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Access to Justice Annotated Bibliography: February 2019 V.6

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THE NATIONAL SELF-REPRESENTED LITIGANTS PROJECT: ACCESS TO JUSTICE ANNOTATED BIBLIOGRAPHY

February 2019 V.6

Megan Campbell¹



¹ Many research assistants at the NSRLP have worked on this bibliography through versions one to six, including Hannah Bahmanpour, Kyla Fair, Kevin Cooke, Katrina Trask, Janice Kim, Lidia Imbrogno, Joanna Pawlowski, and Rebecca Flynn.

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Part I: Access to Justice Overviews

Section A: Canada

Articles in academic journals

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Part I: Access to Justice Overviews

SECTION A: CANADA

Articles in academic journals

1. Birnbaum, R. & Bala, N. “Views of Ontario Lawyers on Family Litigants without Representation” 65 University of New Brunswick Law Journal (2012) 99-124.
2. Birnbaum, Rachel, Michael Saini & Nicholas Bala “Growing Concerns about the Impact of Self-Representation in Family Court: Views of Ontario Judges, Children's Lawyers and Clinicians” (2018) 37:2 Canadian Family Law Quarterly 121–137.
3. Bond, Jennifer, Wiseman, David, & Bates, Emily “The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector” (2016) 25:1 Journal of Law and Social Policy.
4. Flaherty, Michelle. “Self-Represented Litigants, Active Adjudication and the Perception of Bias: Issues in Administrative Law (2015) 38:1 Dalhousie Law Journal 119.
5. Leitch, Jennifer “Lawyers and Self-Represented Litigants: An Ethical Change of Role” (2017) 95 La Revue Du Barreau Canadien 669.
6. MacKenzie, Brooke “Effecting a Culture Shift – An Empirical Review of Ontario’s Summary Judgment Reforms” (2017) 54 Osgoode Hall Law Journal.
7. Pillar, Andrew. “Law and the Business of Justice: Access to Justice and the Profession / Business Divide” (2014) 11 Journal of Law and Equality 5-33.
8. Salyzyn Amy et al. “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice” (2016) 33:2 Windsor Yearbook of Access to Justice.
9. Semple, Noel. “The Cost of Seeking Civil Justice in Canada” (2015) 93:3 The Canadian Bar Review 639-673.
10. Vayda, Paul. “Chipping Away at Cost Barriers: A Comment on the Supreme Court of Canada’s Trial Lawyers Decision” (2015) 36:1 Windsor Review of Legal and Social Issues, 207.

Selected news reports

1. Boyd, John-Paul. “A2J DIY 5: Provide Some Services on a Flat-Rate Basis” Slaw, February 12, 2016.
2. Burton, Sarah. “What Self-Represented Litigants (Actually) Want” LawNow, June 30, 2015.
3. “High Priced Justice” The Globe and Mail Editorials, January 5, 2014.
4. Level, Elliot. “Plain and Simple Will Boost Access to Justice” Canadian Lawyer, October 12, 2015.
5. Watson Hamilton, Jonnette, “The Increasing Risk of Conflating Self-Represented and Vexatious Litigants” (Sep 17 2018) ABlawg.ca (blog).
6. Watson Hamilton, Jonnette, “Challenge to the Queen’s Bench Vexatious Litigant Procedure” (December 5th 2018) ABlawg.ca (blog).
7. Watson Hamilton, Jonnette, “The Vexing Question of Authority to Grant Vexatious Litigant Orders” (December 23rd 2016) ABlawg.ca (blog).

Research reports and lectures

1. Boyd, John-Paul and Bertrand, Lorne. “Comparing the Views of Judges and Lawyers Practicing in Alberta and in the Rest of Canada on Selected Issues in Family Law: Parenting, Self-Represented Litigants, and Mediation” Canadian Research Institute for Law and Family, 2016.
2. British Columbia Ministry of Justice, Family Services Branch “Vancouver Justice Access Centre Evaluation Report” September, 2014.
3. Buckley, Melina. “Evolving Legal Services: Review of Current Literature” Community Legal Education of Ontario, December, 2013.
4. Canadian Bar Association Legal Futures Initiative. “How Can Legal Services be Changed to Increase Access to Justice?” October 21, 2013.
5. Canadian Forum on Civil Justice. “A Roadmap for Change, the Final Report of the Action Committee on Access to Justice in Civil and Family Matters” Slaw, December 13, 2013.
6. Community Legal Education Ontario. “Public Legal Education and Information in Ontario: Learning from a Snapchat” December, 2015.
7. 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.
8. Macfarlane Julie, Gill Gurleen, and Riley Thompson Piper. “Tracking the Continuing Trends of the Self-Represented Litigants Phenomenon: Data from the National Self-Represented Litigants Project, 2015-2016” The National Self-Represented Litigants Project.

Articles in academic journals

1. Birnbaum, R. & Bala, N. “Views of Ontario Lawyers on Family Litigants without Representation” 65:1 University of New Brunswick Law Journal (2012) 99–124.

This article reports the preliminary findings from a recent survey of Ontario family lawyers on their perception of SRLs. Findings indicate that in 27% of family cases, one side has no lawyer and 21% of cases have no lawyer on either side. When lawyers were asked whether the number of family litigants without lawyers had increased in the previous five years, 37% indicated that there were “many more” such cases and 44% reported “more” cases. Respondents to this survey clearly believe that the inability to afford a lawyer, exacerbated by recent cuts to Legal Aid, is the primary issue, with 65% reporting this as the most important reason and another 31% indicating that it is an important reason. 7% of lawyers reported that the most important reason that family litigants have no lawyer is that they think that they can do as good a job as a lawyer, and 19% think that a desire to directly confront one’s former partner in court is a factor. 84% of lawyer respondents indicated that those without lawyers usually or always have unrealistic expectations at the start of a case, making settlement more difficult. Almost half (48%) reported that the party without a lawyer looks to them for advice or information “usually” or “always”. 57% of lawyers reported that judges treat those without lawyers “very well” and 31% believe judges provide “good treatment” to those without a lawyer. 90% of lawyers reported that their clients sometimes or always express concern that the judge seems to favour

the party without a lawyer. Finally, 85% of the respondents indicated that they provide some family services on the basis of “limited scope retainers”.

2. Birnbaum, Rachel, Michael Saini & Nicholas Bala “Growing Concerns about the Impact of Self-Representation in Family Court: Views of Ontario Judges, Children's Lawyers and Clinicians” (2018) 37:2 Canadian Family Law Quarterly 121–137.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

This article reports on three related studies, comparing the perceptions and experiences of self-representation in family proceedings in Ontario of 67 lawyers for children, 45 social workers, and 93 judges. These studies indicate that the number of cases involving self-represented litigants is growing, and this has resulted in increased length of proceedings and decreased likelihood of settlement. All three studies focused on the experiences in the litigation process in both family and child protection disputes. The three groupings answered a detailed survey online. Lack of financial resources is seen as the primary reason for parental self-representation.

Taken from the collected data from the surveys, the majority of lawyers reported that Office of the Children’s Lawyer (OCL) cases where at least one party is self-represented took, on average, 66% more time than the cases where both parties were represented. Clinical investigators reported that domestic cases are less likely to settle if at least one party is self-represented (37%). Lawyers and clinicians were asked about the impact of working with self-represented litigants on the amount of work they had to spend on a case as OCL representatives, which ultimately influences the amount billed to the OCL. Judges indicated that they provide 99% of self-represented litigants with at least some assistance during the litigation process. 90% of judges also indicated that they have awarded costs against a self-represented litigant.

This paper suggests that access to justice in family law matters must focus not only on the needs of the self-represented litigant, but also access to services for children that directly allows for their views and preferences to be heard in all matters.

3. Bond, Jennifer, David Wiseman & Emily Bates “The Cost of Uncertainty: Navigating the Boundary Between Legal Information and Legal Services in the Access to Justice Sector” (2016) 25:1 Journal of Law and Social Policy.

While “legal information” and “legal services” are two concepts that can be and presently should be distinguished by service providers, many projects are not easily categorized according to this dichotomy. This paper suggests that the Canadian justice system urgently requires innovative approaches to the provision of legal assistance. In order to make efficient use of limited resources, those crafting and executing important initiatives in this area must have clearly-defined parameters for their work. The continued threat of an unauthorized practice violation – non-lawyers offering “legal advice” rather than “legal information” – creates an atmosphere in which risk-averse funders and service providers will inevitably resort to more traditional approaches of limited assistance rather than experiment with the new models that are desperately needed. The article recommends that, given the complexity and importance of these issues, it is

regulators and lawmakers who are best placed to absorb the costs of conducting a detailed policy analysis and develop a new, consumer-focused approach across the legal services sector that is not borne by individual actors.

4. Flaherty, Michelle. “Self-represented Litigants, Active Adjudication and the Perception of Bias: Issues in Administrative Law” (2015) 38:1 Dalhousie Law Journal 119.

This paper advocates for a more active and hands-on role for adjudicators. Active adjudication allows the adjudicator to provide direction to parties and to actively shape the hearing process. Active adjudication can be an important access to justice tool for growing numbers of self-represented litigants who cannot meaningfully access administrative justice. As the role of the adjudicator shifts, so too must our understanding of the notion of impartiality.

If it is unfair to expect self-represented litigants to navigate the hearing process without adjudicative assistance and direction, it is also unfair to insist on a vision of impartiality that prevents adjudicators from actively managing the hearing process. The author develops the notion of “substantive impartiality” to show how existing legal principles can accommodate a more active role for the administrative adjudicator. The author also makes practical recommendations and suggests how administrative tribunals can help self-represented litigants understand the principles and procedures related to bias allegations.

5. Leitch, Jennifer “Lawyers and Self-Represented Litigants: An Ethical Change of Role” (2017) 95 Canadian Bar Review 669.

This paper argues that a focus on the consequences of increased self-representation requires revision of the values and objectives underlying the professional rules, as well as ensuring that the rules stay relevant and reflect the changing realities of the litigation process. The first section of the paper sets out the scope of self-represented litigants' engagement with the civil justice system, and the second section examines critiques of the traditional adversarial model in light of the new challenges associated with self-representation. The third section of the paper reviews the qualitative research data that highlights self-represented litigants' experiences of participating in the civil justice system, and in particular, their experiences with opposing counsel. Finally, the author discusses how to reformulate lawyers' roles and their ethical duties within a revised understanding of the adversarial model that is more sensitive to its non-adversarial dimensions. The focus throughout is to explore what this might mean for a reconstituted account of lawyers' ethical responsibilities as they relate to self-represented litigants.

6. MacKenzie, Brooke “Effecting a Culture Shift – An Empirical Review of Ontario’s Summary Judgment Reforms” (2017) 54 Osgoode Hall Law Journal.

This paper presents an empirical analysis of all reported summary judgment decisions in Ontario between 2004 and 2015, in order to explore whether amendments to the court rules actually achieved their intended effects of improving the efficiency and effectiveness of dispute resolution. The paper observes an increase in the number of summary judgment motions determined, and an increase in the number of summary judgment motions granted.

The paper refers to the study that NSRLP conducted on summary judgements, summarizing the NSRLP's finding that there are striking differences in the success rate of these motions when brought against SRLs (88% in 2014, 100% successful in 2004), vs. when brought by SRLs (none successful in either 2014 or 2004), and those brought between represented parties (61% successful in 2014, 70% successful in 2004). The data collected for the herein study provides the opportunity to expand upon the NSRLP's work.

The study also found that, albeit a small sample size to draw any meaningful connections, there were self-represented parties able to succeed on summary judgment against represented parties under the new Rule 20, where they had not done so under the old rule.

7. Pilliar, Andrew. "Law and the Business of Justice: Access to Justice and the Profession/Business Divide" (2014) 11:1 Journal of Law & Equality 5–33.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

In order to address access to justice problems, the legal profession must pay more attention to the relationship between the profession of law and appropriate business practices. This article provides the background to the access to justice crisis in Canada, as well as the history of the profession/business dichotomy in law. Pillar explains how this dichotomy has impaired efforts to improve access to justice because of unresolved and changing meanings attached to the ideas of "profession" and business" as they relate to the practice of law. Pillar suggests four areas of tension between professional ideals and business realities that need to be addressed in order to improve access, namely: (1) practice organization; (2) billing and profits; (3) advertising; and (4) legal education.

8. Salyzyn Amy et al. "Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice" (2016) 33:2 Windsor Yearbook of Access to Justice.

The authors sought to determine what in particular makes court forms difficult for non-legally trained people to complete. Rather than using a traditional conception of literacy, the authors utilized a functional literacy approach to shift the focus of the literature away from an individual's ability to read, and towards the ability of individuals to meet the particular task demands associated with court forms. The authors analyzed the following four forms: a Plaintiff's Claim (Form 7A) (needed to initiate a claim in Small Claims Court), a Form T2-Application (needed when seeking relief against a landlord before the Landlord and Tenant Board), and an Application (General – Form 8) and Financial Statement (Property and Support Claims, Form 13.1) (needed to seek a contested divorce, that would include a contested spousal support claim and the division of property).

The authors found that the challenges inherent in court forms include the difficulty in generating information which requires expert legal knowledge, inferring the meaning of technical legal terms, and moving between multiple information sources while completing court forms. There are also many "distractors" contained in court forms that risk confusing readers, such as broad

requests for information, or the use of unclear terms. Although associated court guides provide some assistance, the authors found that the guides were often incomplete, and also potentially difficult to use, due to the overall complexity of the guides themselves. The paper concludes with a preliminary discussion of possible solutions to the issue of court form complexity, including court form redesign, the use of dynamic electronic forms, and the provisioning of unbundled legal services.

9. Semple, Noel. “The Cost of Seeking Civil Justice in Canada” (2015) 93:3 Canadian Bar Review 639–673.

This article compiles empirical data about the monetary, temporal, and psychological costs that confront individual justice-seekers in Canada, and proposes a taxonomy of the private costs of seeking justice. The analysis is derived from the interview data gathered by the NSRLP National SRL Study from 2011-2013. The study also offers a few hints that the private costs associated with family law are higher compared to other civil legal needs.

The author argues that a costs-based analysis that includes monetary, temporal, and psychological costs can move access to justice forward in two ways. First, it can help public sector policy-makers identify ways to reduce those costs, either with or without new funding. Second, it can also help lawyers and entrepreneurs identify new, affordable ways to reduce the costs that are most onerous to individual justice-seekers, who have many different legal needs. The author concludes as follows: “The monetary, temporary, and psychological costs of seeking civil justice in this country are high, and indeed often prohibitive for individuals. However, there is enormous potential for creative policy-making and innovative legal practice to decrease these costs, and thereby make civil practice more accessible to Canadians”.

