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**The National Self-Represented Litigants Project:
Identifying and Meeting the Needs of Self-Represented
Litigants**

Final Report

May 2013

Dr Julie Macfarlane

**Supported by grants from the Law Foundation of Ontario, the Law
Foundation of Alberta, and the Law Foundation of British Columbia/ Legal
Services Society of British Columbia**

Table of Contents

Executive Summary	8
<u>Part 1: The Study and the Sample</u>	
1. Study Methodology	15
a) Background	15
b) A note on terminology	16
c) Study objectives	16
d) Research design	17
i. <i>Selection of the field sites</i>	17
ii. <i>Establishing the field sites</i>	18
iii. <i>Building the sample</i>	19
iv. <i>Other sampling questions</i>	20
e) Further data collection strategies	21
f) The Project database	21
g) Methodological and sample strengths and limitations	22
2. SRL Sample Analysis	24
a) SRL's by province	24
b) SRL's by court	25
c) SRL's by gender	27
d) SRL's by age	27
e) SRL's by income	28
f) SRL's by highest educational level	29
g) Previous legal representation in this action	31
h) Legal representation of the other side	31
i) Mental health issues	32
3. The SRL explosion: how many people are representing themselves in family and civil court?	32
a) Family courts	33
b) Civil courts	34
c) Predispositions towards lawyers and other sources of professional advice	35
d) Considering alternatives to legal process	37

Part 2: Decision-Making over Self-Representation	38
4. Why are so many people representing themselves?	38
a) Financial reasons	39
i. <i>SRL's who have self-represented throughout the process</i>	40
ii. <i>SRL's who had received Legal Aid</i>	42
iii. <i>SRL's who cannot afford to continue with counsel</i>	42
b) Dissatisfaction with their legal representative	44
i. <i>Counsel "doing nothing"</i>	45
ii. <i>Counsel not interested in settling the case</i>	45
iii. <i>Difficulty finding counsel to take their case</i>	46
iv. <i>Counsel not listening or explaining</i>	46
v. <i>Counsel made mistakes/ was not competent</i>	47
c.) A preference for handling the matter themselves	48
5. How do SRL experiences match up to their expectations?	50
a) First steps: initial confidence	50
b) First steps: initial fears	52
c) Becoming overwhelmed	53
Part 3: Getting Started: How SRL's Engage with the Justice System	56
6. SRL's and court forms	56
a) Overview	56
b) The Divorce Applications Project (Kyla Fair)	56
i. <i>Language and terminology</i>	57
ii. <i>Picking the "right" form</i>	57
iii. <i>Complexity of forms and information required</i>	57
iv. <i>Commonplace and unhelpful notations</i>	58
v. <i>What happens next?</i>	58
c) SRL experiences with court forms	59
i. <i>Difficulty knowing which form(s) to use</i>	59
ii. <i>Difficulty with language used on forms</i>	60
iii. <i>Complaints about inconsistent information</i>	60
iv. <i>Consequences of difficulties completing forms</i>	61
d) Service providers comments on court forms	62
7. On-line self -help resources for SRL's	63
a) What on-line resources do SRL's identify as most helpful?	63
b) Website deficiencies and limitations	64
c) The Court Guides Assessment Project (Cynthia Eagan)	65

d) Conclusions	67
8. Legal information for SRL's	67
a) Overview	67
b) The legal information/ legal advice distinction	69
c) Interaction between SRL's and court staff	70
d) Other stresses for court staff	73
9. Other resources for SRL's	73
e) Mediation services	73
f) Community-based support for SRL's	75
g) Access to law libraries	76
h) Support person	77
i) What other resources are SRL's asking for?	79
i. <i>SRL orientation and education</i>	79
ii. <i>Office facilities</i>	80
iii. <i>Coaching/ mentoring</i>	80
Part 4: SRL's, Lawyers and Judges	81
10. Delivering legal services to SRL's	81
a) SRL recourse to legal services	81
b) Legal Aid	83
c) Duty counsel and summary advice services	85
d) SRL evaluation of the summary advice model	86
e) What might make the summary model more effective?	88
i. <i>Preparing SRL's</i>	88
ii. <i>Specialized training for counsel</i>	88
iii. <i>Building in flexibility</i>	89
f.) Private legal services	90
i. <i>SRL critiques</i>	90
ii. <i>Comments about opposing counsel</i>	91
iii. <i>Unbundled legal services</i>	92
iv. <i>Para-legal services</i>	93
11. Court appearances and interactions with judges	95
a) Negative experiences: overview	95
i. <i>Feeling like an outsider</i>	97
ii. <i>Not knowing how to behave</i>	98
iii. <i>Emotional investment</i>	98
iv. <i>Multiple judges</i>	99
v. <i>Judge did not read materials</i>	99

