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VOICES AND VISIONS OF THE FUTURE

*The Stories of Self-Represented Litigants who are
Survivors of Intimate Partner Violence*

Madhurie Dhanrajh

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In Partnership with the National Self-Represented Litigants Project and Womenatthecentre

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I. INTRODUCTION

“Words don’t teach. Experience teaches.”

~ Interviewee

It is every university student's dream to make a difference in the world, and I am luckier than most in that I have been given the exact opportunity to do so. As part of a course at the University of Toronto called TRN407 — Community Research Partnerships in Ethics, I was assigned to work with the National Self-Represented Litigants Project to produce a project largely designed and headed by myself. NSRLP is a powerful organization that aims to provide support and resources for Canadians who come to court without counsel, while analyzing the implications for the justice system and its impact on self-represented litigants, or SRLs. To be able to work with such an impactful organization was humbling, as well as daunting. But the lovely people in this organization, namely my Project Supervisor Dayna Cornwall and my Faculty Supervisor and President of NSRLP Jennifer Leitch, welcomed me with open arms and made me feel like anything was possible. Through them, I learned about the resilience and plight of self-represented litigants throughout Ontario and Canada — the reasoning behind their choices, the struggles they faced in court, and the resources available to them like NSRLP that aided them in overcoming structural barriers to justice. Ideas for this project began to form.

The folks at NSRLP then introduced me to another organization — WomenatthecentrE, created and led *by survivors for survivors*, who strive to eradicate gender based violence against women, girls, trans, 2-spirit, and gender diverse folks through personal, political and social advocacy. The incredible people I met helped to open my eyes to the reality of intimate partner violence in Ontario. I was able to see the tangible steps they were taking to support women and all peoples in our own community, and the profound difference they were making in so many lives. I began to wonder for my project, how did intimate partner violence intersect with self-representation in court?

I did not have to wonder long. The team that was now coming together easily explained to me how the struggles of self-represented litigants were greatly compounded when they were women as well as survivors of IPV. They raised issues such as dealing with abuse in family court, the inefficacy of the justice system in resolving such issues, and the acute pain felt by those forced to endure these ordeals. With all of this information, as well as the connection the team and myself felt to these topics, I felt it right to link these subjects into one research question: How should the Ontario and Superior Court of Justice adapt to more effectively mitigate the psychological and social harms that self-representation has on women who are survivors of intimate partner violence?

What follows is an answer to this question rooted in fact, research, and most importantly, experience. This comes in the form of a policy paper directed towards the Ontario Justice System with recommendations on how to improve the justice system when it comes to SRLs who are survivors of IPV. These recommendations stem from research, but also from the voices of those who have undergone the process themselves. With the help of the incredible Kelsy Dundas from WomenathecenrE, we were able to interview four women to whom we are deeply grateful to for sharing their stories. If there is anything I have learned from working with organizations such as NSRLP and WomenathecenrE who privilege the voices of survivors, it is that for any change to be successful, it must come from those it is intended to serve. I hope that this research paper can mobilize some change within the Ontario and Superior Court of Justice to better help SRLs who are survivors of IPV, or at the very least, raise awareness to what is an understudied but highly important issue.

I wish to thank the incredible team that made this possible. Without their support, guidance, and love, this paper would never have existed. I hope it becomes one stepping stone to realizing our dream of a better, safer world for all.

1.1 Structure of the Paper

This paper will focus on SRLs who are survivors of IPV and their experiences in family court in Ontario. Section 2 will begin by providing a background about IPV and SRLs in Ontario, narrowing down the focus of this paper to those in family court while explaining alternatives in criminal court. Section 3 will focus on the Woman, centring the experiences of survivors who self-represent. Who they are and why they self-represent are crucial questions to answer before making recommendations on how to improve their situation.

Section 4, entitled the Court, will explore the actual court process and how difficult it can be for survivors. Drawing primarily from interviews, this section will highlight the many issues raised with court procedure including inefficiency, retraumatization, and perception. Section 5 moves into the Reality, looking at the long lasting impact that self-representation combined with IPV has on survivors. These take the form of social, psychological and physical effects.

Finally, Section 6 of this paper will conclude with policy recommendations directed towards the Ontario and Superior Court of Justice on how to improve the justice system when it comes to SRLs who are survivors of IPV. Stemming from research and interviews, these recommendations will encompass all of the issues brought to our attention by survivors and provide practical suggestions on how to improve their experiences moving forward. Many

recommendations will also be directed towards the officials in court as well like lawyers, judges, jury, social workers, and others who interact with these women throughout the process.

II. THE BACKGROUND

“The most dangerous time for a woman in an abusive relationship is when she attempts to leave.”

~ Canadian Women’s Foundation¹

¹ “Warning Signs of an Abusive Relationship,” *Canadian Women’s Foundation*, November 27, 2013, <https://canadianwomen.org/blog/warning-signs-abusive-controlling-relationship/>.

2.1 IPV in the Ontario and Superior Court of Justice

The World Health Organization defines intimate partner violence (IPV) as “one of the most common forms of violence against women and includes physical, sexual, and emotional abuse and controlling behaviours by an intimate partner.”² Physical violence can include any acts of hitting, slapping, beating, and so on, while sexual violence relates to forced sexual intercourse or coercion. Emotional and psychological abuse can refer to insults, humiliation, intimidation, as well as threats to the partner’s life and to their children. Finally, controlling behaviours include isolating the partner from family and community, or restricting financial and medical resources.³

In Canada, over one quarter of all “all victims of police-reported violent crime are victims of intimate partner violence,” which in 2015, translated to about 92000 Canadians, most of which were women.⁴ Ontario, in particular, has often been the province with the most victims of IPV, which in 2019 was a staggering number of 24300 women and 5900 men.⁵

2.2 SRLs in Ontario:

Self-represented litigants (SRLs) are persons who appear in court without lawyer representation. There are two reasons people may become SRLs — because they choose to or because they are forced to. The minority of SRLs who choose to often believe that telling their

² “Understanding and addressing violence against women,” *World Health Organization*, 2012, 1.