10. Vayda, Paul. “Chipping Away at Cost Barriers: A Comment on the Supreme Court of Canada's Trial Lawyers Decision” (2015) 36:1 Windsor Review of Legal and Social Issues 207.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

In a recent decision, *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, the Supreme Court of Canada made significant comments on cost barriers and access to justice. Chief Justice Beverley McLachlin stated that access to justice is inadequate when the middle class cannot hope to pay legal fees that average \$338 per hour. This leaves many Canadians the choice of representing themselves in court, or giving up on access to justice. Chief Justice McLachlin argued that this situation threatens the public’s confidence in the Canadian justice system: “[w]e can draft the best rules in the world and we can render the best decisions, but if people can't have access to our body of law to resolve their own legal difficulties, it is for naught”. Chief Justice McLachlin addressed two issues that she says undermine public confidence: “First, there cannot be cost barriers that deny some citizens access to our courts; and second, lawyers and governments should not be complicit in limiting this access by imposing unaffordable legal fees or costs”.

Selected news reports

1. Boyd-John Paul, “A2J DIY 5: Provide Some of Your Services on a Flat-Rate Basis” Slaw, February 12, 2016.

This article first discusses why the billable-hour approach, from the client’s point of view, is extremely unappealing. One alternative to the billable hour is flat-rate billing. The author lists some examples of solicitor’s work that can be handled on a flat-rate basis, as well as some examples of firms that are adopting the flat-rate billing method. Finally, the article touches upon how to calculate these flat rates in general, and provides tips and suggestions in offering flat-rate services.

2. Burton, Sarah. “What Self-Represented Litigants (Actually) Want” LawNow, June 30, 2015.

As the numbers for self-represented litigants are being driven up, ignoring their needs will not solve the problem. Engaging in meaningful conversation, and understanding what self-represented litigants are looking for, could be a move towards finding feasible solutions. This article highlights what self-represented litigants want: clear and practical legal information; an explanation of the difference between legal information and legal advice; access to seminars and coaching; a different approach to legal services (e.g. limited scope retainers and non-lawyer assistance); and to be treated with respect.

3. Power, Peter “High Priced Justice” The Globe and Mail Editorials, January 5, 2014.

“The Bar Association estimates that 20 years ago, at least 95% of people appearing in court were represented by a lawyer. Today, ‘anywhere from 10 to 80% of litigants are unrepresented, depending on the nature of the claim and the level of court’. [...] In Ontario, for example, a single person earning more than \$208 a week is not eligible for legal aid. That’s half the minimum wage. [...] Last year, Ontario Superior Court Justice D.M. Brown said that the country’s courts were becoming ‘only open to the rich.’ [...] If you get your day in court, but at a back-breaking price, or without proper legal advice, is that justice?”

4. Level, Elliot. “Plain and Simple Will Boost Access to Justice” Canadian Lawyer, October 12, 2015.

There are two specific solutions that are proposed in this article to the access to justice problem: 1) an increase in plain language; and 2) more administrative tribunals and tribunal-style rules for civil courts. The first solution would allow for a better understanding of legislation, which would in turn benefit future relations such as landlords and tenants. The second proposes that if the rules of civil procedure were more like the rules of administrative tribunals, simpler and flexible, it would obtain fair results and provide a more educational experience for participants for the future.

5. Watson Hamilton, Jonnette, “The Increasing Risk of Conflating Self-Represented and Vexatious Litigants” (Sep 17 2018) ABlawg.ca.

Case commentary on the decisions of *Alberta Treasury Branches v Hawrysh*, 2018 ABQB 475 (CanLII) (*Hawrysh #1*) and *Alberta Treasury Branches v Hawrysh*, 2018 ABQB 618 (CanLII) (*Hawrysh #2*). This case highlights the new two-step process adopted by Alberta to label litigants as vexatious and bar them from the court. This blog post outlines the facts of the case, as well as comments on the evolution of this new process. This case reveals how quickly the Court of Queen’s Bench of Alberta now acts to restrict access to the courts by someone whose litigation behaviour is judged to be vexatious. Jonnette Watson Hamilton comments that this case illustrates that very little of the behaviour found to be abusive in these cases occurred in the courtroom or in documents filed with the court. Most importantly, the litigant’s use of *Pintea v Johns*, 2017 SCC 23, [2017] 1 SCR 470 and the Canadian Judicial Council “*Statement of Principles on Self-represented Litigants and Accused Persons* (2006)” was held to be an independent indicia of abusive litigation justifying the imposition of court access restrictions.

6. Watson Hamilton, Jonnette, “Challenge to the Queen’s Bench Vexatious Litigant Procedure” (December 5th 2018) ABlawg.ca.

Justice Frederica Schutz in *Lymer (Re)*, [2018 ABCA 368](#) is the first case that the new two-step process of restriction orders will be scrutinized by the court of appeal. Watson Hamilton notes that the access restriction order claims inherent jurisdiction rather than vexatious litigant provision of the *Judicature Act*. This blog post analyzes how this case will negatively affect SRLs.

7. Watson Hamilton, Jonnette, “The Vexing Question of Authority to Grant Vexatious Litigant Orders” (December 23rd 2016) ABlawg.ca.

Along with case commentary, this blog post discusses the unusual nature of the two-step process adopted in this case. *Hok v Alberta* [2016 ABQB 651](#) is the first time the second step in the new two-step process has been taken. Watson Hamilton outlines the court of queen’s bench two-step process, which has been formalized in Civil Practice Note 7 – Vexatious Application/Proceeding Show Cause Procedure, which came into effect on September 4, 2018. This post gives a good summary of the scope of vexatious litigant orders, and an explanation of how the courts justified how they had the authority and jurisdiction to be able to follow this two-step process instead of the vexatious litigant provision in the *Judicature Act*.

Research reports and lectures

1. Boyd, John-Paul E. and Lorne D. Bertrand. "Comparing the Views Of Judges And Lawyers Practicing In Alberta And In The Rest Of Canada On Selected Issues In Family Law: Parenting, Self-Represented Litigants And Mediation" Canadian Research Institute for Law, April 8, 2016.

This report draws on the findings of a survey, conducted by the Canadian Research Institute for Law and the Family, Professor Nick Bala, and Dr. Rachel Birnbaum, of the participants at the 2014 National Family Law Program in Whistler, British Columbia, and compares the views of Alberta respondents with those from the rest of Canada on a number of issues, including parenting after separation, self-represented litigants, access to justice and mediation. The report proposes a series of recommendations including: the utilization of unbundled services; the amendment of the Divorce Act; mandatory mediation when at least one party is self-represented; the provision of limited legal services in family law matters by paralegals; and, the use of standardized questionnaires by lawyers screening for domestic violence.

2. British Columbia Ministry of Justice – Family Justice Services Branch. “Vancouver Justice Access Centre Evaluation Report” September, 2014.

This report found diverse demographics of client groups: 14% no high school graduation, 15% high school grad, 17% college, 22% university; 63% less than \$30,000 annual income, 12% over \$50,000. The report indicates generally high satisfaction rates but only a bare majority of clients thought that going to the JAC meant that their case went more smoothly in court, or that their case went more quickly because they had been helped at the JAC. Slightly more (64%) clients thought that they were better prepared to present their case because of the JAC. These numbers were slightly lower again for those with a lawyer.

3. Buckley, Melina. “Evolving Legal Services: Review of Current Literature” Community Legal Education of Ontario, December, 2013.

This literature review provides an overview and analysis of research findings on civil legal needs and the effectiveness of various forms of legal services delivery programs in providing meaningful access to justice, including PLEI (public legal education and information). The review’s focus is on research and reports that assess legal services on a rigorous basis, on outcome-based evaluation, and on the processes and methodologies used in these studies. The purpose of this research is to provide context and background for researchers, to develop a framework for research, and to refine the research’s focus and research questions to ultimately guide the selection of methodologies and case studies for the ELSRP (Evolving Legal Services Research Project). This review also outlines the following for researchers: key lessons, a suggested approach to framing outcome measurements, a reframing of the research focus, and thoughts on site selection criteria.

4. Canadian Bar Association Legal Futures Initiatives. “Report on the Consultation” February 21, 2014.

The CBA’s Reaching Equal Justice report recommends “a wide range of alternative organization models for the provision of legal services to meet the legal needs of low and moderate income Canadians, including those living outside major urban centers.” The report sets a target that “by 2030, 80% of lawyers in people-centered law practices work with an integrated team of service providers...including non-legal services and services provided by team members who are not lawyers”.

Alternative structures are becoming realities outside private practice as well. British Columbia’s *Civil Resolution Tribunal Act*, passed in May 2012, will create North America’s first online tribunal to deal with small claims and strata property disputes. It is hoped that alternate ways of doing business will improve access to justice. Outsourcing, unbundling and fixed fees may reduce costs for clients. Or they may have a softer impact: one US study that shows unbundled legal services “make little difference to outcome” but “enhance procedural fairness.” The CBA’s Reaching Equal Justice project takes a more cautious approach to limited scope retainers and recommends that they “are only offered in situations where they meet the meaningful access to justice standard.” Mitch Kowalski suggests that capping lawyers’ salaries would free up resources to be used in innovations and access to justice.

Some commentators have suggested that the law schools have a role to play in facilitating access to justice: through offering practical learning opportunities like *pro bono* work and legal clinic internships, and by ensuring more low-income students get an opportunity to enter the profession. The CBA’s Reaching Equal Justice project envisions a multifaceted role for law schools, and recommends that all graduating law students “know that fostering access to justice is part of their professional responsibility.” Professor Adam Dodek suggests that for access to justice to be a part of a Canadian lawyer’s professional responsibility, it needs to be matched by a commitment to access to justice within lawyers’ Codes of Professional Conduct. The path to improving access to justice may differ based on how we conceive of A2J. Is it simply about keeping legal costs down, and providing alternatives to market-based legal services for those who need them? Or is it a more robust concept, requiring “that laws and remedies must be just, equitable, and sensitive to the needs of the poor and marginalized”?

5. Canadian Forum on Civil Justice. “A Roadmap for Change, the Final Report of the Action Committee on Access to Justice in Civil and Family Matters” Slaw, December 13, 2013.

The legal aid system in Canada provides more service in civil matters than is available in many places throughout the world. Yet, with all this and all that it costs, we are not meeting the legal needs of the Canadian public. The final report of the Action Committee on Access to Justice in Civil and Family Matters, *A Roadmap for Change*, tackles the difficult problem of why this is the case and lays out recommendations for what can be done to bring full access to justice to Canadians.

The report has three main purposes 1) to promote a broad understanding of what we mean by access to justice; 2) to promote a culture shift, a new way of thinking about justice, access to justice and what we mean by the justice system; 3) to offer a broad roadmap for change. The Action Committee presents a view of access to justice that is much broader, reflecting not only the legal problems for which people obtain legal advice or that find their way to the courts, but the much larger number of serious and difficult legal problems experienced by the public for which they do not seek legal resolution. The poor are especially vulnerable to experiencing multiple problems.

Because of current levels of funding and coverage, the legal aid system is unavailable to most people and legal problems. The courts are not accessible to most people, largely due to cost. Further, the report acknowledges that systemic problems with the conventional approaches, which have dominated efforts to address the access to justice problem, may have produced the current unsustainable situation. What is needed is a culture shift, a new way of thinking that is based on a culture of reform.

Finally, the report provides a nine-point access to justice roadmap. It is not a recipe but rather a set of principles intended as a guide for local initiatives. The roadmap for change includes the establishment of national and local implementation mechanisms to put in place enhanced access to justice services that meet the needs of local and regional populations. The report emphasizes that to succeed we must enhance our capacity for innovation.

6. Community Legal Education Ontario, “Public Legal Education and Information in Ontario: Learning from a Snapshot” December 2015.

This report identifies an abundance of legal information resources available in Ontario. The objective of this mapping initiative was to get an overview of PLEI (public legal education and information) resources available in Ontario relating to the common legal problems of modest- and low-income people. The review looked at PLEI resources through several lenses, including topic and subtopic, audience, format, language, intended use, and information provider. A key goal of this project was to identify opportunities for improved collaboration and coordination among PLEI providers in the province.

7. Farrow, Trevor 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.

Based on empirical research with court administrators, this white paper found a service gap in the Canadian justice system between what SRLs need and what is being provided. The report makes 8 recommendations. Many of the recommendations are designed to be achievable with modest financial and human resource implications – they are also designed to make an immediate impact. Supported by adequate training, a shift in the court’s service focus will set the stage for further reforms. Rethinking the role of court workers within a triage model has both short term and long-term requirements and implications.

8. Macfarlane Julie, Kaila Scarrow and Becky Robinet. “Tracking the Continuing Trends of the Self-Represented Litigants Phenomenon: Data from the National Self-Represented Litigants Project, 2017” The National Self-Represented Litigants Project.

The National Self-Represented Litigants Project collects information from self-represented litigants across Canada. This Report presents data from 66 respondents collected from January 1, 2017 to December 31, 2017. The 2017 report introduced new questions about identifying as someone with a disability, access to and use of unbundled services, and more detailed questions about SRL experiences

Similar to the data from previous reports, the majority of respondents continue to report low annual incomes. 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. There was a dramatic decline in the number of respondents who describe themselves as satisfied with earlier legal services. 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. 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). The new question asking about access to unbundled legal services revealed 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. Further, there continues to be more familiarity with mediation services. The report remarks the continuation of SRLs feeling frustrated, overwhelmed, stressed and defeated by the legal process.

Part I: Access to Justice Overviews

Section B: United States

Part I: Access to Justice Overviews

SECTION B: UNITED STATES

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17. Leitch, Jennifer, “Coming off the Bench: Self-Represented Litigants, Judges and the Adversarial Process” (October 2017) 47:3 The Advocate’s Quarterly 309.
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19. Rhode, Deborah L. “Access to Justice: A Roadmap for Reform” 41 Fordham Union Law Journal 1227, 2013-2014.

20. Rhode, Deborah, and Buford Ricca, Lucy. "Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement" 82 Fordham Law Review 2587, 2014.
21. Sandefur, R. L. "The Impact of Counsel: An Analysis of Empirical Evidence" (November 2010) 9:1 Seattle Journal for Social Justice, Article 3.
22. Shanahan, Colleen F., "The Keys to the Kingdom: Judges, Pre-hearing Procedure, and Access to Justice" (2018) 2018:2 Wisconsin Law Review.
23. Sullivan, Joseph A. "United States: Civil Gideon and Access to Justice" January 15, 2014.
24. Zimmerman, N, and Tyler, Tom. "Between Access to Counsel and Access to Justice: A Psychological Perspective" 37 Fordham Urban Law Journal, 2010.
25. Zorza, Richard. "An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue" 43(3) Family Law Quarterly, February, 2009.
26. Tyler, T. "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures" 22 Law and Society Review, 1988
27. Charne, Jeanne. "Celebrating the Null Finding: Evidence-Based Strategies for Improving Access to Legal Services" 122 Yale Law Journal 2209, 2013

1. Applegate, Amy & Beck Connie "Self-Represented Parties in Mediation: 50 Years Later It Remains the Elephant in the Room" (2013) 51:1 Family Court Review.