vi. <i>Prejudged by the judge</i>	100
vii. <i>A “two-tiered system”</i>	101
viii. <i>Experiencing hostility</i>	102
ix. <i>Experiencing moral judgment</i>	103
b) Positive experiences: overview	105
i. <i>Respectful communication</i>	105
ii. <i>Assisted in problem-solving and settlement</i>	105
iii. <i>Coaching</i>	106
c) Comments from court staff and service providers	106
d) Conclusions	107
12. Personal and social impact on SRL’s	108
a) Personal health issues	108
b) Financial impact	109
c.) Social isolation	110
d) Failing faith in the justice system	110
<u>Part 5: Preliminary Recommendations</u>	113
1. Court forms	113
2. On-line resources	115
3. Access to legal information	116
4. Other support & resources for SRL’s	118
5. The delivery of legal services to SRL’s	121
6. The judicial role	124
7. Social impact and consequences	127
8. Culture change	127
Appendices	
Appendix A: Total Respondents by Province and Field Site	129
Appendix B: All Sites in All Provinces	131
Appendix C: Service Provider Interview Template	132
Appendix D: Focus Group Template Questions	132
Appendix E: SRL Interview Template	133
Appendix F: SRL Interview Codes	135
Appendix G: Service Provider Interview Codes	136
Appendix H: Report of the Divorce Applications project	137
Appendix I: Report of the Court Guides Assessment Project	142

Figures

Fig 1: SRL data source by province	25
Fig 2: SRL's by court	26
Fig 3: SRL's by age	27
Fig 4: SRL's by income	28
Fig 5: SRL's by highest educational level	30

Thanks and acknowledgements

This study has been generously funded by the Law Foundation of Alberta, the Law Foundation of British Columbia / the Legal Services Society of British Columbia) and the Law Foundation of Ontario. Thanks especially to Deborah Duncan, Kirsten Manley-Casimir and Wayne Robertson for their support and assistance. While financially supported by the three Law Foundations, the findings of this research do not necessarily reflect the views of the Foundations.

Special thanks are owed to the Project Advisory Board – Professor John Manwaring (Chair), Justice John Rooke, Mary Anne Docherty, Mary Butterfield, Melina Buckley, Dr Noel Semple and Sherry MacLennan – as well as John Greacen, Perry Dunmore, Gillian Dunmore and Bernie Mayer, for their thoughtful input to the draft report and recommendations.

I appreciated the time and expertise provided by the justice ministries in the three participating provinces who worked with me to identify the study field sites (Anne-Marie Predko and Maretta Miranda in Ontario, Edie Delanghe in Alberta, and Irene Robertson and Lisa Nakamura in British Columbia.)

To the more than one hundred court staff and service providers who sat down to be interviewed for this study, and the 259 self-represented litigants who participated in interviews and/or focus groups interviews – I sincerely hope that I have been able to accurately capture your perspectives here.

I am extremely grateful to my Project team – Raman Pandher, Lois Li, Kyla Fair and Cynthia Eagan – for all their hard work and dedication to this undertaking. Thuy Bin-Shiu dealt with many aspects of the Project finances, and fielded innumerable calls from people looking for “that Ontario professor doing the study.” Finally, Sue Rice, the Project Co-ordinator, has been absolutely pivotal in creating the conditions for this research and providing organizational and creative support throughout. This really was a team effort - thank you all.

Julie Macfarlane, Kingsville, April 2013

EXECUTIVE SUMMARY

Part 1: The study

1. Methodology

The goal of this qualitative study was to develop data on the experience of self-represented litigants in three Canadian provinces: Alberta, British Columbia and Ontario. Field sites in each province were used as primary data collection points, but SRL respondents also came via social media and from all over each province. In addition, service providers (court staff, duty counsel, pro bono lawyers, staff in community agencies working with SRL's) were included in the sample. Most respondents (almost 90% of SRL's and 100% of service providers) participated in an in-depth personal interview; the remaining 10% of SRL's participated in a focus group.