³ “Understanding and addressing violence against women,” *World Health Organization*, 1. Please note that these examples are not exhaustive.

⁴ I “Intimate Partner Violence,” *Department of Justice Canada*, May 2017, https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2018/jus/J23-4-3-2017-eng.pdf/.

⁵ “Number of male and female intimate partner violence victims in Canada in 2019, by province,” *Statista Research Department*, March 7 2023, <https://www.statista.com/statistics/434417/intimate-partner-violence-victims-in-canada-by-sex-and-province/>

story with their own voice would be more effective than if a lawyer, which is an unfamiliar third party, were to do it. Those who are forced to often cannot afford legal services or do not qualify for aid, and thus have no alternatives but to represent themselves.⁶ Many of them sometimes begin the process with a lawyer, but are usually forced to proceed without them for various reasons, most often being their inability to sustain such high costs.⁷ This type of SRL makes up the majority of SRLs in Ontario, especially in family court cases.

Research on SRLs is growing, largely due to their increasing size in court systems as well as the initiatives of organizations like NSRLP in collecting data. Thanks to them, we know that the majority of SRLs occur in family court as opposed to civil and criminal court, and that there has been an upward trend of self-represented litigants since 2014.⁸ Data from the provincial ministries of justice demonstrate that the “proportion of litigants appearing *pro se* in provincial family court is consistently at or above 40%, and in some cases far higher.”⁹ In fact, in 2019 and 2020, over half of all family law litigants in Canada represented themselves.¹⁰

⁶ “Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court,” *Luke’s Place Support and Resource Centre for The Denise House*, March 2008, <https://lukesplace.ca/research/through-the-looking-glass/>, 17.

⁷ “Through the Looking Glass,” *Luke’s Place Support and Resource Centre*, 17.

⁸ Eric Epp, “Disproportionate Outcomes for Self-Representing Litigants Raise Access to Justice Concerns,” *University of Manitoba Faculty of Law*, November 21, 2022, <https://law.robsonhall.com/disproportionate-outcomes-for-self-representing-litigants-raise-access-to-justice-concerns/>.

⁹ Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants,” *National Self-Represented Litigants Project*, May 2013, 33.

¹⁰ Lyndsay Ciavaglia Burns, “Profile of family law cases in Canada, 2019/2020,” *Canadian Centre for Justice and Community Safety Statistics*, June 28 2021, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00011-eng.htm>

2.3 Intersection between SRLs and IPV in Family and Criminal Court:

Cases of IPV can end up in criminal court based on the decisions of the police and prosecution. For those who end up here, two thirds will succeed in finding a guilty verdict for their partner within about 4 months, according to the Department of Justice Canada.¹¹ However, many of these IPV survivors, especially when they are married to, live with, and have children with the abuser, face various other hurdles such as custody battles, child protection, and spousal support matters that can only be resolved in family court. For example, partners who live together and are married can be entitled to spousal support, that is, money paid to a spouse to compensate for financial disadvantages during the relationship or to help a spouse become financially self-sufficient.¹² This kind of money can be a crucial brace for women who have just decided to leave abusive relationships, since they often leave with little financial resources after enduring IPV.

Family court is also predominantly used by IPV survivors to deal with protecting their children, gaining custody, and determining parental access.¹³ Leaving an abusive relationship is complicated tenfold when children are involved, and women are often forced to make the difficult decision of facing their abuser in court again to fight for and protect their children from the abuser. Matters are often complicated when abusers also file for custody and access as methods of intimidation, thereby depleting the financial assets of the survivor and prolonging the process to further upset her.

¹¹ Intimate Partner Violence. Department of Justice Canada, 2017. https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2018/jus/J23-4-3-2017-eng.pdf.

¹² “Spousal Support,” *Ontario*, June 30 2022, <https://www.ontario.ca/page/spousal-support#:~:text=You%20may%20be%20entitled%20to,and%20had%20a%20child%20together>

¹³ “Family Court,” *Ontario Court of Justice*, <https://www.ontariocourts.ca/ocj/family-court/>

As such, while criminal court remains a pathway to justice, family court is often used instead because of its practicality — survivors often have no other recourse except navigating family court to obtain financial support and other forms of compensation owed to them by the abuser. There are also many instances of conflicting orders from both family and criminal courts as they operate independently from each other. This can lead to more complication and delays, doing more harm than good.¹⁴ Thus, survivors are either forced to navigate two processes, the results of which might conflict with each other, or they are forced to undergo family court alone, sacrificing their chance at criminal justice so that they can fight a different battle.¹⁵

¹⁴ “When Criminal Law And Family Law Intersect,” *Shulman & Partners LLP*, November 20 2019, <https://shulman.ca/navigating-the-legal-system/when-criminal-law-and-family-law-intersect/>

¹⁵ “When Criminal Law And Family Law Intersect,” <https://shulman.ca/navigating-the-legal-system/when-criminal-law-and-family-law-intersect/>

III. THE WOMAN

“You can recognize survivors of abuse by their courage. When silence is so very inviting, they step forward and share their truth so others know they aren’t alone.”

~ Jeanne McElvaney¹⁶

¹⁶ Felisha Ener, *I Am A Survivor: Stories of Tragedy & Triumph* (USA: Michele Lee Evans, 2018), 13.