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The number of mediation programs offered by courts has risen significantly in the last 25 years: "family mediation is the heart of family dispute resolution services". Now there are growing numbers of family SRLs and many are unaware of and/or unskilled in how to use mediation without lawyers to represent them. The authors propose that to take account of this, mediators should develop (as some states have) a special code of practice for working with SRLs including: the mediator should be able to provide legal information to SRLs; the mediator should explain the difference between a lawyer's role and a mediator's role; and the mediator should be able to draft agreements for SRLs (implying that these mediators need some type of legal training). The authors argue that the mediator's primary duty is to protect the SRL and that this justifies them extending their responsibility into these areas for SRLs in family mediation.

2. Barton, Benjamin H., and Stephanos Bibas, *Rebooting Justice: More Technology, Fewer Lawyers, and the Future of Law* (New York: Encounter Books, 2017).

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Many of the most compelling proposals of *Rebooting Justice* revolve around using technological tools and institutional reforms to more effectively support the overwhelmingly lawyerless litigants who seek redress from the courts. The legal profession has to-date managed to largely insulate itself from outside interference. *Rebooting Justice* documents how this self-interested legal doctrine has been abused by courts, as the book describes, in an "unholy alliance" with bar associations to shield lawyers from competition at the expense of the public. This book looks at

how on the one hand, providing any legal services typically requires attendance at a law school whose accreditation requirements – an expensive library, burdensome three years of course requirements and more – impose a significant entry barrier and a significant debt burden on graduates. On the other hand, once admitted, members benefit from a disciplinary process that almost never results in penalties or expulsion, combined with aggressive policing of the unauthorized practice of law should any non-lawyer try to assist a litigant unable to afford the real deal.

3. Blasi, Gary “Framing Access to Justice: Beyond Perceived Justice For Individuals” (2009) 42:1 Loyola of Los Angeles Law Review 913.

The author asserts that the current vision of access to justice is framed too narrowly. While our system is still far from providing a right to counsel in individual civil matters, we should aim toward a goal beyond providing counsel for individuals with already well-defined legal disputes. Access to justice has come to be framed rather narrowly as access of an individual to a lawyer, or some form of assistance purported to be at least a partial substitute, to help deal with a problem or dispute already framed in legal terms. But, access to justice should be framed to include exploring legal solutions where they are not immediately apparent, enabling collective and collaborative action when necessary, and attending to not only perceptions of procedural justice but also to outcomes. A broader framing of access to justice may lead to greater equality, effectiveness, and efficiency. This broader frame for access to justice would include (1) claim making; (2) legal organizing and coordination to overcome collective action problems and to assert group claims; and (3) monitoring and enforcement, which would include legal and investigative assistance to monitor and enforce compliance.

4. Boston Bar Association Task Force on the Right to Civil Counsel. “The Importance of Representation in Eviction Cases and Homelessness Prevention” (2012).

Two pilot studies were designed following the call to a renewed commitment by the Bar to provide legal counsel in cases where basic needs are at stake, including housing. Both pilots deal with eviction cases in two different courts. In both pilots an experimental group is provided with full representation up to and including trial. In the first pilot (Quincy) the control group is offered no representation. In the second pilot (North East) there is already a Lawyer for a Day program offering limited legal assistance for participating in mediation.

In the Quincy pilot represented tenants show clearly better outcomes than those who are unrepresented in relation to (e.g.) possession, damages, timelines etc. In the second (North East) pilot there is little measurable difference between the two groups. Lawyers in the North East program assert that there are still benefits to the full representation model including better understanding of the client’s goals and objectives in longer intake interviews and ongoing representation. However, the outcomes – almost always negotiated and then presented as consent orders – show little difference.

5. Carpenter, Anna, “Active Judging and Access to Justice” February 9, 2017.

The article aims to contribute new data and a new conceptual framework to the study of how active judges engage with self-represented litigants. The frequency of active judging is analyzed in the context of a particular American court. Three dimensions of active judging are assessed: adjusting procedures, explaining law and processes, and eliciting information. The results reveal that all judges in the sample engage in at least one dimension of active judging. All of the judges in the sample were seemingly willing to adjust civil procedures to accommodate self-represented litigants. However, in regard to the other two dimensions, the judges' practices varied; the greatest variance occurred in eliciting information from self-represented litigants. Carpenter ends on an optimistic note by asserting that judges in this sample clearly see themselves as playing a significant role in facilitating fairness and access to justice for self-represented litigants – more research is needed to understand how other judges are responding to the self-represented litigant crisis to ultimately understand how different approaches of active judging affect individual litigants and the justice system as a whole.

6. Clarke, Thomas M. & Rebecca L. Sandefur, “Preliminary Evaluation of the Washington State Limited License Legal Technician Program” (March 2017) Report, Public Welfare Foundation, American Bar Foundation, and National Center for State Courts.

The Washington State Supreme Court and the Washington State Bar Association have created an innovative program to expand the provision of legal services. Limited Licensed Legal Technicians (LLLTs) represent a new legal role that builds on the capabilities of traditional paralegals and operates without supervision by lawyers. LLLTs primarily help customers fill out legal forms and understand legal procedures. The program started in the family law practice area, but Washington State plans to expand it to additional practice areas in the near future. So far, a small number of LLLTs have been certified and are currently practicing.

The evaluation finds that the program has been appropriately designed to provide legal services to those who cannot afford a lawyer but still wish for or need assistance. It also concludes that the training program prepares LLLTs to perform their role competently, while keeping within the legal scope of that role. Customers have found their legal assistance to be valuable and well worth the cost. The legitimacy of the role appears to already be widely accepted in spite of its short track record.

Sustainability requires the program creates business models that work for both LLLTs and the organizations providing training and regulation. This new role must be performed well enough to ensure that the public to view it as legitimate and effective.

7. Columbia Law School Human Rights Clinic, “Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases” (2013).

People who are poor or low-income are unable to obtain legal representation when facing a crisis such as eviction, foreclosure, domestic violence, work place discrimination, termination of subsistence income or medical assistance, and loss of child custody. The result is a crisis in unmet legal needs which disproportionately affects racial minorities, women and those living in poverty, and which particularly impacts those in immigration proceedings.

In ratifying the ICCPR, the United States committed itself to ensuring meaningful access to justice. Recently, the U.N. Special Rapporteur on the Independence of Judges and Lawyers noted that “legal aid is an essential component of a fair and efficient justice system founded on the rule of law... it is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights.” The report argues that the U.S. must ensure meaningful access to counsel in civil cases, especially where core human needs are at stake and particularly where lack of counsel has a disparate impact on vulnerable communities.

Current efforts at both the federal and state level are inadequate to fulfill this commitment. The report also proposes that the U.S. Justice Department file supportive amicus briefs for right-to-counsel litigation, and support and coordinate efforts on the state level to establish a civil right to counsel. Finally, the U.S. should establish a right to counsel in cases implicating basic human needs, including in immigration proceedings.

8. American Bar Association, Commission on the Future of Legal Services, “Report on the Future of Legal Services in the United States” (2016).

Access to affordable legal services is critical in a society that depends on the rule of law. Yet, legal services are becoming more expensive, time-consuming, and complex – many who need legal advice are unable to hire a lawyer and are forced to represent themselves. In this Report, the American Bar Association proclaims that the Justice System is overdue for fresh thinking, technological changes, and innovation to address the lack of access to affordable justice. The American Bar Association wishes to inspire innovation, suggest new models for the regulation of legal services, encourage new methods for delivering legal services, educate lawyers, and to foster the development of financially viable approaches to delivering legal services that more effectively meet the public’s needs.

The American Bar Association has established the Commission on the Future of Legal Services, to examine the realities of the public’s lack of access to legal services. The Commission produced a series of recommendations (outlined in the report), and concludes that solutions will require the efforts of all stakeholders in order to implement the recommendations.

9. Cummings, Scott L., and Rebecca L. Sandefur, “Beyond the Numbers: What We Know – and Should Know – About American *Pro Bono*.” (2013) 7 Harvard Law and Policy Review 83.

This paper questions if *pro bono* is an effective and efficient way to provide legal aid and access to justice. In the United States, *pro bono* activity is understood as “legal services without fee or expectation of fee” to “persons of limited means”. The development and organization of *pro bono* raises crucial questions about its systemic consequences. This paper suggests that unleashing greater *pro bono* participation does not simply increase services to poor clients and other underrepresented groups; it also changes the nature of those services in ways that may affect the professional identity of lawyers, the outcomes obtained for individual clients, the overall distribution of legal services, and the advancement of social causes. As a result of

economic downturn, firms are less likely to spend more time on *pro bono* hours, and the ones that do give them a lower priority.

The authors also note that firms are more likely to partner with “cause-oriented” *pro bono* organizations (rather than cultural, community, or legal services organizations), with the most common causes including civil rights and liberties, and issues related to children. There are far fewer partnerships involving organizations pursuing causes such as labor, poverty, or assistance to veterans and the elderly. The paper concludes that there is reason to be concerned that the well of *pro bono* resources will shrink, and the resources that remain will be targeted to the needs of firms for associate development rather than the needs of the public for justice. Law firms, influenced by corporate clients, may come to view *pro bono* activity as one element of their broader corporate social responsibilities, and evaluate the nature and scope of *pro bono* activity through the lens of advancing corporate objectives.

10. Engler, Russell, “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed” (2010) 37:1 Fordham Urban Law Journal.

In evaluating the ABA proposal for a civil right to counsel, Engler considers the scenarios in which full representation by counsel might be most important. He assesses the characteristics of litigants, the cases they pursue, and the courts that hear their cases. Engler then interprets the correlation between representation and success rates in the courts and assesses key variables beyond representation that can affect the outcomes of cases.

Engler develops two approaches to assessing the need for representation. The first is directly correlated with the power opposing the litigant. The greater the power opposing the litigant, the greater the need for legal representation. Secondly, Engler argues that the amount of assistance that is required for self-represented litigants is dependent on what is at stake in a given proceeding. We must ask: “Where would an advocate most likely affect the outcome?”

11. Haneman, Victoria J, “Bridging the Justice Gap with a (Purposeful) Restructuring of Small Claims Courts” (2017) 39:4 Western New England Law Review 457.

In an effort to broaden its jurisdiction, small claims courts may assist with bridging the justice gap by implementing the following changes: (1) simultaneously raising court limits for claims filed by natural persons [Corporations and businesses] and lowering (or keeping static) limits for filings by non-natural persons; (2) limiting the number of claims that may be filed by one plaintiff within a twelve-month period; (3) providing a small claims advisory service to assist self-represented litigants; and (4) establishing a framework to assist them.

Meaningful assistance must be available to account for differences in the litigants’ native ability and education. Collection of a judgment is so complicated and confusing to many laypersons that they may recover nothing without some assistance by a lawyer. Multiple studies suggest that more than half of successful plaintiffs do not collect a single dollar of the amount awarded to them. For the vast number of individuals who are unrepresented or underrepresented, the only solution

remaining may be to improve delivery of justice through the existing framework of the small claims court system.

12. Haneman, Victoria J, “Everybody Dies. Or, A Consideration of Simultaneous Death Statutes and the Struggles of the Self-Represented” (2017) 32 Notre Dame Journal Of Law, Ethics and Public Policy.

This paper explores how ‘do it yourself wills’ in the US done by those who have opted to forgo legal assistance, usually due to lack of funds, run into legal pitfalls. Access to information through technology should allow basic legal issues to be resolved in an efficient and predictable manner, but the reality is that the complexity of the system interferes. This paper explores and recommends revisions of probate statutes to protect the self-represented from easily anticipated mistakes. This discussion is framed within the context of holographic wills.

13. Hough, Bonnie “Self-Represented Litigants in Family Law: The Response of California’s Courts” (2010) 2:1.

National data indicate that 60% to 90% of family law cases involve at least one self-represented litigant, while in comparison, less than 5% of cases in general civil dockets include a self-represented litigant. Litigants choose to represent themselves because the cost of legal services in California is too high for many litigants. California courts have responded with a variety of strategies designed to ensure access to the courts.

JusticeCorps recruits and trains 250 university students annually to augment court and legal aid staff who are assisting SRLs in court-based self-help programs in select locations throughout California. Students provide in-depth and individualized services to SRLs and assist litigants in completing pleadings under attorney supervision. The students also assist in giving litigants a better understanding of the court system. The California Bar Association allows lawyers to provide limited scope assistance, where the services sought are limited to specific tasks. Courts are changing the roles of court staff and judicial officers and their handling of cases with SRLs.

14. Kaufman, Risa E, et al. “The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel” (2014) 45 Columbia Human Rights Law Review 772.

This paper explores the relationship between a right to housing and a right to civil counsel by setting out the international human rights framework for a right to counsel when basic needs are at stake. It refers to the International Covenant on Civil and Political Rights (ratified by the US in 1992), the Convention on the Elimination of All Forms of Racial Discrimination (ratified by the US in 1994), calls by independent human rights experts for a right to counsel, and 2012 and 2013 reports by the UN Special Rapporteur on the right to adequate housing.

The author evaluates the impact of legal representation on a right to housing, drawing on both qualitative accounts by litigants represented by legal aid in Wisconsin, and quantitative research surveys showing statistics that represented individuals have more favorable outcomes in family law, domestic violence, small claims, administrative agencies, and housing court disputes than

unrepresented litigants. The paper discusses the challenges faced by SRLs regarding rights to housing and notes efforts to lobby for a right to housing (via constitutional litigation), and pilot programs such as those in California, Maryland, Texas, Boston, and Wisconsin.

15. Klein, Stephanie. “Mediating, Judging with Pro Se Parties: A Balancing Act” The Legal Intelligencer, January 19, 2016.

This article deals with mediators and the ethical issues that they face in relation to self-represented parties. The Model Standards of Conduct for Mediators (2005), have been adopted by the three main trade associations for mediators. These are the American Bar Association, the Association for Conflict Resolutions, and the American Arbitration Association. The Model Standards include some main principles: first, while impartiality is important, equally important is procedural fairness and party competency; second, while mediators must refrain from practicing their former disciplines while mediating, mediators are duty bound to make accommodations or adjustments that will "make possible the party's capacity to comprehend, participate and exercise self-determination.". The article analyzes the types of adjustments mediators may use in order to best serve their clients, while complying with industry standards.

16. Legal Services Corporation, “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans” (June 2017) Prepared by NORC at the University of Chicago for Legal Services Corporation. Washington, DC.

A study by NORC (National Opinion Research Center) at the University of Chicago surveyed more than 2,000 American adults living in low-income housing and eligible for Legal Services Corporation (LSC) funded legal aid programs. In 2017, low-income Americans will approach LSC funded legal aid organizations for support with an estimated 1.7 million problems. They will receive only limited or no legal help for more than half of these problems because of a lack of resources. In the past year 71% of low-income households have experienced a civil legal problem, including problems with domestic violence, veterans’ benefits, disability access, housing conditions, and health care. The rate is even higher for some: households with survivors of domestic violence or sexual assault (97%), with parents/guardians of kids under 18 (80%), and with disabled persons (80%). 1 in 4 low-income households has experienced 6+ civil legal problems in the past year, including 67% of households with survivors of domestic violence or sexual assault.

Low-income Americans are most likely to seek professional legal help for problems that are more obviously “legal,” such as custody issues and wills/estates. Among the low-income Americans receiving help from LSC funded legal aid organizations, the top three types of civil legal problems relate to family, housing, and income maintenance. More than half (53% to 70%) of the problems that low-income Americans bring to LSC grantees will receive limited legal help or no legal help at all because of a lack of resources to serve them.

17. Leitch, Jennifer, “Coming off the Bench: Self-Represented Litigants, Judges and the Adversarial Process” (October 2017) 47:3 The Advocate’s Quarterly 309.

This paper demands a serious re-appraisal of the structure and dynamics of the adversarial process. The author explains that for the majority of litigants entering the civil justice system without legal training, the organization and operation of the legal process is, at best, stressful to navigate and, at worst, indecipherable and inaccessible. When these feelings are combined with the sense of disempowerment and disengagement felt by many of those who attempt to represent themselves (or do not litigate at all) as well as the emotional challenges associated with self-representation, the need for deep and systemic changes to the adversarial system become clear. Without reforms, a large segment of the population will be unable to exercise their right to be heard and participate in fair hearings. This undermines the legitimacy of the adversarial process and legal institutions more generally.

The first section of the paper looks at recent examples of how judges have recognized and begun to respond to the challenge of increasing numbers of self-represented litigants. Some members of the judiciary are confronting traditional assumptions about adjudication and are advocating for new approaches and processes that take better account of self-representation. The second section examines and challenges the assumptions that underlie the adversarial process. In the third section, the author canvasses the views of self-represented litigants on the challenges they face within the litigation process. The final section looks at changes that might be made to enable the adversarial process and the pivotal role of judges within the adversarial context to work more fairly.

18. Macfarlane, Julie. “Time to Shatter the Stereotype of Self-Represented Litigants” 20 Dispute Resolution Magazine 1, 2014.

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Macfarlane’s study of self-represented litigants (SRLs) found that the dominant reason for the high level of self-representation in the courts, particularly family courts, is the cost of legal services. There is a general assumption that SRLs are deliberately creating difficulties, however, the study found the contrary: many SRLs spent long hours trying to prepare for court. This article also describes a stakeholder dialogue held at the University of Windsor, with 45 delegates from the justice system and 15 SRLs. This dialogue enabled both insiders and “outsiders” to better understand one another’s experiences.

The study makes five recommendations for lawyers and other justice system actors:

1. Recognize that the rise in the number of family self-represented litigants is the responsibility of all members of the profession;
2. Be willing to listen to criticism and embrace the challenge of considering new ways to provide services to family and civil clients;
3. Start sharing territory. Some services can be affordable if delivered by paralegals or other specialists;

4. Stop seeing themselves as information gatekeepers and instead help clients understand and appraise their options;
5. Help make self-represented litigants more aware of other options such as mediation and how to use dispute resolution effectively.

19. Rhode, Deborah L, “Access to Justice: A Roadmap for Reform” (2016) 41:4 Fordham Urban Law Journal 1227.

This article references a range of studies that show while the US has an advanced economy, it provides very poor access to legal services for low and middle-income individuals. The author canvasses specific barriers to justice including:

- (i) Financial: statistics from the Legal Services Corporation show one legal aid lawyer per 6,415 low-income individuals. Public legal aid contributions amount to less than \$1 a day for each person in the US. The US is more “priced out” of legal services than comparable countries.
- (ii) Structural: a 2007 civil legal aid national survey found only 11 states had comprehensive programs to help SRLs.
- (iii) Doctrinal: restrictive unauthorized practice of law rules do not protect litigants and have an impact on the limited availability of court-appointed counsel.
- (iv) Political: surveys show widespread misconceptions about civil legal issues and the importance of lawyers. The Bar plays a significant role in upholding unauthorized practice of law rules, opposing non-lawyer assistance, and sabotaging mandatory *pro bono* initiatives.

20. Rhode, Deborah & Buford Ricca, Lucy, “Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement” (2014) 82:1 Fordham Law Review 2587.

This article provides a comprehensive overview of how the unauthorized practice of law doctrine has been enforced by bar associations over the past ten years, drawing on a 2013 survey and phone interviews with chairs of unauthorized practice of law committees, and other prosecutors, from 42 states. The paper describes and analyzes the total number of unauthorized practice of law complaints received (and from whom), and their outcomes. It also reviews 103 federal and state decisions relating to the enforcement of the unauthorized practice of law rules. The article ends with a call for reform to ensure that unauthorized practice offences emphasize the public interest instead of the interests of the legal profession.

21. Sandefur, Rebecca L, “The Impact of Counsel: An Analysis of Empirical Evidence” (2010) 9:1 Seattle Journal for Social Justice.

How much does legal representation affect who wins and loses in adjudication? Represented litigants facing self-represented litigants benefit from the sheer imbalance of expertise in representation. This paper discusses the procedural complexity involved for self-reps: that is,

figuring out what is specifically legal about one's problem, and how to address it using the formal legal system. Complexity likely raises the bar on both these dimensions: greater complexity makes it more difficult for lay litigants to identify legally cognizable claims, and to pursue those claims through hearings, trials, and legal documents.

The author suggests that better access to lawyers is only part of the answer. Americans could benefit from services provided by those other than lawyers. Non-legal institutions can provide advice, information, and authoritative resolution of civil justice problems, without requiring contact with courts, tribunals, lawsuits, litigation or lawyers. A set of non-legal institutions could include both a component designed to produce authoritative resolutions and a set of auxiliary processes that work independently of formal courts and tribunals and provide problem-resolution strategies that, while not legally binding, may nevertheless be effective for the public.

22. Shanahan, Colleen F, “The Keys to the Kingdom: Judges, Pre-hearing Procedure, and Access to Justice” [2018]:2 Wisconsin Law Review.

This article analyzes pre-hearing procedures using more than 5,000 individual unemployment insurance cases, largely involving self-represented litigants, to investigate how judges and procedure interact to expand or contract access to the court hearings. The data show significant variation in how judges apply these procedures, and parties' case outcomes. These findings underscore the importance of pre-hearing procedures and judicial decisions that grant or deny access to the courtroom, and the barriers that pre-hearing procedures can present for self-represented litigants. They also underscore that changes to judicial behavior – through suggestion, training, or ethical codes – are likely insufficient to achieve access to justice in state civil and administrative courts.

23. Sullivan, Joseph A, “United States: Civil Gideon and Access to Justice” (January 15, 2014) online: *Mondaq* <www.mondaq.com>.

The "Civil Gideon" movement, also known as the "right to counsel" and "access to justice" movement, began formally in 2009 with the formation of the Task Force – a diverse blue-ribbon panel of judges, bar leaders, legal services attorneys, and private bar representatives. The Task Force looked at some undisputed statistics and demographics about the state of legal representation for low-income individuals and families in Philadelphia, across the commonwealth, and throughout the country. These investigations confirmed that legal representation is largely unavailable to a large number of low-income Americans in desperate need. In 2009, the Legal Services Corporation conducted a survey of all federally funded legal services programs and found that 50 percent of those seeking legal representation are turned away, for lack of adequate funding.

24. Zimmerman, Nourit & Tom Tyler, “Between Access to Counsel and Access to Justice: A Psychological Perspective” (2010) 37:1 Fordham Urban Law Journal.

Traditionally, increasing access to justice has been correlated with increasing access to legal counsel. The authors assess the American Bar Association's proposal to institutionalize a right to counsel in certain civil cases, and consider empirical data in evaluating whether increased access to justice simply means increased access to lawyers. The authors also ask whether being denied

access to counsel influences the decision to proceed with a legal matter. The article examines the normative evaluations of both represented and self-represented litigants of the value of legal representation.

25. Zorza, Richard, “An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue” (2009) 43:3 Family Law Quarterly.

This article outlines litigant-friendly innovations which can provide “win-win-win” situations to litigants, courts, and lawyers. These innovations ensure courts are more efficient, that lawyers enjoy more efficient proceedings, lawyers receive clients from broader referral pools, and self-represented litigants interact with a more accessible justice system. A need remains for greater transformative change in the justice system for self-represented litigants to access justice. The justice system is too complex, too expensive, and too time consuming, and is especially ill-equipped to deal with particular issues such as family cases. Zorza suggests that a dialogue needs to take place between the justice system’s stakeholders, particularly between the court and the bar in order to build a stable, more efficient system that works for self-represented litigants.

26. Tyler, Tom, “What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures” (1988) 22:1 Law and Society Review.

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This paper addresses two issues: (1) whether the inherent “justice” of a process (“procedural justice”) influences citizen satisfaction with outcomes; and (2) how citizens define “fair process” in such settings. The study was based on interviews with 652 respondents in Chicago with recent personal experiences involving the police or the courts.

Critical elements of procedural justice include consistency, decision quality, bias suppression, and representation (voice). As past studies have found, those receiving favorable outcomes think that the procedures used to get to those outcomes are fair. The most highly rated procedural justice factor was the impartiality of the decision-maker, which is related to perception of subjective bias, the effort to be fair, and honesty. Procedures used for resolving disputes are judged in terms of opportunities for input, and consistency of treatment.

The study points out that the major criteria used by participants to assess procedural fairness are those least directly linked to outcomes, for example honesty, and the effort to be fair. Ethicality is important to people because it relates to their self-respect. The study results suggest shared cultural values about the meaning of procedural justice within the context of particular situations. These common values highlight the public concerns that process reformers should focus on, in order to ensure their reforms are seen as both legitimate and useful.

27. Charne, Jeanne. “Celebrating the Null Finding: Evidence-Based Strategies for Improving Access to Legal Services” (2013) 122:8 Yale Law Journal 2209.

This paper describes the historical context for the current civil legal aid regime in the US. It explores the history and arguments of the right-to-civil counsel movement by referring to case law, what other similar nations do, and empirical research.

The author notes in particular three recent empirical studies that considered the effect of having access to a lawyer compared to access only to advice or other limited assistance. The first study considered unemployment insurance applicants appealing a denial or defending a challenge by an employer, the second looked at tenants in a district court, and the third looked at tenants in a county housing court.

Individuals with legal representation did substantially better in the second study – in a district court – while there was no appreciable difference in the first and third studies. The author argues that civil legal aid is not an appropriate policy response to unequal access to civil litigation assistance, and suggests continuing reforms that promote self-help and “lawyer-lite” services.

Part I: Access to Justice Overviews

Section C: Other Jurisdictions

Part I: Access to Justice Overviews

SECTION C: OTHER JURISDICTIONS

1. “Access to Justice for Litigants in Person” (2011) Civil Justice Council Report and Recommendations to the Lord Chancellor, England and Wales online (pdf): <www.judiciary.uk>.
2. Forell, Suzie & Hugh M McDonald, “Beyond Great Expectations: Modest, Meaningful and Measurable Community Legal Education and Information” (December 2015) 21 The Justice Issue, Law and Justice Foundation of New South Wales.
3. Garton Grimwood, Gabrielle, “Litigants in Person: The Rise of Self-Represented Litigant in Civil and Family Cases in England and Wales” House of Commons Library Brief Paper No 07113 (January 14, 2016).
4. Grainger, Julie. “Litigants in Person in the Civil Justice System – Learning from New Zealand, the United States, the United Kingdom” The Winston Churchill Memorial Trust of Australia (November 1, 2013).
5. Moorhead, Richard & Mark Sefton, “Litigants in Person: Unrepresented Litigants in First Instance Proceedings” (February 2005) online *Department for Constitutional Affairs Research Series, England and Wales*: <rca.cf.ac.uk>.
6. Pleasance, Pascoe & Balmer, Nigel J, “Mental Health and the Experience of Social Problems Involving Rights” (2009) 16:1 Psychiatry, Psychology, and Law 123–140.
7. Selita, Fatos, “Unrepresented Litigants in Modern Courts - Ordeal by Combat” (January 2018) 6:1 Legal Issues Journal 1.
8. “Litigants in Person: Guidelines for Lawyers” (June, 2015) online: *Chartered Institute of Legal Executives*, online: *The Law Society* <www.lawsociety.org.uk>.
9. Toy-Cronin, Bridgette. “Keeping up Appearances: Accessing New Zealand’s Civil Courts Without a Lawyer”, (2015) Executive Summary of PhD Thesis, University of Oregon.

1. “Access to Justice for Litigants in Person” (2011) Civil Justice Council Report and Recommendations to the Lord Chancellor, England and Wales.

This report recognizes the reality of the rising numbers of self-represented litigants (or “litigants in person”) as civil legal aid declines. “It is a reality that those who cannot afford legal services and those for whom the state will not provide legal aid comprise the larger part of the population of England and Wales. Thus, for most members of the public who become involved in legal proceedings they will have to represent themselves.” (at page 8). The report also recognizes the reality of just how difficult it is to represent oneself.

The most pressing challenge is ensuring that SRLs can access trusted and objective information and advice. All means to improve access to this must be considered, including the wider use of limited scope retainers. Judges also have a role to play, and should be open to a role for McKenzie Friends. Advice agencies are more essential than ever and deserve more support. Technology can offer some solutions but must be combined with personal assistance, including the expansion of the Personal Support Units across England and Wales.

2. Forell, Suzie & Hugh M McDonald, “Beyond Great Expectations: Modest, Meaningful and Measurable Community Legal Education and Information” (December 2015) 21 The Justice Issue, Law and Justice Foundation of New South Wales.