3.1 Intersectionality

To better grasp an understanding of the particular adversities faced by survivors of IPV who are SRLs, we must premise the rest of the paper on intersectionality, the idea that harms are not additive, but intersectional. SRLs who are survivors of IPV experience unique harms that result from the interaction of various social categories such as race, class, ability, gender and sexuality.¹⁷ In addition to the combination of oppressions that they face from this positionality, they must also undergo the court process without a lawyer, facing difficulties in navigating the process itself while often invoking the ire of judges and other personnel for impeding the traditional process. Thus, the pre-existing vulnerability of SRLs is further compounded by their being women *and* survivors of IPV, in addition to whatever race, class, ability, and so on, they may also be. These multifaceted identities carry the weight of oppression, histories of discrimination, as well as strength and resilience, and must be recalled when understanding the experiences of IPV survivors who self-represent.

3.2 Who are the women that self-represent in IPV cases? Class, Race, and Gender

One in three women have experienced IPV, although most do not report their cases to the police much less take their cases to criminal court, for various reasons such as the fear of stigma and shame, cultural beliefs in keeping family matters private, or lack of faith in the criminal justice system.¹⁸ However, many survivors find themselves in family court battling out child

¹⁷ Shanti Kulkarni, "Intersectional Trauma-Informed Intimate Partner Violence (IPV) Services: Narrowing the Gap Between IPV Service Delivery and Survivor Needs," *Journal of Family Violence* 34, no. 1 (2019): 58.

¹⁸ "Fact sheet: Intimate partner violence," *Government of Canada*, 2020, <https://women-gender-equality.canada.ca/en/gender-based-violence/intimate-partner-violence.html#facts>.

protection, parenting time or access, and spousal support for those with and without children.¹⁹ These survivors tend to be from middle to lower class economic backgrounds, evidenced by a commonly faced predicament in their failure to qualify for legal aid but their inability to afford a lawyer.²⁰

Studies have also shown that "visible minority women and non-visible minority women are equally likely to experience physical and sexual IPV in the past 12 months,"²¹ although there are few studies and statistics available on visible minority SRLs. The lack of data on this particular group of people might mean that they use the court system less, or that this data is not collected, which has other implications about the erasure of their narratives from the public eye. For the SRLs who are women of colour that navigate the Ontario and Superior Court of Justice systems, one can infer the unique struggles they face in terms of structural racism and discrimination.

Yet, as much as statistics can describe the survivors of IPV that undergo self-representation, they are nothing like the stories of those who have actually experienced the process. It is to these stories, substantiated with academic research, to which we turn now.

3.3 Why do women self-represent?

As mentioned before, self-representation usually results from survivor's inability to afford legal representation, listed as the most common reason.²² All of our interviewees cited

¹⁹ "Family Court," *Ontario Court of Justice*, <https://www.ontariocourts.ca/ocj/family-court/>

²⁰ Macfarlane (2013) National Self-Represented Litigants Project, 40.

²¹ Intimate partner violence: Experiences of visible minority women in Canada, 2018, 4.

²² Macfarlane (2013) National Self-Represented Litigants Project, 39.

financial strain as one of the largest impediments to hiring a lawyer, which most would have preferred. Describing the feelings that came with not being able to afford a lawyer, one respondent said: “There’s a shame around the fact that you don’t have the money to throw into a lawyer. I don’t know how to explain it but it’s a weird place to be in.”

Some also noted that while they started the process with a lawyer, fees accumulated so quickly that they had no choice but to let them go and maneuver the process themselves. “I have no choice. It’s not that I think that I can do this better than a lawyer, I have no choice.”²³ Yet, many women also noted the fact that judges would censure them in court for not having a lawyer, encouraging them to get one as soon as possible. Such statements assume that SRLs could get lawyers if they wanted to, overlooking the lack of choice in their situation.²⁴ In reality, most women find themselves in a dilemma whereby their income is too high on the spectrum to qualify for legal aid but still too low to afford a lawyer. Legal aid is also predominantly for criminal matters and extremely limited examples of civil litigation involving family. Lamenting the failure of the government to provide more lawyers, one respondent said:

“We always look at how expensive it is to give free lawyers to SRLs...but it ends up costing more because the person [the SRL] can’t work, needs social services anyway, the children will need support...will struggle with mental health...So by not taking care of our most vulnerable, our children, our survivors, we are actually adding to the cost at the end of the day.”

²³ Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants,” *National Self-Represented Litigants Project*, May 2013, 40.

²⁴ Julie Macfarlane, “The National Self-Represented Litigants Project, 40.

While financial impediments were the main reason that IPV survivors self-represented, distrust of lawyers and other legal personnel is another contributing factor to self-representation. Many survivor SRLs cited previous personal experiences with lawyers that made it difficult to trust them.

“I paid so much...and was still doing everything myself because that’s the reality...the lawyer doesn’t do everything.”

“Everything was always last minute. I was always following up behind the lawyer to see if he submitted...”

“...had a lawyer but he doesn’t respond. He’s too busy... at the mercy at them with the most important thing in the world — your children.”

Overall, most felt as though they were wasting what little money they had for barely any results in their case, expressing extreme disappointment and distrust in their lawyers. Other studies have also shown similar experiences where SRLs have felt that their lawyers would not listen to them, would not provide quality legal counsel, and would not stand up to opposing counsel.²⁵

²⁵ Julie Macfarlane, “The National Self-Represented Litigants Project, 45.

This leads to another reason why some survivors self-represent — because they trust their ability to do better. With the failure of many lawyers to capture the survivor’s story and respond to opposing counsel properly, as well as to listen to and follow the instructions of the survivor, many decide to self-represent simply because they know they could do a better job than their ex-lawyers. One woman fighting for custody remarked: “Nobody can represent my kids better than me. This needs to be done by me.” Another said:

“They make it seem like it’s so difficult. Many lawyers I spoke to gave me advice and price tags saying it would be hard, but I was glad to be able to do it...I would recommend self-representing because lawyers have other people to handle so you might not be their priority.”

“They just don’t know the story like you do...”

Thus, self-representation can be a point of destruction or empowerment depending on whose experience is being analyzed. In the first instance, SRL survivors feel as though they have no agency and are forced into self-representation regardless of their wishes. And despite many instances and experiences of lawyer incompetence and failures, most SRLs would still wish to undergo the process with a lawyer if they could afford it, mostly because as bad as lawyers are, for many they are still preferable to endure this tremendous process alone. Conversely, there are SRLs, albeit a minority of them, who choose self-representation as way to reclaim their voice and tell their own story. However, while they may still be limited financially which can push

them onto the pathway of self-representation regardless, they perceive self-representation as a choice, and an empowering one at that. As one woman said, “there are some things that a woman can represent herself better if she’s got the strength to do it.”

IV. THE COURT

“Litigation is hard enough but when you have a factor of abuse there, it becomes a very different ball game...”

~ Interviewee

After deciding to self-represent, SRLs who are IPV survivors face one of the hardest parts of the process — the court. This process begins from the completion of court forms and documents, continues with the journey of going to offices for the submission of these forms, attending actual court sessions the contents of which are often traumatizing, and concluding when cases are finally resolved, which can take months and even years. The following are the most common issues faced by SRLs who are IPV survivors throughout this arduous process, which is lengthy, draining, and only sometimes rewarding for all who endure it.

4.1 Length of Process

All respondents spoke about the protracted length of the litigation process. Despite various resources provided by the court with form templates and frequently answered questions, filling out forms would take countless hours because of their convoluted explanations and legal jargon. After finally completing them, SRLs would have to stand in line for hours upon hours just to submit them and upon reaching the front of the line, would be informed of various errors and forced to repeat the entire process again.

“You wait in these long lines to finally submit and then they say this is missing, or this is needed, and you’re already waiting four or five hours.”

If the pre-court process was not long enough, in-court proceedings also took an extreme amount of time. This was largely due to the fact that judges could use their discretionary power to adjourn cases countless of times, thus dragging cases on months at a time.

“I was pushing a project for emergency custody orders...it took 8 months...that’s too long to be removed from the primary caregiver while waiting for the court process.”

“They [judges] need to give exact reasons of why they’re adjourning the case...and also maximum number of times after which it becomes against the law.”

This constant adjournment is also complicated by the fact that every court appearance usually has a different judge presiding over it. Survivors have found that when orders are given to the abuser to be completed before the next hearing and the abuser fails to do this, they are granted extensions when another judge presides over the following hearing. Furthermore, survivors usually have to wait years to know what financial penalties they are entitled to for the abuser not performing these orders. Thus, getting back their money takes years, while their time is lost forever.

Overall, all respondents found that being an SRL dominated their entire lives.

“When you’re self-representing, you don’t have time for your family. You don’t have time for your friends...you have to take care of your kids, you have to go to work, and when you’re self-representing, that’s a third, fourth job...”

“You have to take time off work, school, to go to these offices...It was financially draining and time consuming. It became my whole life.”

4.2 Coldness of the Court

“You learn very quickly...that it is a very cold process.” “I’ve been on my cold floor feeling debilitated from the hurt of the cold process.” “Others should know...how cold of a process it is.”

The word “cold” came up multiple times throughout our interviews to describe the atmosphere in court and the procedural nature of self-representing. It can be understood as synonymous with clinical, dehumanizing, and unfeeling. Like all courts, family law deals in fact, not emotion. Personnel like judges and lawyers are trained to speak in a certain legal language full of large terms and meanings obvious to themselves. There are rigid procedures that must be followed from when someone steps into a courtroom to when she leaves. The atmosphere is based on optimal efficiency, processing as many cases as possible in as little time as needed. Despite the Canadian Judicial Council’s Statement of Principles on SRLs that affirm their commitment to providing SRLs with “fair access and treatment by the court,”²⁶ the reality of self-representing is unforgiving and merciless.

“Any time the self-rep showed any emotion like cry out... they were warned there would be consequences, like adjournment, ruling for other side, or a fine...”

²⁶ “Canadian Judicial Council Issues Statement of Principles on Self-Represented Litigants and Accused Persons,” *Canadian Judicial Council*, December 12 2006, <https://cjc-ccm.ca/en/news/canadian-judicial-council-issues-statement-principles-self-represented-litigants-and-accused>, 1.

“Maintaining that division of being objective when going to court...how do you deal with that horrible emotional content that is with you 24/7?”

Such a combination of factors can create this “coldness” referenced by almost all of our interviewees. When dealing with a topic that is so emotional, whether it be abuse from a partner or the protection of children, it is especially jarring to suddenly extract the emotion from it to assimilate into good courtroom behaviour.

4.3 Lack of Training in Abuse

One of the largest issues women faced in court was the fact that lawyers, judges, and other legal personnel had no training in abuse. They did not understand what constituted IPV or its severity, and often dismissed and undermined claims entirely. “They chalked it up to ‘conflict’ with the parents,” one respondent said, upset that her abuse was reduced in this way. Calling it ‘conflict’ shifts the focus away from abuse, highlighting the importance of language in defining IPV, and its instrumentality in minimizing it.