There are high expectations around many community legal education and information (CLEI) strategies. These may be tools to empower, prevent legal issues escalating, and generally improve access to justice. But are these expectations realistic? This paper seeks to identify what different types of CLEI strategies – differentiated by user, timing and purpose – may actually provide to whom, when and to what end. This model can support the design, planning and evaluation of CLEI within organizations, and in collaborative planning across the legal assistance sector, and link CLEI to other legal assistance strategies.

3. Garton Grimwood, Gabrielle, “Litigants in Person: The Rise of Self-Represented Litigant in Civil and Family Cases in England and Wales” House of Commons Library Brief Paper No 07113 (January 14, 2016).

In England and Wales, there is evidence that the number of litigants in person (LIPs) have increased significantly since the *Legal Aid, Sentencing, and Punishment of Offenders Act 2012*. The Act took many civil and private law family cases outside the margins of legal aid. Evidence suggest that LIPs are now “qualitatively different” than in the past – that they are no longer self-represented by choice, but because legal aid is not available to them.

4. Grainger, Julie. “Litigants in Person in the Civil Justice System – Learning from New Zealand, the United States, the United Kingdom” The Winston Churchill Memorial Trust of Australia (November 1, 2013).

This paper reviews a range of strategies for helping litigants in person, aimed at enhancing an individual’s ability to access justice in Australia in fair and efficient courts and tribunals. Many innovations make use of on-line technology, facilitating “self-help” by developing a litigant in person’s legal knowledge and skills. Grainger suggests that “best practice” requires the development of strategies that give litigants in person who are unable to take advantage of on-line self-help strategies access to face-to-face assistance.

5. Moorhead, Richard & Mark Sefton, “Litigants in Person: Unrepresented Litigants in First Instance Proceedings” (February 2005) online Department for Constitutional Affairs Research Series, England and Wales.

This report explores detailed qualitative and quantitative data on SRLs from four courts in first instance civil and family cases (not including small claims). The study shows the prevalence and nature of SRLs and the impact of self-representation on themselves, the courts, and their opponents. Findings include:

1. Self-represented litigants are common. It is usually defendants who were unrepresented. Obsessive, or difficult litigants are a very small minority of self-represented litigants generally, but pose considerable problems for judges and court staff;

2. Unrepresented litigants are often partially represented (receiving some advice on, or assistance with, their case);
3. Parties are self-represented for a range of reasons including lack of free or affordable representation. Even in small cases what was at stake was significant to the self-represented litigants;
4. Self-represented litigants participate at a lower intensity than represented parties, but make more mistakes. Problems faced by self-represented litigants demonstrated struggles with substantive law and procedure. There is other evidence of prejudice to their interests;
5. There is at best only modest evidence that cases involving self-represented litigants took longer, though cases involving self-represented parties are less likely to be settled;
6. Judges recognize that self-represented litigants pose a challenge to the passive ‘arbiter’ model of judging and respond to that challenge with varying degrees of intervention;
7. Court staff recognize self-represented litigants’ needs, but are unsure of what help was permissible because of the way the ‘no advice’ rule is managed.

6. Pleasance, Pascoe & Balmer, Nigel J, “Mental Health and the Experience of Social Problems Involving Rights: Findings from the United Kingdom and New Zealand” (2009) 16:1 Psychiatry, Psychology, and Law 123–140.

Using data collected by face-to-face interviews in England and Wales and via telephone survey in New Zealand, this study shows a correlation articulated by respondents between mental health issues and rights issues. People reporting mental health issues described reported higher levels of problems with rights issues (65% of this group compared with 32% of whole population). Also, the authors note a higher correlation among young people (85% compared to 32% above). In addition, 26% of those reporting a problem also reported that it had led to stress-related illness, especially in relation to family breakdown, divorce and employment issues. “People frequently attribute mental health problems – in the form of stress related illnesses – to right problems.” 41% of those reporting initial mental health problems report that problems lead to stress compared to 4% of the rest.

7. Selita, Fatos, “Unrepresented Litigants in Modern Courts - Ordeal by Combat” (January 2018) 6:1 Legal Issues Journal 1.

This paper provides an analysis of the large proportion of unrepresented litigants in the justice system including a vast variability in terms of ability, education, personality characteristics, and personal circumstances. The author focuses on the situation in the UK, but the issue is relevant to other justice systems, in particular the US, which shares similar issues. The author observes that the SRL crisis has created a more general crisis of public confidence in the judicial process. The following recommendations are offered:

1. Include scientific information on individual differences and cognitive processes in all forms of legal education.
2. Require parties in informal dispute resolution use accessible language, and ensure and that all legal documents are free of legalese.

3. Require judges to use language accessible to non-lawyer members of the public.
4. Make information on procedure (including potential risks) available online and through leaflets in formats accessible to non-lawyer members of the public.
5. Take advantage of technological advancements to assist SRLs, such as digital submissions and automated court services.

8. “Litigants in Person: Guidelines for Lawyers” (June, 2015) online: *Chartered Institute of Legal Executives*, online: *The Law Society*.

These guidelines outline good practices for lawyers when they need to work with self-represented litigants. At times, the lawyer’s duty to the court and to the administration of justice will demand a lawyer to assist a self-represented litigant, such as by explaining the processes of the court. A list of resources is located in Annex B for lawyers to pass along to self-represented litigants in a manner that is unlikely to compromise the lawyer’s duty to their clients (these resources are specific to the United Kingdom). The work also contains an explanation to clients on how their lawyers will operate in a case involving a self-represented litigant, along with a guideline for self-represented litigants on how opposing lawyers are to treat them and what they can expect from opposing lawyers.

9. Toy-Cronin, Bridgette. “Keeping up Appearances: Accessing New Zealand’s Civil Courts Without a Lawyer”, (2015) Executive Summary of PhD Thesis, University of Oregon.

This qualitative research project investigates why more and more people go to court without a lawyer in New Zealand, their experience of litigating without a lawyer, and how the lawyers, judges and court staff perceive them and respond to them. Drawing on interviews with litigants, judges, lawyers and court staff, as well as in-court observations and review of court documents, this research study analyzed the experiences and perspectives of the participants through the different stages of litigation. The author provides some concluding proposals for policy reforms, and encourages a re-evaluation of the stereotypical view that people who go to court without a lawyer have a “fool for a client”.

Part II: Access to Justice Solutions

Section A: Canada

PART II: Access to Justice Solutions

SECTION A: CANADA

1. Bilson, Beth, Brea Lowenberger, & Graham Sharp, “Reducing the “Justice Gap” through Access to Legal Information: Establishing Access to Justice Entry Points at Public Libraries” (2017) 34:99 Windsor Yearbook of Access to Justice.
2. Boyd, John Paul E. “Client and Lawyers Satisfaction with Unbundled Legal Services: Conclusions from the Alberta Limited Legal Services Project” (August 2018) Canadian Research Institute for Law and the Family
3. Boyd, John-Paul. “DIY A2J 4: Unbundle Your Services, Reinvent Your Billing Model” Slaw, December 5, 2016.
4. Boyden, Bev. “Explore Ways to Effectively and Efficiently Utilize the Skills and Talents of Legal Support Staff” Legal Education Society of Alberta Program, January 19, 2017.
5. Canadian Bar Association – Alberta Branch. “The Limited Scope Retainer”.
6. Cheung, Kevin. “The Case for Limited-Scope Retainers” Canadian Lawyer Magazine, February 13, 2017.
7. Community Legal Education Ontario. “Don’t Smoke, Don’t be Poor, Read Before Signing: Linking Health Literacy and Legal Capability” Community Legal Education Ontario Centre for Research and Innovation, April, 2015.
8. Cooper, James. “Access to Justice for the Self-Represented Litigant” Selfreplawyer.ca, February, 2016.
9. Cunningham, April. “Unbundled Legal Services Fill Gap in Family Law” Advocate Daily
10. Gallant, Jacques. “Concept of ‘Unbundled’ Legal Services Gaining Support” Toronto Star, January 26, 2017.
11. Giroday, Gabrielle. “Fellow Will Focus on Helping Self-Represented Litigants” July 4, 2016.
12. Hendry, Mallory. “Unbundling for the Underserved Family Law Client” March 27, 2017.
13. Jerome, Amanda. “Alberta Research Project Aims to Study Impact of Unbundled Legal Services” The Lawyer’s Daily, April 20, 2017.
14. McGill, Jena, Suzanne Bouclin, & Amy Salyzyn, “Mobile and Web-Based Legal Apps: Opportunities, Risks and Information Gaps” (November 2017) 15:29 Canadian Journal of Law and Technology.
15. McHale, Jerry, and Thompson, Kathryn. “Exploring a British Columbia Justice Research Framework” University of Victoria, Faculty of Law Colloquium, May 13, 2016.
16. Mushtaq, Amer. “Exploring New Frontiers for the Delivery of Legal Services in Canada” LawNow, March 2, 2017.
17. Pinnington, Dan. “Unbundled Legal Services: Pitfalls to Avoid” Slaw, April 15, 2013.
18. Provincial Court of British Columbia. “British Columbia Court Adopts Support Person Guidelines” Provincial Court of British Columbia News and Reports, April 11, 2017.
19. Salyzyn Amy, Isaj Lori, Piva Brandon, and Burkell Jennifer. “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice”

1. Bilson, Beth, Brea Lowenberger & Graham Sharp, “Reducing the “Justice Gap” through Access to Legal Information: Establishing Access to Justice Entry Points at Public Libraries” (2017) 34:99 Windsor Yearbook of Access to Justice.

This paper explores how libraries and librarians might play a role in providing the public with access and guidance to legal information. These issues are considered primarily in the context of two scenarios: a self-represented litigant, and a client using a limited scope retainer. The authors consider in particular how public libraries as public spaces and public librarians as trusted intermediaries might support greater access to legal information. The possible roles of law society/courthouse and academic libraries in training and collection development are also considered. The distinction between providing access to legal information and giving legal advice is discussed briefly, and the authors suggest some possible ways of clarifying this distinction while pursuing the goal of expanding public access to legal information.

The authors suggest that libraries could become crucial partners and resources for addressing access to justice challenges in Canada, specifically for assisting SRLs and LSR clients with accessing legal resources. Easy and effective access to legal information is vital to resolving legal issues, and library staff members are natural and appropriate intermediaries for this purpose. In contrast, law society or courthouse libraries, academic law libraries, and public libraries typically have distinct mandates, clientele, and locations.

2. Boyd, John Paul E. “Client and Lawyer Satisfaction with Unbundled Legal Services: Conclusions from the Alberta Limited Legal Services Project” (August 2018) Canadian Research Institute for Law and the Family

Canada’s first empirical study of lawyers’ and clients’ satisfaction with unbundled legal services and the impact on clients’ ability to access justice has shown high rates of satisfaction with the services provided, as well as their speed and cost. This project, launched in April 2017, involved 60 lawyers providing unbundled legal services to clients throughout Alberta in almost every area of the law. This report presents the result from three surveys conducted to evaluate lawyers’ and clients’ satisfaction with unbundled legal services

Almost three-fifths of clients said that their lawyer asked them to sign a letter or an agreement describing the services the lawyer would provide (59.4%). Most clients reported receiving unbundled legal services from their lawyer because they asked for such services (72.2%). Most clients reported receiving unbundled services in the form of initial consultations (n=28), legal opinions (n=13), coaching on filing and service processes (n=10) and the drafting of agreements and settlement documents (n=9). Almost four-fifths of clients reported that the amount they were charged for unbundled legal services was less than \$1,000 (78.2%). Most lawyers billed for their fees at a flat rate (45%), while 38.3% of lawyers said that they billed the client for their time by the hour. Almost all lawyers said that they were *strongly satisfied* or *satisfied* providing legal services on an unbundled basis (91.7%). Most lawyers *strongly agreed* or *agreed* that providing unbundled legal services helps them *contribute to improving access to justice* (78.9%).

3. Boyd, John-Paul, “DIY A2J 4: Unbundle Your Services, Reinvent Your Billing Model” (December 5, 2016) Slaw.

Boyd discusses the problems inherent with the comprehensive service billable hour model of practice, particularly that few clients are able to afford full legal representation and pay for start-to-finish legal services. Boyd then delves into the “unbundled alternative”, where a client can pick and choose particular tasks for a lawyer to accomplish, according to their needs and budgets. The author outlines typical unbundled tasks in family law matters: initial legal advice, second opinions, independent legal advice, drafting agreements, on-going advice (or coaching), assistance with court forms, guidance through the disclosure process, assistance with legal research, assistance with drafting, commenting on written arguments, conducting examinations for discovery, attending a client’s discovery, preparing desk-order divorce applications, or representation at trial. Boyd discusses his positive experiences with unbundling and how he likes unbundled work “a great deal more” than many of his full-service files. He advocates for a change in the profession’s resistance to unbundled legal work as many individuals wish to hire counsel on an unbundled basis, and by allowing individuals to do this, unbundling will improve access to justice. He concludes his work by providing tips and suggestions for lawyers who wish to attempt to take on some work on an unbundled basis.

4. Boyden, Bev, “Explore Ways to Effectively and Efficiently Utilize the Skills and Talents of Legal Support Staff” (January 19, 2017), online (pdf): *Legal Education Society of Alberta Program.*

The author acknowledges the pressing issue of a lack of affordable access to justice. She asserts that using paralegals, in the place of lawyers, for particular legal services is a means of providing clients with cost-savings in fees, and that it also has the added benefit of freeing up the lawyer’s time to perform more complex legal services. She advocates for lawyers to recognize and utilize the distinct skills of their legal support staff as a way to provide the most effective and cost-efficient delivery of legal services. This presentation is primarily focused on the general advantages associated with legal support staff and the opportunities available to legal support staff to advance their careers.

5. Carruthers, Nancy, “The Limited Scope Retainer: Ethical and Practical Issues” (June 9, 2014) online: *Canadian Bar Association - Alberta Branch.*

This work acts as an introduction for lawyers to the notion of unbundled legal services, or in other words, to the limited scope retainer. The Honourable Jonathan Denis, former Minister of Justice and Solicitor General notes the importance of unbundled legal services for self-represented litigants – limited scope retainers can help alleviate the strain of legal costs on individuals and the strain on the justice system where many truly do not access justice. The Canadian Bar Association also discusses the benefits of limited scope retainers for lawyers, the ethical and practical issues associated with limited scope retainers, how to limit risks, the best practices in offering limited scope retainers, the public’s great desire for the availability of unbundled legal services, perspectives from the Bench, limited scope retainers in small practices, and in criminal law, innovations in the provision of Alberta’s Legal Aid Services, and the benefits and importance of *pro bono* work.