“Do not call this conflict between the two of us. It’s not a high conflict divorce. It’s an IPV divorce. A domestic violence divorce.”

“I shouldn’t have to explain to you what abuse is. You should know this.”

“A quote I heard said by a judge to a IPV survivor was “you chose him so why are you complaining?””

“To think there’s experts out there who know about abuse...mediation specialists who screen for abuse...expected that same thing to apply in the courtroom...It’s a whole different world. They’re not knowledgeable about anything. Now you’re in a realm where they don’t understand abuse.”

Finding out during the process that legal personnel are not trained in abuse has been described as “heartbreaking.” Despite whatever choices and challenges may have led them to self-represent, many enter the system hopeful that it will help them achieve some semblance of justice. Realizing that something as simple as abuse is not even taught or prioritized feels like a betrayal from the system intended to help them.

“...not knowing this is how it’s going to go, that people aren’t trained in abuse.....I would have prepared myself a bit more, you know...I would have been less devastated.”

“Learning that something you thought in society was important, and then to the people who have all the control, it’s not important to them...it’s heartbreaking.”

4.4 The Adversarial Court Process

Survivors also find the adversarial nature of Ontario and Superior Court of Justice systems to be inappropriate for dealing with IPV cases and abuse. In an adversarial court system, both parties present their evidence and position after which the judge impartially decides a resolution, often competing to every end to ‘win.’ This can get especially volatile in family court cases that deal with such personal issues.²⁷

“They will bulldoze you...Lawyers are across the table calling you names...It’s not personal. It’s business.”

“They are going to say things about you that aren’t true. You’re in court for that reason... But it’s hurtful to have these people who don’t know you to say these terrible things about you.”

“I would have gotten another lawyer but this one would have attacked my ex as a strategy, and I didn't want that.”

But it was not just lawyers — judges also played a large role in minimizing IPV in court, being insensitive to the struggles of SRLs dealing with abuse, and also looking down on SRLs who they felt to be upsetting traditional mechanisms of courtroom norms.

²⁷ “Is the family law ‘adversarial’ approach out of date?” *Family Law Decisions*, <https://www.familylawdecisions.co.uk/family-law-adversarial-approach-out-date/>

“You’re waiting for a long time to be heard, and then when you’re being heard, if you need a break, judges will say we don’t have time, again missing that component of abuse.”

“Judges don’t read...they always say before they start a session they’ve read the material but most times they can’t even remember big details.”

Many interviewees noted that their process hinged on getting a fair lawyer and judge. “If you’ve got an abusive lawyer or judge, you’re out of luck. You can be as strong as you want.” Another noted that “I think a self-represented litigant’s success depends on the integrity of the people she’s dealing with.” For a process that is supposed to be fair, it is highly contingent on who takes part in it. And after recently leaving IPV relationships where all kinds of abuse would have taken place, entering a courtroom premised on fighting to the death to achieve favourable results felt like another kind of abuse altogether.

4.5 Retraumatization

Another issue faced by SRLs is one that affects only those who are IPV survivors — facing the abuser in court. In the current Ontario Family Court system, there are no provisions to prevent interaction between abusers and survivors, mainly because allegations of abuse can only lead to enforceable consequences in criminal court. In family court, however, abuse allegations have little bearing on the presence of the accused in court. Thus, SRLs are forced to “face these

people,” which can be extremely difficult for obvious reasons.²⁸ The extent of abuse endured, the amount of time the partners lived together, and the degree of trauma from an IPV relationship can all make the environment in which an SRL is forced to represent herself very uncomfortable and even dangerous.

“The survivor has left [the abusive relationship]. Wonderful. But when court begins, there is a new abuse process that happens because not only do they have to see the abuser, but the court doesn’t recognize the fact that they have PTSD, anxiety, depression, that are preventing them from going forward and presenting their argument properly.

Many women resent the court’s enabling of the abuser’s behaviour, even helping them by prolonging court procedures, giving them more opportunity to target survivors. One respondent says:

“It’s not the men perpetrating the IPV who are the problem in the court system. The problem is those with the authority to help the women and those assisting the abuser not doing what’s needed to stop the abuse.”

For IPV survivors who have already been through so much to get away from their abuser, being forced to interact with them in court further extends the abusive process altogether. The

²⁸ Interview.

path forward to escape, freedom, and justice looks too similar to the path left behind, of violence and danger.

4.6 Perception

Perception, whether it be self perception of the survivors or the perception of the legal personnel around them, is also a huge factor that can often be an impediment to self-representation for IPV survivors. SRLs who were forced to self-represent often dreaded appearing in court, experiencing nerves, anxiety, and stress all throughout the process.²⁹ But many of those who also chose the SRL pathway experienced similar apprehension before the process. This was partially because the court system is created for lawyers, and circumventing this unspoken rule would cause judges and lawyers both to treat SRLs differently. For example, some noted that judges would only speak with the opposing lawyer, cutting off the SRL when they asked a question.³⁰ Judges and lawyers both would also use extensive legal jargon, often unnecessarily so, to create an elitist community from which the SRL was excluded.³¹ The inexperience of SRLs would also cause judges to treat them even more unfavourably — most judges have observed that SRLs take more time in court for cases to be resolved because of their unfamiliarity with the procedure and substantive rules, or their unwillingness to settle.³² While some look sympathetically onto their plight, many others feel annoyed and upset, which can

²⁹ Julie Macfarlane, “The National Self-Represented Litigants Project, 95.

³⁰ Macfarlane, “The National Self-Represented Litigants Project, 99.

³¹ Macfarlane, 97.

³² Birnbaum, Rachel and Nicholas Bala. 2020. “Judicial perspectives on self-represented litigants in family courts.” *The Lawyer’s Daily*, 2.

cause them to berate the SRL or dismiss them entirely. This can impact the SRL tremendously, causing them to lose confidence in themselves, and faith in the system intended to protect them.

“They [legal counsel] make it seem like it’s so difficult...often make it seem like you have to get a lawyer...a lot of it is not as hard as they make it...”

The privileging of lawyers and the covert condescension towards SRLs can all have a detrimental impact on SRLs who are survivors of IPV. Having just exited an abusive relationship which would have done all kind of damage to the SRL, they must now enter into a completely new and foreign process for most, whereby they are forced to relive traumatizing experiences and face abusers all in front of an audience. Having confidence to present one’s case is crucial to success, but that confidence can easily be pulled apart when facing the dismissive and condescending attitudes of judges, lawyers and other legal personnel.

“Self-represented litigants are very strong to be able to do that. Having said that, it’s still very difficult. If you’ve got an abusive lawyer or judge, you’re out of luck. You can be as strong as you want.”

V. THE REALITY

“I wouldn’t want anyone to hurt the way I hurt going through this process.”

~ Interviewee

The impact that self-representing has on survivors of IPV can affect physical, psychological, and social aspects of health. The following is what self-representation of IPV survivors truly feels like.

5.1 Physical

Survivors described the physical effects that extreme amounts of stress had on their body. Many experienced everything from sleep disorders and headaches to weight loss and anxiety, many of which were symptoms of post-traumatic stress disorder.³³ So many SRLs also fell ill “from the stress associated with the process and the stress from knowing that their lives and the lives of their children are at risk.”³⁴ So taxing was the process of self-representing in *combination* with being a survivor of IPV. Importantly, these effects were not tied to preexisting health conditions or ailments — rather, they all manifested during the self-representation process, which is indicative of the intense pressure it places on SRLs.³⁵

“I am not suicidal at all...but there was a time where I was quite prepared that if I lost my son in court...there were two instances where I thought of killing myself...there wasn't nobody to help...”

³³ Macfarlane, “The National Self-Represented Litigants Project, 107.

³⁴ Maria Evelyn Jovel-Rollins, “Self-representation in the family court: is justice for all in Canada?” Master’s thesis, Toronto Metropolitan University, 2019, <https://doi.org/10.32920/ryerson.14662518.v1>, 38.

³⁵ Macfarlane, “The National Self-Represented Litigants Project, 108.

5.2 Psychological and Emotional

The psychological and emotional impacts of self-representing as survivors of IPV was very difficult for many of our respondents to relive due to the strength of the emotions they had endured. Many spoke about the loneliness of the process, the all-encompassing nature of self-representing and how it came to dominate their entire lives, and their feelings of inadequacy and hopelessness that came to characterize the entire process.

“It was very hard...you feel like you’re cornered. You already have a loss of control because of the other element [IPV], and you feel a further loss of control because the legal system is so complicated.”

“I knew I wasn’t dumb and that I could figure it out...I remember crying many many many times... You’re figuring it out but you’re still lost...”

“I remember crying after the judge [made a decision]...I couldn’t stop crying for 6 hours. I got home and couldn’t get out of the vehicle even after I cried at the courthouse for so long...”

“It was very debilitating...it was a nightmare.”

5.3 Social

We also explored the impact on community that self-representation had on survivors of IPV. While many found that they lost all semblance of social life having no time for friends or family and by extension, no support, a small minority conversely found strength in community which enabled them to survive the process.

One survivor felt a sense of shame in the fact that she was forced to self-represent, and thus felt isolated from her social circle even further. She says: “I didn’t tell anyone that I was self-representing. I didn’t want to tell my parents...or ask my brothers or sisters [because they had already done so much].” The combined stigma of being an IPV survivor as well as an SRL inhibited her from asking for help, demonstrating the societal pressures and norms that run counter to the reality of SRLs and IPV survivors.

Another respondent talked about the struggles of her fellow survivors, and how they were unable to recover from IPV due to the immediacy of self-representation. “Not only have they just left a horrible relationship lasting years, now they have to recover but they don’t have time to recover. They have to take care of themselves, they have to have finances, but a lot of women don’t have...they can’t afford legal representation and having to do this on their own doesn’t allow them to recover.”

Another reflected on her feelings of loneliness, mirroring the experience of most in this category. “I didn’t have anybody. Nobody knew how to help me...I felt very alone...My mother and sister were disturbed for me...but there was nothing they could do. They couldn’t understand the system...even my good friends didn’t understand.” Like many others, though there may be people in the community willing to help, the unique experience of SRLs who are IPV survivors

is hard to understand and empathize with unless it is experienced, which makes it difficult for friends, family and community members to provide adequate support.

However, one respondent discussed the support of centres geared towards women like her. “They were my saving grace. It wasn’t a support group, but just doing the work that they do, it was supportive...do what you can for each other. If those people didn’t have me...they wouldn’t have anyone. And I know what that feels like.”

5.4 Resolution of Cases

We asked our respondents to share the final outcome of their cases if they were comfortable to understand whether all of that suffering meant something by the very end.

“I got exactly what I wanted, sole and final custody of my kids. There were little things they couldn’t enforce like child support. I’ve never received anything...when it comes to enforcing support, there is nothing really there.”

Another respondent’s outcome was similar: “I got custody. I had to concede financially but it didn’t matter because I have my kids.”