6. Cheung, Kevin, “The Case for Limited-Scope Retainers” (February, 13 2017), online: [Canadian Lawyer Magazine](#).

Cheung begins by arguing that limited-scope services offer a way for lawyers to target unmet legal needs – many people do not seek full legal representation, and there is an unmet market of legal work that is being largely ignored as many lawyers do not proactively offer unbundled legal services. Unbundled legal services can also foster a strong lawyer-client relationship as the client is obtaining what they truly desire, and it can free up a lawyer’s time to pursue other work. Cheung also highlights the following three cautionary tips for lawyers to keep in mind when offering limited-scope services: a written retainer agreement must clearly define the scope of work, a lawyer should communicate to other lawyers involved in the matter, and to the Court (if applicable) that the lawyer is only acting on a limited-scope basis, and full investigation into a matter must still be done as the duty of competence cannot be ignored.

7. “Don’t Smoke, Don’t be Poor, Read Before Signing: Linking Health Literacy and Legal Capability” (April 2015), online: [Community Legal Education Ontario Centre for Research and Innovation](#).

Vulnerable individuals face barriers when attempting to obtain information on or assistance in relation to the health and justice sectors in Canada. However, the health sector has addressed the challenges these individuals face in accessing health information. The health sector has recognized the “social determinants of health”, or in other words, the social and economic conditions that influence a person’s ability to be health literate – the research indicates that this recognition has led to major improvements in the development and distribution of accessible health material in Ontario. In contrast, legal literacy (or legal capability) continues to be framed in general terms and there is no specific recognition of the economic and social barriers which may interfere with the ability of vulnerable individuals to access and use legal information. CLEO recommends that the justice sector to its cue from the health sector by systematically addressing these economic and social barriers to improve access to legal information, and ultimately to facilitate access to justice.

8. Cooper, James, “Access to Justice for the Self-Represented Litigant” (February 2016), [Selfreplawyer.ca](#).

James Cooper argues that limited scope retainers can facilitate access to affordable legal assistance to litigants in a search of legal help on a tight budget. Limited scope retainers can be customized to a self-represented litigant’s particular needs and budgetary constraints – the litigant can negotiate a fixed fee for very specific tasks. However, Cooper notes that these retainers can pose difficulties for lawyers by creating opportunities for confusion as they are often customized and non-standard. Clients may perceive that their limited scope retainer with a lawyer goes far beyond the scope for which the retainer was intended – as a consequence, the lawyer may spend an inordinate time in communicating with clients to ensure there is no confusion. However, lawyers can get around this complication by maintaining a firewall between the services they offer, and the services that they do not offer. In order for a limited scope retainer to work most effectively, the lawyer must communicate to the client as to when the

limited retainer begins and ends, and must strictly define the exact task or tasks that the retainer is limited to.

9. Cunningham, April, “Unbundled Legal Services Fill Gap in Family Law” *Advocate Daily*.

Many individuals would benefit from unbundled legal services, since though many cannot afford to hire full legal representation, they may be able to afford a lawyer to handle portions of their case. This article highlights Lisa Gelman, a Toronto family lawyer who advocates for unbundled legal services, as “it provides a service to clients because there’s a huge gap for people who are not entitled to Legal Aid, but can’t afford a full-time lawyer”. Gelman discusses how she, as a lawyer, tackles unbundled legal services and how she interacts with clients seeking unbundled legal services.

10. Gallant, Jacques, “Concept of ‘Unbundled’ Legal Services Gaining Support” (January 26, 2017), *Toronto Star*.

“A Canadian database launched last year now features [hundreds of] lawyers who offer what is known as ‘unbundled’ legal services – where a person only pays for specific services from a lawyer while still remaining in charge of their case”. This article discusses Dr. Julie Macfarlane’s work through the National Self-Represented Litigants Project in launching the National Database of Professionals Assisting Self-Represented Litigants. Gallant also discusses the National Self-Represented Litigants Project’s recently launched legal coaching initiative, which the Project calls “the next natural step in the evolution of the unbundling model”.

11. Giroday, Gabrielle, “Fellow Will Focus on Helping Self-Represented Litigants” (July 4, 2016), online: *Canadian Lawyer* <www.canadianlawyermag.com>.

The National Director of Pro Bono Students Canada, Nikki Gershain, is using her Community Leadership in Justice Fellowship (awarded from the Law Foundation of Ontario) to look at how legal coaching may help self-represented litigants tackle their legal problems. Gershain will create “teaching tools for a new model of legal service delivery called ‘legal coaching’”. For Gershain, developing legal coaching is part of the unbundling trend – the coaching model is “to set the client up for success ... the lawyer is there to guide the client through the process, teach the client what they need to know to get through the process, and to empower the client to be able to get through it on their own”. Gershain notes that “huge massive numbers of ordinary Canadians ... cannot afford access to justice” – the greater availability of unbundled legal services and legal coaching may allow self-represented litigants access to some form of legal representation, as many self-represented litigants would prefer to be represented by counsel, but they do not have the financial resources to be able to afford full representation.

12. Hendry, Mallory, “Unbundling for the Underserved Family Law Client” (March 27, 2017), *Canadian Lawyer*.

Proponents of unbundling family law services assert that unbundled legal services can help clients access justice, and allow lawyers to tap into a new market. This is also the argument being made by proponents of legal coaching. Nikki Gershbain, National Director of Pro Bono Students Canada, was awarded a Community Leadership in Justice Fellowship from the Law Foundation of Ontario in June, 2016 – she is working with Julie Macfarlane on her National Self-Represented Litigants Project to develop curriculum and training materials to be used for professional development work with lawyers to encourage them to incorporate unbundling into their practices. Gershbain notes that full representation is no longer realistic due to its high costs and she argues that the legal profession possesses an obligation to “encourage lawyers to offer it, train them to understand what’s different about this model, and to encourage them to promote the service so clients are aware of the fact this is an option for them”. The National Self-Represented Litigants Project is also developing a national database of lawyers across Canada who offer unbundled legal services. The development of unbundled legal services and legal coaching is integral, as “there is a real disconnect in the market – [the Project] hears from people literally every day looking for people to do ... unbundling or coaching, but they don’t have anywhere to look for that”.

13. Jerome, Amanda, “Alberta Research Project Aims to Study Impact of Unbundled Legal Services” (April 20, 2017), *The Lawyer’s Daily*.

**Subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

To-date, no studies have been done in Canada on the impact of unbundled legal services and how they can help lawyers and their clients, and possibly lessen the large number of self-represented litigants in the court system. In April, 2017, Rob Harvie (a divorce and family lawyer), and John-Paul Boyd (executive director of the Canadian Research Institute for Law and the Family), launched the Alberta Limited Legal Services Project, which studied the usefulness of unbundled services and assessed the satisfaction of clients and lawyers involved in the project.

14. McGill, Jena, Suzanne Boucli, & Amy Salzyn, “Mobile and Web-Based Legal Apps: Opportunities, Risks and Information Gaps” (November 2017) 15:29 *Canadian Journal of Law and Technology*.

The authors offer a preliminary taxonomy of the legal apps available in Canada, identifying approximately 60. These legal apps perform a variety of functions, including providing legal information and advice, creating documents, and collecting evidence. The authors propose that future policy discussions about legal apps should be informed by an analysis of the potential benefits and risks of using this technology in the pursuit of access to justice.

Financial restrictions remain one of the most important access to justice barriers in Canada. In addition, the challenge of accessing justice is uniquely burdensome for persons of Aboriginal

ancestry, members of visible minority groups, persons with disabilities, and persons who receive social assistance, who are all more likely to face multiple legal problems. While legal apps create opportunities in mitigating financial barriers, there are risks in relation to privacy and security concerns, uneven or unequal access to justice, the unauthorized practice of law and other regulatory impediments. Further, apps require constant updating in order to stay up to date and reliable. The authors conclude that there is a pressing need for more empirical research on the efficacy of legal apps.

15. McHale, Jerry & Thomson, Kathryn. “Exploring a British Columbia Justice Research Framework” (May 13, 2016) University of Victoria, Faculty of Law Colloquium.

The purpose of this paper is to provide background information on the Colloquium that occurred on May 13, 2016, sponsored by the University of Victoria’s Access to Justice Center for Excellence. The ultimate goal of those involved in the Colloquium was to develop a research framework for access to justice research in British Columbia, as they assert that the lack of research is a major impediment to enhancing access to justice. The following issues must be remedied to advance the reality of a common research framework in British Columbia: lack of data, narrow focus of existing data, lack of defined objectives, lack of an empirical research tradition, lack of systematic coordination, administrative challenges, and methodological challenges. The proposed research framework is to serve as a foundation for more and for better research on access to justice, to ultimately inform policy development and management decision-making in relation to access to justice issues. From this Colloquium the UVic Access to Justice Centre for Excellence (ACE) started a research framework based on this paper.

16. Mushtaq, Amer, “Exploring New Frontiers for the Delivery of Legal Services in Canada” (March 2, 2017), *Law Now*.

This article explores some of the new ways in which the legal profession, and emerging technologies, are offering new solutions to make dispute resolution more efficient, effective, and affordable, particularly for those who are forced to represent themselves as a consequence of the expense of full legal representation. Mushtaq begins by highlighting the effectiveness of unbundled legal services in making justice more affordable. The author specifically highlights the National Directory of Professionals Assisting Self-Represented Litigants produced by the National Self-Represented Litigants Project – although many lawyers remain resistant to the idea of unbundled legal services, this Directory contains lawyers who are willing to provide unbundled legal services.

17. Pinnington, Dan, “Unbundled Legal Services: Pitfalls to Avoid” (April 15, 2013), *SLAW*.

Pinnington acknowledges that unbundled legal services are one solution to address the issue of access to justice. He outlines a number of steps for lawyers to take to reduce their exposure to a malpractice claim when providing legal services on a limited scope basis. He offers the following advice: limited scope representation does not mean less competent or lower quality legal services; identify the discrete collection of tasks that can be undertaken on a competent

basis; confirm the scope of the limited retainer in writing; clearly document work and communications; be careful with communication when opposing counsel is acting on an unbundled basis; recognize that unbundled legal services are not appropriate for all lawyers, all clients, or all legal problems; and be careful providing further assistance to a client after a limited scope retainer is terminated.

18. Provincial Court of British Columbia. “BC Provincial Court Adopts Support Person Guidelines” (April 11, 2017), *Provincial Court of British Columbia News and Reports*.

The British Columbia Provincial Court recognizes that many self-represented litigants find that having a trusted friend or family member with them to provide emotional support, take notes, and organize documents can be a big help. Self-represented litigants themselves have also identified that the ability to have someone attend court with them is an important aspect of access to justice. The British Columbia Provincial Court has adopted guidelines to make it easier for self-represented litigants to bring a support person (sometimes called a “McKenzie Friend”) to court. The purpose of the Guidelines is to provide self-represented litigants with a measure of certainty about when they will be permitted to bring a support person to court, and the scope of the assistance the support person can provide. The National Self-Represented Litigants Project has promoted the use of support persons in Canada as a significant aid to people struggling with all of the challenges of representing themselves, and advocates for a “clearer, more consistent, and more credible approach to McKenzie Friends or navigators to be implemented in Canadian Courts”. The British Columbia Provincial Court aims for these Guidelines to provide this type of clarity, consistency, and credibility.

19. Salyzyn Amy et al. “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice” (2016) 33:2 Windsor Yearbook of Access to Justice.

Court form complexity is a major barrier to accessing justice for self-represented litigants. The authors use a “functional literacy” framework (analyzing the complexity of the tasks that an individual is able to complete) to evaluate court form complexity by asking what makes a court form complex for self-represented litigants. The study analyzes four different Ontario forms needed to initiate three different legal proceedings: Small Claims Court, Landlord and Tenant Board, and divorce proceedings. The study outlines that the type of information necessary to complete a form, the distracting language used in a form, and the technical nature of forms confused self-represented litigants, among other factors. The authors recommended for the redesign of court forms, the integration of court forms and guides, and the promotion of innovative legal service delivery models (like unbundled services and coaching) to assist self-represented litigants with forms that require legal expertise.

Part II: Access to Justice Solutions

Section B: United States and Other Jurisdictions

PART II: Access to Justice Solutions

SECTION B: UNITED STATES AND OTHER JURISDICTIONS

1. American Bar Association. “Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force”, 2003.
2. Blankey, Kristen M. “Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services” 28 Ohio State Journal on State Dispute Resolution 659, 2013.
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6. Michaelis, Beverly. “How to Reduce Malpractice Exposure While Meeting Client Needs” Oregon State Bar Bulletin, August/September, 2010.
7. Moltzen, Robyn M, and Pinnard Johnson, Mary. “Outreach Beyond the Traditional Adapting Services to Promote Access to Justice” American Association of Law Libraries Spectrum 19:6, April, 2015.
8. Mosten, Forrest. “Unbundled Services to Enhance Peacemaking for Divorcing Families” 53 Family Court Review 3, July, 2015.
9. Mosten, Forrest. “Unbundling Legal Services Today – and the Predictions for the Future” 35 Family Advocate 14, 2013.
10. O’Grady, Kevin. “Making the Limited-Scope Relationship Work” 35 Family Advocate 22, 2013.
11. Ayelet, Sela, "Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation," (2016) 26:2 *Cornell Journal of Law and Public Policy* 331.
12. The Bach Commission, “The Right to Justice, the Final Report of the Commission” (September 2017) The Fabian Policy Report.
13. Chambliss, Elizabeth. “Law School Training for Licensed Technicians – Implications for the Consumer Market” 65 South Carolina Review 579, 2013-2014.
14. Crossland, Stephen R and Littlewood, Paula C. “The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession” 65 South Carolina Law Review 579, 2013-2014.
15. Frank, Jessica, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (May 2017) 39:2 Western New England Law Review.
16. “Government Responds to Productivity Commission Access to Justice Report”, Timebase Online Legislation Research, May 3, 2016.
17. Greacen, John. “The Benefits and Costs of Programs to Assist Self-Represented Litigants” Judicial Council of California Center for Families, Children, and the Courts, 2009.
18. Greacen, John. “Serving Self-Represented Litigants Remotely: A Resource Guide” Self-Represented Litigation Network, July 1, 2016.