Both respondents took the outcome of their cases as a victory, although the lack of child support and financial support were significant and unexpected setbacks. Their cases represent the common mentality of most SRLs who are survivors, who are oftentimes grateful for their successes regardless of smaller failures, because of their accomplishment of emerging out of the

arduous ordeal of self-representation. While achieving what they achieved was monumental, they should also never have to settle for any failings of the justice system..

VI. RECOMMENDATIONS

“It’s like a really old old broken car. You can’t even just focus on one part. Everything has to go.”

~ Interviewee

“Words don’t teach. Experience teaches.” This was the profound statement of one of the survivors interviewed for this project. Her words perfectly encapsulate the goal of this project. Thus far, this paper has demonstrated the multitude of problems, inadequacies, and shortcomings of the Ontario and Superior Court of Justice systems and their especially adverse effects on SRLs who are survivors of IPV. This section provides recommendations to remedy these issues, drawing primarily from the *experiences* of survivors themselves. The overarching sentiment is that the family court system as it currently exists is inappropriate to dealing with cases of IPV especially when they are put forth by SRLs. Thus, the following are suggestions survivors have made, combined with other recommendations inferred from various academic studies and research projects, that coalesce into a promising reimagination of the family court system for the future.

These recommendations are divided into two sections; the first deals with survivor-specific recommendations to directly improve their experiences with the system with a focus on survivor and SRL support. The second section deals with improvements to the system in its entirety, moving away from survivors on an individual scale and towards improving their experiences as a whole.

6.1 Survivor-Specific Recommendations

6.1.1 On Forms and Procedures

1. Clarify explanations and create guidelines and checklists for filling out court forms and other procedural work

2. Provide in person guidance to SRLs needing help with forms.
3. Increase personnel to help with forms to decrease wait times.
4. Create online and virtual alternatives to in person submission to decrease commuting time for SRLs and increase the speed of the overall process.

6.1.2 On Organizations to Support SRLs who are IPV Survivors

5. Increase funding to non-governmental organizations such as NSRLP and WomenatthecentreE who provide guidance and support to SRLs navigating the system.
6. Create an official government organization with a mandate to educate and guide SRLs. The increase of SRLs indicate that more and more need help and guidance, and thus should be able to find it in official settings as soon as they decide to self-represent, rather than having to do additional research to find available resources.
 1. Establish paid advisory positions for those who have undergone self-representation as IPV survivors so that they can advise others. Many who currently serve this role do so as volunteers and out of the goodness of their own hearts. Establishing this position as a permanent job will thus benefit those who have already undergone the experience and those who are about to as well.
7. Create and mandate support groups for SRLs who are survivors of IPV. Survivor testimony and research has shown that having communities of individuals who have undergone similar experiences can reduce feelings of loneliness and hopelessness.

6.1.3 Addressing the Lack of Abuse Training of Legal Personnel

8. Lawyers should have yearly, specialized, and extensive training to understand how to interact with IPV survivors without further retraumatizing them. They should understand the details of abuse and how it can cause stress and trauma to those forced to relive it in court. Lawyers should update their knowledge often with feedback from survivors themselves.
9. Lawyers should be trained on how to represent survivors of IPV accurately. One common criticism is that they fail to listen to their clients and thus do not convey their stories accurately. Lawyers must be trained to present IPV cases and represent IPV survivors in a manner that upholds the quality of legal counsel.
10. Lawyers of both the client and the opposing counsel must not under any circumstances engage in aggressive or bullying behaviours towards clients or victims. Norms of “good lawyering” should change to reflect achieving intended outcomes by civil and respectful means, not by any means necessary.
11. Judges must also be trained to interact appropriately with IPV survivors, undergoing yearly, specialized, and extensive training courses. They must exhibit sensitivity and consideration when making comments and decisions, and ensure a safe and secure environment is maintained throughout all court proceedings.
12. Court procedures and rules should be less strict and more considerate of SRLs, especially those who are survivors of IPV. If they make mistakes or become emotional, their behaviour should be understood in context of the situation they are facing. Lawyers and judges should look more compassionately on all SRLs and survivors of IPV to minimize pain and trauma

that can be invoked by courtroom procedures.³⁶ Overall, the courtroom and those who operate within it should do so with more compassion to combat the coldness that so many survivors experience.

6.2 Systemic Improvement Recommendations

Changes to the family court system must be made to ensure justice is delivered in a safe and peaceful manner. Many respondents advocated a separate system altogether — one for all IPV survivors, not just those who self-represent, as described below.

13. There must be a separate system geared towards survivors of IPV who are also dealing with family court issues. As soon as an allegation of abuse is present on an application for divorce or any other family court issue, the case must be analyzed by a panel of capable individuals trained in IPV and abuse, who will make a decision on whether the case should proceed to regular family court or the separate system that hears cases with IPV survivors.
14. In this separate system, a social worker should be present at all times. Any lawyers retained must be trained in understanding abuse and interacting with survivors. There should be not one, but a panel of at least three judges, comprised of experts in IPV as well as family court matters. This will ensure that any decision reached is done so fairly with attention to the intricacies of IPV that play various roles in matters such as spousal support, custody, and access.

³⁶ Maria Evelyn Jovel-Rollins, “Self-representation in the family court: is justice for all in Canada?” Master’s thesis, Toronto Metropolitan University, 2019, <https://doi.org/10.32920/ryerson.14662518.v1>, 13.

15. One panel should be assigned to each case. Having different judges each time can be exhausting for SRLs who are IPV survivors as they must keep reliving their traumatic experiences over and over again to explain to various different judges each time. Having the same panel for each case will ensure that the panel is familiar with the case and can thus make informed and just decisions.
16. Cases must be concluded within a reasonable time.³⁷ Adjournments must be finite and cannot exceed a certain number. They should be prioritized and sped up as soon as possible due to the time sensitive nature of the issues.
17. Information should be communicated between family and criminal court without infringing on the privacy rights of all parties involved. Communication between these courts will ensure that orders do not conflict and security and safety is maintained for survivors of IPV.³⁸

³⁷ “Through the Looking Glass,” *Luke’s Place Support and Resource Centre*, 39.