19. Harmon, Mark G., et al. "Remaking the Public Law Library into a Twenty-First Century Legal Resource Center" (2018) 110:1 Law Library Journal 115.
20. Jackson, Dan, and Davis, Martha F. "Gaming a System: Using Digital Games to Guide Self-Represented Litigants" Northeastern University School of Law Working Paper No 252-2016, 2016.
21. Lenahan, Meghan. "DIY Forms Programs: Helping Unrepresented Litigants Navigate the Court System in New York" 18 American Association of Law Libraries Spectrum 15, 2013-2014.
22. Mancini, Laura M. "Increasing Access to Justice for All: The Programs and Community Partnerships of the Adams-Pratt Oakland County Law Library and Their Impact on Self-Represented Litigants in Southeastern Michigan" 14 Journal of Law and Society, 65, 2013.
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24. Niemeyer, Paul. "Is Now the Time for Simplified Rules of Civil Procedure?" 46 University of Michigan Journal of Law Reform 2, 2013.
25. Painter, Richard W. "Pro Se Litigation in Times of Financial Hardship: A Legal Crisis and its Solutions" 45 Family Law Quarterly 45, 2011.
26. Tesler, Pauline. "Can This Relationship be Saved? The Legal Profession and Families in Transition" 55:1 Family Court Review, January, 2017.
27. Kuria, W. "Justice Sector to Set up Electronic Case Management System in Rwanda" Humanpio, September 13, 2013.
28. Linton, L. "Intensified Efforts to Improve Access to Justice" Productivity: Pathway to Prosperity – Jamaica Information Service, January 10, 2014.
29. "Taylor Review Recommends Radical Reform to Scottish Civil Litigation Funding" Pinsent Masons, September 13, 2013.
30. Greenland, James. "UK Judgment Bolsters Unbundled Legal Services" New Zealand Law Society, November 26, 2015.
31. Ipsos MORI. "Qualitative Research Exploring Experiences and Perception of Unbundled Legal Services: Prepared for the Legal Services Board and Legal Services Consumer Panel" August 6, 2015.
32. New Zealand Law Society. "Practice Briefing: Guidance to Lawyers Considering Acting Under a Limited Retainer" 2016.
33. Dr. Toy-Cronin, Bridgette. "Just an Hour of Your Time?" New Zealand Law Society, March 24, 2016.

1. Tuohey, Mark H et al, *Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force (American Bar Association, 2003).*

The American Bar Association begins by defining "limited scope legal assistance" as a designated service, or services, rather than the full package of traditionally offered services – the client and the lawyer select the particular services the lawyer will provide. The American Bar Association acknowledges that the handbook on limited scope legal assistance is a response to the self-represented litigant phenomenon. This Handbook is aimed at introducing and explaining limited scope legal assistance to lawyers. The Handbook discusses types of limited scope legal

assistance, lawyers who provide limited scope legal assistance to clients, how to provide limited scope legal assistance to clients, how to determine whether limited scope legal assistance is appropriate, special issues that may arise in carrying out limited scope representation, ethical issues posed by limited scope legal assistance, how to end limited scope representation, and limited scope legal assistance programs and initiatives. The Handbook concludes with a number of recommendations for stakeholders in the legal community to implement to encourage lawyers to provide limited scope legal assistance.

2. Blankey, Kristen M, “Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services” (2013) 28:1 Ohio State Journal on Dispute Resolution 659.

The author reviews a number of studies showing the disadvantages of self-representation, including that SRLs are unfamiliar with the law and court procedure, that they have fewer research resources, that they may face bias from counsel and the court, that they may not understand alternatives to litigation, that they struggle to properly value their cases, and that they are more likely to lose than represented litigants. She canvasses how alternative dispute resolution techniques and limited scope representation can address these concerns and form a new type of law practice. The paper provides concrete examples of services that could be offered, including coaching or representation for negotiations, settlements and mediation, and facilitating arbitrations. Finally, the paper sets out policy reasons supporting the use of limited scope agreements or unbundled legal services: SRLs would gain valuable resources, it would encourage settlement, it would improve imbalances in bargaining power, SRLs would become more autonomous, and the legal services would be a good value.

3. Kimbro, Stephanie L, “The Ethics of Unbundling” (June 28, 2017), American Bar Association.

Unbundled legal services provide an affordable way for many self-represented litigants to receive the guidance they need to navigate the justice system. However, law firms offering unbundled legal services must take precautions by ensuring ethical compliance with the rules of professional conduct. The author asserts that unbundling should never result in an inferior quality of service, or a lesser standard of practice. Kimbro notes that the key to ethically providing unbundled legal services begins with a clear definition of the legal services to be provided, in addition to the services that will not be covered during representation. Kimbro further details the factors lawyers and law firms should consider when engaging with clients who seek unbundled legal services to ensure ethical performance. Kimbro also outlines the best practices for law firms and lawyers to undertake when introducing unbundling into their firm.

4. Kimbro, Stephanie, “Unbundled Legal Services: Risk Management Practice Guide of Lawyers Mutual” (December 2016), Lawyers Mutual: Liability Insurance Company of North Carolina.

This Guide introduces attorneys to unbundled legal services and discusses the considerations and determinations attorneys must undertake to properly manage the risks associated with unbundling. Kimbro begins the Guide by discussing the benefits of unbundled legal services for both clients and attorneys. She then details a list of questions for attorneys to consider in determining whether integrating unbundled legal services is right for the law firm, or for the attorney. The Guide also details the best practices for offering unbundling, resources for working with self-represented litigants, the relevant North Carolina Rules of Professional Conduct related to limited legal services, and how to write a limited scope engagement letter.

5. Medows, Deborah Beth, “Justice as a Luxury: The Inefficacy of Middle Class Pro Se Litigation and Exploring Unbundling as a Partial Solution” (2014) 29:1 Brigham Young University Journal of Public Law.

Medows asserts that it is critical that members of the legal community address the affordability issue of legal services. Unbundled legal services represent one service delivery model which, while not a panacea, offers a potential solution to the predicament of some pro se litigants who cannot afford full representation.

6. Michaelis, Beverly. “How to Reduce Malpractice Exposure While Meeting Client Needs” (August/September, 2010), Oregon State Bar Bulletin.

Michaelis discusses the simple precautions a lawyer can take to manage the risks associated with unbundled legal services and reduce the potential for malpractice. She notes that although a client may be a good candidate for unbundling, a client’s case may not be. Michaelis provides a list of questions to assist lawyers in making this determination. The author outlines frequent causes of legal malpractice claims and explains how lawyers can avoid the ‘traps’. For instance, lawyers may be sued for failing to define or document the scope of engagement – she recommends preparing carefully worded engagement letters explaining the scope of engagement by simply outlining what the lawyer will and will not do. She concludes with an optimistic note on unbundled legal services, by asserting that the potential traps of providing unbundled legal services are well known to lawyers – this implies that lawyers should not be fearful of providing unbundled legal services as they can undertake simple precautions.

7. Moltzen, Robyn M Pinard Johnson, Mary, “Outreach Beyond the Traditional: Adapting Services to Promote Access to Justice” (2015) 19:6 (April 2015), American Association of Law Libraries Spectrum.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

Lawyers in the Library programs have become increasingly popular. Sessions are led by volunteer attorneys who discuss the legal issues and provide information about options and procedures for patrons. Appointments are given through a lottery system upon which patrons receive an intake form. “The intake form provides a lengthy disclaimer about the program, including important statements that no attorney client relationship is created by this meeting, that

there is no guarantee of privacy or confidentiality for the meeting, and that this service may assist both sides in a dispute.” It has become a progressively popular service.

8. Mosten, Forrest, “Unbundled Services to Enhance Peacemaking for Divorcing Families” (2015) 53:3 Family Court Review.

Mosten argues that unbundled legal services benefit divorcing families by advancing the ability of lawyers to provide information and support to families to reduce family conflicts. He notes that lawyers can undertake four unbundled roles when working with divorcing families: collaborative lawyer, lawyer coach for self-represented litigants, lawyer for mediation participants, and preventive legal health care provider. The author argues that lawyers, in providing these unbundled legal services, can also play a peacemaking role by undertaking a client-centered approach in their work by striving to support and guide their clients to ultimately resolve their family conflicts. Instead of leading their clients into adversarial-escalated conflict, lawyers can rather use their role in the particular unbundled service support and guide their clients to attain peace in their personal lives.

9. Mosten, Forrest. “Unbundling Legal Services Today—and Predictions for the Future” (2013) 35 Family Advocate.

This comprehensive article explains two approaches to unbundling legal services that can be used with the clients’ written informed consent:

- Vertical unbundling, which covers specified legal services as required, such as for advice, research, drafting, ghostwriting, negotiations, and appearances;
- Horizontal unbundling, which limits a lawyer’s involvement to a specific issue or court process.

Mosten notes benefits for lawyers offering unbundled services as including greater control over their practices, fewer malpractice claims or disciplinary complaints, and a greater chance of being paid in full and on time. Unbundling mainly exists to:

- Offer services to self-represented litigants
- Provide collaborative representation with other lawyers or an interdisciplinary team
- Serve mediation parties

The author also sets out tips for how to incorporate unbundled services into a legal practice. He predicts that by 2032 unbundled legal services will be routinely demanded, legislation and rules will require discussing unbundling before a full-service contract may be signed, and this will make the legal process less adversarial and less focused on litigation.

10. O’Grady, Kevin. “Making the Limited-Scope Relationship Work” (2013) 35:2 Family Advocate.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

O’Grady sets out advice for lawyers who offer or are thinking about offering limited-scope retainers. First, lawyers should ensure there is a good written agreement that explains what work might be done, what the parties have agreed will be done, and what will not be done. Ideally lawyers should keep detailed notes and create a list of possible issues to be appended to or included in the agreement. It is also advisable to limit the agreement to a one-time meeting or to otherwise clearly explain (possibly by setting a date) when the agreement expires. Staff should be trained on the differences between full and limited-scope retainers, the consequences of going beyond the scope of the retainer, and special file management procedures, such as explicitly marking files as “limited scope”, should be put in place. Finally, the author considers some situations that might arise and how best to address them.

11. Sela, Ayelet, “Streamlining Justice: How Online Courts Can Resolve the Challenges of Pro Se Litigation” (2016) 26:2 Cornell Journal of Law and Public Policy 331.

Mitigating the challenges of the influx of SRLs into the courts requires a systemic institutional and procedural reform. The author proposes that online courts would alleviate many of the challenges. Modeling the procedural and technological properties that would promote SRLs’ “day in court”, the author reviews successful implementations of judicial online dispute resolution (JODR) systems. In conclusion, the author proposes a detailed policy design framework for a JODR system and reports the results of an experiment evaluating the effect of the proposed framework on SRLs’ procedural justice experiences.

12. The Bach Commission, “The Right to Justice, the Final Report of the Commission” (September 2017) The Fabian Policy Report.

This is the final report of the Bach Commission. The commission was established at the end of 2015 to find solutions that will restore access to justice as a fundamental public entitlement. Over the course of nearly two years the commission heard from well over 100 individuals and organizations with special expertise in all parts of the justice system. The commission has found that the justice system is in crisis. Most immediately, people are being denied access to justice because the scope of legal aid has been dramatically reduced and eligibility requirements made excessively stringent. But problems extend very widely through the justice system, from insufficient public legal education and a shrinking information and advice sector, to unwieldy and creaking bureaucratic systems and uncertainty about the future viability of the practice of legal aid practitioners.

The primary recommendation of this report is for a new Right to Justice Act. This Act will codify and supplement the existing rights and establish a new right for individuals to receive reasonable legal assistance, without costs they cannot afford. It will also establish a new, independent body to promote, develop and enforce that right.

13. Chambliss, Elizabeth, “Law School Training for ‘Licensed Technicians’? Implications for the Consumer Market” (2014) 65 South Carolina Review 579.

This article considers the status of Washington’s licensed legal technician initiative and how a similar model could be adopted elsewhere. It argues that, while the Washington model faces obstacles such as lawyer resistance and unregulated competition, law school training for licensed legal technicians is a promising means for institutionalizing a nationally recognized, independent paraprofessional brand, which itself could promote broader consumer access to routine legal services.

14. Crossland, Stephen R & Littlewood, Paula C., “The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession” 65 South Carolina Law Review 579.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

This article reviews the history and implementation of the Limited Practice Rule for Limited License Legal Technicians, a rule drafted by the Supreme Court of Washington, which allows individuals who meet certain education, training, and certification requirements to provide technical help and advice on legal matters. Although limited license legal technicians are not allowed to represent clients in court or to contact and negotiate with an opposing party on a client's behalf, they are able to give legal advice within a defined scope of authority. Similar to lawyers, the legal technicians will need to adhere to stringent requirements such as passing an examination, engaging in continuing education, abiding by rules of professional conduct, and showing proof of financial responsibility.

15. Frank, Jessica, “A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly” (May 2017) 39:2 Western New England Law Review 251.

This article discusses the history of document assembly and A2J Author, an interactive interviewing tool for self-represented litigants within the legal aid context. The author makes the argument for how document assembly can help to close the justice gap, and shows that over the past decade, this technology has repeatedly proven itself to be cost effective, efficient, and well-received by self-represented litigants. The author closes by discussing the next wave of technological advances, using the example of A2J Author.

16. “Government Responds to Productivity Commission Access to Justice Report”, Timebase Online Legislation Research, May 3, 2016.

On 29 April 2016, in a media release, the Federal Government Attorney General George Brandis released the government's response to the Productivity Commission's *Access to Justice* Report. The Report, delivered on 3 December 2014, included 83 recommendations to improve accessibility to the civil justice system. As stated by the Attorney-General: "Over the next five

years, the Australian Government will provide \$1.6 billion for legal aid commissions and community legal centres through the National Partnership Agreement and direct funding agreements with Indigenous legal assistance providers. The Australian Government is committed to doing what it can to increase funding levels for legal assistance in a tight fiscal environment.” Of a total of 83 recommendations, the Government responded directly to 16 recommendations in their response to the report, in particular, focusing on:

- Provision of legal services to disadvantaged people;
- Funding of legal assistance services;
- Reforms to collect data and report on functioning of court systems;
- Court fees and cost recovery;
- Government agencies and organizations involved in dispute resolution should have accessible guidelines in place;
- Government subject to model litigant obligations;
- Examination of *pro bono* services;
- Restriction of cross-examination laws in matters of family violence; and,
- Proposals to assist self-represented litigants.

17. Greacen, John, “The Benefits and Costs of Programs to Assist Self-Represented Litigants” (2009) Judicial Council of California Center for Families, Children, and the Courts.

Research shows that self-help services provided to SRLs produce economic savings for courts and for litigants. This project’s approach was to identify areas in which the programs believe their services produce a quantifiable benefit to the court and to the litigants, to test empirically whether such benefits are in fact produced, and to quantify the value of the benefits and compare them to the costs of the program services required to produce the specific benefits.

Findings include: (1) providing services in a workshop to SRLs reduces the number of court hearings and the time of staff at the public counter; (2) courts that provide one-on-one support and information services to litigants save at least one hearing per case, and 5 to 15 minutes of hearing time for every hearing held in the case and/or 1 to 1 1/2 hours of court staff time related to providing assistance to SRLs and to reviewing and rejecting proposed judgments; (3) courts that provide assistance to SRLs to resolve cases at the first court appearance save future court hearings (note that on average, an individual who came to court for one hearing would spend approximately \$80 in lost wages and/or child care); (4) providing a monthly seminar at which such litigants could get help with completing all of the forms, calculating child support amounts, and mediating child custody issues significantly reduced the length of time to hear self-represented domestic relations matters and the number of reopened cases dropped significantly.

18. Greacen, John, “Serving Self-Represented Litigants Remotely: A Resource Guide” (1 July 2016) Self-Represented Litigation Network.

The purpose of this Resource Guide is to provide information on technology-based options for the courts, and other organizations interested in providing services to self-represented litigants using electronic means. This is a response to the need to develop and expand remote services.

Greacen outlines the various benefits, values, limitations, obstacles, and challenges associated with the delivery of remote services by reviewing the available literature and studies on remote services. This study concludes that the delivery of services through the use of the internet and telephones constitutes an effective means of providing information and assistance to self-represented litigants, to the degree that it should be a part of the service delivery strategy of every organization interacting with self-represented litigants. Examples of the various types of remote services that organizations can offer to self-represented litigants is also provided. The report enumerates 17 customer-serving functions that current technology can provide. The 18th recommendation is for courts to adopt the "component-based model" of the Next Generation functional standards proposed by the COSCA/NACM Joint Technology Committee – to enable their easy integration into existing court case management systems.

19. Harmon, Mark G. et al. “Remaking the Public Law Library into a Twenty-First Century Legal Resource Center” (2018) 110:1 Law Library Journal 115.

A law library's reference and general services include (1) traditional and computerized legal research assistance, (2) program referrals, (3) explaining legal/judicial processes, (4) providing legal information websites and collections useful for nonlawyers, (5) offering document delivery of library resources (e.g., fax, scan, and hardcopy delivery), (6) chat reference, (7) providing access to court forms, (8) Internet and general computer access, (9) e-filing support, (10) materials available in multiple languages, and (11) assistance to prisoners. The author argues that based on the information gleaned from research, there is no reason to assume that a 501(c)(3)-model library cannot provide both traditional law library and self-help center services effectively, as long as it is willing.

While money and resources are critical components to what a self-help center can achieve, perhaps most crucial is having a center built around the belief that self-represented litigants are equal players in the legal system. According to one law library consultant, the acceptance of self-represented persons as equal to licensed attorneys is a hallmark of the more innovative law libraries.

20. Jackson, Dan & Davis, Martha F. “Gaming a System: Using Digital Games to Guide Self-Represented Litigants” (2016) Northeastern University School of Law Working Paper No 252-2016.

This paper explores the use of digital technology in addressing access to justice issues through the application of digital games in the legal field. It first provides a concise review of access to justice applications up to the present time. Second, it summarizes why digital gaming is a promising experiential learning environment for *pro se* litigants. Third, it describes some of the digital games that have been developed that offer legal information and legal education. Part four of the paper discusses the unique co-design that has been put in place to engage *pro se* litigants with court service center personnel and legal aid lawyers in the game design process. The paper concludes “with some thoughts on the potential we see for future efforts in legal gameplay”.

21. Lenahan, Meghan, “DIY Forms Programs: Helping Unrepresented Litigants Navigate the Court System in New York” (2014) 18:2 American Association of Law Libraries Spectrum.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

In 2009, the New York State Unified Court System’s Access to Justice Program launched statewide Do-It-Yourself Forms, interactive software programs that guide unrepresented litigants through the process of filling in information and generating the proper court forms. Although not all forms are available in the online format, new features are constantly being included, such as more language options and statistics indicate that this resource is significantly increasing in its utilization.

22. Mancini, Laura M, “Increasing Access to Justice for All: The Programs and Community Partnerships of the Adams-Pratt Oakland County Law Library and Their Impact on Self-Represented Litigants in Southeastern Michigan” (2013) 14:1 Journal of Law and Society

The rise in numbers of SRLs require new strategies, resources, and programming by the Adams-Pratt Oakland County Law Library. Library services for SRLs include a staffed information desk, 13 public access computers, 4 computers with complementary WestLaw access, and a computer station for electronic case filing. The library also hosts three onsite legal aid clinics. The Mobile Law Clinic Program of the University of Detroit Mercy School of Law offers civil law clinics twice a month for low income litigants. It has served about 200 SRLs each year since it began in 2006.

In 2007, the Family Law Assistance Project, created from collaborated efforts of Lakeshore Legal Aid and Thomas M. Cooley Law School, began to address divorce, custody, child support, and guardianship issues at twice monthly clinics for low-income litigants with a case in the county court system. It sees about 1,200 SRLs each year. The Common Ground program is the most recent addition. It offers weekly clinics and has no income or geographic restrictions. It too sees about 1,200 SRLs each year, though it does not offer in-court representation. It is one of few programs, however, that assists with expunging criminal records. The library has also partnered with the Public Services Committee to provide speakers through The People’s Law College.

23. Mansfield, Marsha M, “Litigants Without Lawyers: Measuring Success in Family Court” (2016) 67:1 Hastings Law Journal 1389.

The author sought to measure the success of litigants who utilized courthouse clinics versus self-represented litigants who did not rely on legal assistance. A survey of the users of the University of Wisconsin’s Law School Family Court Clinic (“FCC”) was undertaken to determine whether the services enabled self-represented litigants to successfully complete the legal task for which they sought assistance. Ninety percent of survey respondents believed that the services provided by the FCC students made a positive difference in the outcome of their case and eighty-eight percent of respondents were satisfied. One hundred percent of the respondents felt the FCC

provided them with the understanding needed to undertake the next legal steps. Mansfield asserts that the survey supports the conclusion that unbundled legal clinics provide support to self-represented litigants and reveals that most self-represented litigants are able to complete the legal action they are involved in with assistance from such legal clinics. The clinic setting ultimately delivers a level of understanding that allows self-represented litigants to complete the task while feeling satisfied with the process.

24. Niemeyer, Paul, “Is Now the Time for Simplified Rules of Civil Procedure?” (2013) 46 University of Michigan Journal of Law Reform 2.

The time has come for a systematic review of the civil process in the United States. A genuine openness is necessary to simplify the Federal Rules of Civil Procedure. Discovery disputes have become the prime source of cost and delay. Niemeyer outlines the history of the development of discovery disputes and argues that the reform efforts by Congress, the Civil Rules Committee, and the Supreme Court have not addressed the larger structural problems arising from the discovery dispute process. Niemeyer suggests a Simplified Rules Project to simplify the process of discovery disputes in an attempt to mitigate against the time-consuming and costly nature of the federal civil process.

25. Painter, Richard W. “Pro Se Litigation in Times of Financial Hardship: A Legal Crisis and its Solutions” (2011) 45:1 Family Law Quarterly.

**Database subscription required to access this material. Contact your local public library, law library, courthouse library, or academic library to enquire about access.*

The information provided in the 2009 ABA White Paper serves as a basis for understanding the policies addressed by those states that have confronted the challenges of *pro se* litigation. Painter examines alternative approaches to low-cost legal services, such as advancing the involvement of non-lawyers and transferring of court documents to the online format similar to the TurboTax model and the H&R block model. He also discusses suggestions for further regulating discounted legal services by adopting specific rules for law firm procedures.

26. Tesler, Pauline, “Can This Relationship be Saved? The Legal Profession and Families in Transition” (2017) 55:1 Family Court Review.

The author acknowledges the pressing issue of a lack of affordable access to justice. She asserts that using paralegals, in the place of lawyers, for particular legal services, is a means of providing clients with cost-savings in fees, and that it also has the added benefit of freeing up the lawyer’s time to perform more complex legal services. She advocates for lawyers to recognize and utilize the distinct skills of their legal support staff as a way to provide the most effective and cost-efficient delivery of legal services. This presentation is primarily focused on the general advantages associated with legal support staff and the opportunities available to legal support staff to advance their careers.

27. Kuria, W, “Rwanda: Justice Sector to Set up Electronic Case Management” (September 13, 2013), *allafrica*.

The system discussed is designed to digitize every step of a case, hoping to reduce case duration period and reduce bureaucratic costs in the long-term. Individuals will be able to access their case online and track its progress before attending the court on the day of trial. The project is expected to have 2,500-3,000 users and cost around \$7 million within the first first-years, with the first two years as pilot. The main objective of the JRLOS is to strengthen the rule of law and ensure accountable governance and a culture of peace.

28. Linton, Latonya, “Intensified Efforts to Improve Access to Justice” (January 12, 2014) Jamaica Information Service.

The Ministry of Justice has pushed forward for a number of initiatives aimed at enhancing access to justice for Jamaicans. It has been the first time in 51 years that the Court of Appeal has sat in the town of Lucea on a case. This new development to bring justice to people where they reside aims to improve access. The Ministry of Justice has expanded its civil jurisdiction to enable citizens to enforce their legal rights in their home parish courts, rather than having to travel to the Supreme Court in Kingston. The Ministry has also rolled out its Restorative Justice Programme by opening three centres in February. The upgrading and construction of new courts and Legal Aid Clinics are under way as well. Jamaica has also advanced technological innovation in case management software systems, court reporting, as well as providing new computers, laptops and high-end servers in courts.

29. “Taylor Review Recommends Radical Reform to Scottish Civil Litigation Funding” (13 September 2013), Out-law.com.

The Taylor Review, conducted by former Sheriff Principal of Glasgow and Strathkelvin James Taylor, sets out 85 recommendations for radical and substantial changes to the current system. Sheriff Principal Taylor said that his intention was to remove "obstacles" to access of justice, both in terms of the cost of litigation and recoverability of expenses. One of Taylor's recommendations is to allow solicitors to offer their clients 'no win no fee' agreements, under which their fee would be calculated as a percentage of the damages recovered. These agreements cannot currently be enforced by solicitors but third-party claims management companies (CMCs) can enter into them with their clients. The report also recommended the introduction of qualified one-way costs shifting (QOCS) in personal injury cases, meaning that the party bringing a personal injury claim should generally no longer run the risk of having to pay the other side's legal expenses if the court action fails.

30. Greenland, James, “Mind the Gap - Closing the Justice Gap” (November 26, 2015) New Zealand Law Society.

In *Minkin v Lesley Landsberg*, the United Kingdom Court of Appeal held that lawyers do not have a broader duty of care when offering legal services. Lord Justice Jackson stated that solicitors acting under a “defined limited retainer” do not owe a broader duty of care to clients that goes beyond the terms of the retainer. It is reported that the Law Society of England and Wales has welcomed this decision, as they now believe that the profession can offer unbundled services with greater confidence that they will not be held liable for issues that fall outside the

scope of their retainers. The Law Society of England and Wales further argued that this approach is needed given the growing demand for affordable unbundled services in the wake of the access to justice crisis.

31. “Qualitative Research Exploring Experiences and Perceptions of Unbundled Legal Services: Prepared for the Legal Services Board and Legal Services Consumer Panel” (August 6, 2015) Ipsos MORI.

The researchers explored the provisioning of unbundled legal services by conducting thirty-five qualitative, in-depth interviews with a range of consumers who used unbundled legal services in regard to civil, family, or immigration matters, fourteen interviews with legal service providers who provided unbundled legal services across the same legal areas, and six interviews with members of the judiciary. The researchers found that the reduced cost of unbundling, when compared to the payment for a ‘full service’ is clearly a key reason why consumers choose to unbundle. For some consumers, unbundling meant that they could access legal advice, when otherwise they would have been unable to. Consumers chose to unbundle due to one of the three main reasons: an immediate response to a problem with a willingness to save costs, a requirement for advice following escalation of a problem they had been dealing with themselves, or where additional services were required which they could not afford, following the earlier use of ‘full’ legal service provision. The agreements reached were often not in response to advertisement or promoted offers for unbundled services, as consumers accessed the legal services themselves, without the opportunity to unbundle being clearly or obviously available. Consumers felt that they could improve their outcomes when using an unbundled legal service provider, and they did not feel that there needed to be additional safeguards for those engaging in the unbundling of legal services.

Providers felt that unbundling could potentially offer clients some form of legal advice when previously they would have been unable to access any, and potentially secure better outcomes. However, providers highlighted three main difficulties in providing unbundled services to clients: if clients cannot cope with the work then it may adversely affect the outcome of their matter, clients may not fully understand the limits of what the provider agrees to do for them, and there may be a risk of giving advice on the basis of poor initial information from clients. Many providers felt that they had to make substantial changes within their organizations to fully embed unbundling into their practice. Judges shared similar concerns in regard to client capability and scope of engagement, but ultimately regarded the provisioning of some legal advice and assistance as beneficial, as they noted that many self-represented litigants often face difficulty when dealing with court proceedings.

32. “Practice Briefing: Guidance to Lawyers Considering Acting Under a Limited Retainer” (2016), New Zealand Law Society.

The New Zealand Law Society recognizes that many cannot afford to pay for full legal representation, and that one suggested means by which lawyers can address this growing justice

gap is through the provision of limited or unbundled legal services. In this Guide, the New Zealand Law Society intends to introduce lawyers to unbundled legal services and provide lawyers with a basis to good practice when undertaking limited-scope retainers. The New Zealand Law Society discusses unbundled legal services in the context of its benefits for lawyers, its benefits for clients, its risks for lawyers, risk management strategies for lawyers, and best practices for lawyers considering acting under a limited-scope retainer.

33. Dr. Toy-Cronin, Bridgette. “Just an Hour of Your Time?” (March 24, 2016), *New Zealand Law Society*.

Unbundling is beginning to gain some momentum in New Zealand. However, widespread unbundling remains uncommon. Most unbundled services that self-represented litigants access in New Zealand are offered on an ad-hoc basis, from lawyers who normally offer full-retainer services. Qualitative data demonstrates that lawyers oppose unbundling as they wish to control everything, they perceive unbundling as incorporating low monetary awards and high costs, they think there is a difficulty in recording the limits of the retainer and having to be mindful of updating the retainer when the client has returned for further assistance, and that many clients are difficult to work with due to their perceived inability to understand the complexity of their case. Many lawyers in an interview indicated that even if they did offer discrete task assistance, they were very wary of doing so, and very selective about who they offered the service to. However, there is a small number of lawyers in New Zealand who do market themselves as offering unbundled services to the general public, particularly in family law. Dr. Bridgette Toy-Cronin recommends for the legal community to analyze the barriers that prevent the growth of unbundled legal services in an attempt to alleviate the problems people face accessing justice.