³⁸ “Through the Looking Glass,” *Luke’s Place Support and Resource Centre*, 39.

VII. CONCLUSION

“You think you’re done but you’re really not.”

~ Interviewee

Overall, the Ontario and Superior Court Justice systems are a violent process for SRLs, especially those who have endured IPV. Reforms will only do so much, but as survivors have consistently said, an entirely new and separate system is needed to better address the concerns they have for their safety and justice. And yet, despite every respondent describing in great detail the pain, suffering, and distress of the self-representation process, most said that they were stronger for it.

“I don’t regret it, and it was very hard, and I did break down many many times. But I felt like it was a mini accomplishment.”

“Going through something that awful and coming out on the other side...I am who I am today because of that.”

It is truly a testament to the strength of the women who undergo such horrific ordeals that they continue to remain standing, fighting for a better future for their children as well as other women and persons just like them. That their resilience has not wavered in spite of such a dreadful and taxing process shows their perseverance and strength. But they should not have to be so strong. Enduring abusive court procedures in addition to surviving intimate partner violence should not become the norm.

With these recommendations on improving the Ontario and Superior Court of Justice, the hope is that self-representation for survivors of IPV will become easier, fairer, and just, without fear, insecurity and abuse accompanying the process. Although there is still much work to be

done, this paper hopes to be one of many steps to achieving a reality where survivors who self-represent can do so without fear of further abuse. They have spoken. Their voices are loud. It is time for us to listen.

References

- Burns, Lyndsay Ciavaglia. "Profile of family law cases in Canada, 2019/2020." *Canadian Centre for Justice and Community Safety Statistics*. June 28 2021. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00011-eng.htm>
- "Canadian Judicial Council Issues Statement of Principles on Self-Represented Litigants and Accused Persons." *Canadian Judicial Council*. December 12 2006. <https://cjc-ccm.ca/en/news/canadian-judicial-council-issues-statement-principles-self-represented-litigants-and-accused>.
- Ener, Felisha. *I Am A Survivor: Stories of Tragedy & Triumph*. USA: Michele Lee Evans, 2018.
- Epp, Eric. "Disproportionate Outcomes for Self-Representing Litigants Raise Access to Justice Concerns." *University of Manitoba Faculty of Law*. November 21 2022. <https://law.robsonhall.com/disproportionate-outcomes-for-self-representing-litigants-raise-access-to-justice-concerns/>
- "Fact sheet: Intimate partner violence." *Government of Canada*. 2020. <https://women-gender-equality.canada.ca/en/gender-based-violence/intimate-partner-violence.html#facts>.
- "Family Court." *Ontario Court of Justice*. <https://www.ontariocourts.ca/ocj/family-court/>
- "Intimate Partner Violence." *Department of Justice Canada*. May 2017. https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2018/jus/J23-4-3-2017-eng.pdf/.
- "Is the family law 'adversarial' approach out of date?" *Family Law Decisions*, <https://www.familylawdecisions.co.uk/family-law-adversarial-approach-out-date/>

Jovel-Rollins, Maria Evelyn. “Self-representation in the family court: is justice for all in Canada?” Master’s thesis, Toronto Metropolitan University, 2019. <https://doi.org/10.32920/ryerson.14662518.v1>

Kulkarni, Shanti. “Intersectional Trauma-Informed Intimate Partner Violence (IPV) Services: Narrowing the Gap Between IPV Service Delivery and Survivor Needs.” *Journal of Family Violence* 34, no. 1 (2019): pp. 55–64, <https://doi.org/10.1007/s10896-018-0001-5>.

Macfarlane, Julie. “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants.” *National Self-Represented Litigants Project*. May 2013.

Maria Evelyn Jovel-Rollins, “Self-representation in the family court: is justice for all in Canada?” Master’s thesis, Toronto Metropolitan University, 2019, <https://doi.org/10.32920/ryerson.14662518.v1>

Netolitzky, Donald J. “The Grim Parade: Supreme Court of Canada Self-Represented Appellants in 2017, 2021.” *Alberta Law Review* 117, no. 59-1. 2021 CanLIIDocs 2387, <https://canlii.ca/t/tcr1>

“Number of male and female intimate partner violence victims in Canada in 2019, by province.” *Statista Research Department*. March 7 2023. <https://www.statista.com/statistics/434417/intimate-partner-violence-victims-in-canada-by-sex-and-province/>

“Spousal Support.” *Ontario*. June 30 2022. <https://www.ontario.ca/page/spousal-support#:~:text=You%20may%20be%20entitled%20to,and%20had%20a%20child%20together>

“Through the Looking Glass: The Experiences of Unrepresented Abused Women in Family Court.” *Luke’s Place Support and Resource Centre for The Denise House*. March 2008.

<https://lukesplace.ca/research/through-the-looking-glass/>.

“Understanding and addressing violence against women.” *World Health Organization*. 2012. 1.

“Warning Signs of an Abusive Relationship.” *Canadian Women’s Foundation*. November 27, 2013. <https://canadianwomen.org/blog/warning-signs-abusive-controlling-relationship/>.

“When Criminal Law And Family Law Intersect.” *Shulman & Partners LLP*. November 20 2019.

<https://shulman.ca/navigating-the-legal-system/when-criminal-law-and-family-law-intersect/>