2. Data sample

259 SRL's from the three provinces participated in either an in-depth personal interview or a focus group. Including follow-up interviews, a total of 283 interviews were conducted with SRL's. In addition 107 interviews were conducted with service providers (defined above).

3. SRL demographics

The characteristics of the SRL sample are broadly representative of the general Canadian population. 50% were men and 50% were women. 50% had a university degree. 57% reported income of less than \$50,000 a year and 40% (the largest single group) reported incomes of less than \$30,000 a year.

60% of the SRL were family litigants and 31% were litigants in civil court (13% in small claims and 18% in general civil). 4% were appearing in tribunals (the remainder were unassigned). The majority of family SRL's were filed in the divorce court (Supreme Court, Queen's Bench or Superior Court) and a smaller number in provincial family court.

Part 2: Decisions over self-representation

4. Motivations

By far the most consistently cited reason for self-representation was the inability to afford to retain, or to continue to retain, legal counsel.

In addition, some SRL respondents were dissatisfied with the legal services that they had received earlier in this case when they were represented by counsel. Their complaints (in their own words) included: counsel "doing nothing"; counsel not interested in settling the

case; difficulty finding counsel to take their case; counsel not listening or explaining; counsel made mistakes/ was not competent.

53% of the sample had been represented by counsel earlier in their action. Three quarters of these had retained a private lawyer, and the remainder had been legally aided, but this was now discontinued. These respondents had exhausted their available resources and were often resentful that despite significant expenditures on private legal services, they were still not at the end of their action. Past experience with legal counsel in an *earlier* case or legal transaction was not dispositive in their decision to self-represent.

Around one in five SRL respondents expressed a personal determination to take their matter forward themselves, as well as acknowledging financial reasons to self-represent. A small number – around than 10% of the sample - expressed confidence from the outset that they could handle their case themselves and saw retaining legal counsel as a poor use of resources when relatively little money was at stake.

5. The expectations / experience disconnect

Some SRL's began with a reasonable sense of confidence; others began with trepidation. However within a short time almost all the SRL respondents became disillusioned, frustrated, and in some cases overwhelmed by the complexity of their case and the amount of time it was consuming.

Part 3: How SRL's engage with the justice system

6. SRL's and court forms

While on-line court forms appear to offer the prospect of enhanced access to justice, many forms are complex and difficult to complete, and SRL's often find they have made mistakes and omissions. The most common complaints include difficulty knowing which form(s) to use; apparently inconsistent information from court staff/ judges; difficulty with the language used on forms; and the consequences of mistakes including adjournments and more wasted time and stress. These widespread difficulties result in frustration for SRL's and additional burdens on court personnel, including registry staff and judges.

There has been some progress made towards developing user-friendly and simplified court forms, but it is far too little. A number of court staff commented that they (and some lawyers) also had difficulty completing complex and lengthy court forms and keeping up with constant changes. In her assignment to apply for a divorce in the three provinces (The Divorce Applications Project), Kyla Fair also found that even with legal training, the forms were confusing, contained terminology she did not understand, and required an enormous amount of work and concentration.

Court guides are an important step towards assisting SRL's complete forms and understand court procedure but these too are often written in a confusing and complex

manner. In her "audit" of three sample Court Guides, Cynthia Eagan found problems very similar to those highlighted above by SRL's regarding court forms (see (7) below).

7. On-line resources for SRL's

A large amount of the assistance presently made available to SRL's by the courts (and some service providers) is in the form of on-line information and related technologies (on-line forms, informational websites, and some video material). New initiatives in programming and support for SRL's in both Canada and the United States are largely based on the premise that access to the Internet can promote access to justice for SRL's. While many of these initiatives are in relatively early stages of development, this study suggests there are significant limitations and deficiencies to this material. On-line resources often require some level of understanding and knowledge in order to be able to make best use of them.

SRL's who anticipated that the proliferation of on-line resources would enable them to represent themselves successfully became disillusioned and disappointed once they began to try to work with what is presently available on-line. In particular, they identified the following weaknesses: an emphasis on substantive legal information and an absence of information on practical tasks like filing or serving, advice on negotiation or a strategy for talking to the other side, presentation techniques, or even legal procedure; often directed them to other sites (sometimes with broken links) with inconsistent information; and multiplicity of sites with no means of differentiating which is the most "legitimate". Cynthia Eagan found many of the same problems when she audited a selection of on-line Court Guides (The Court Guides Assessment project). Cynthia also highlighted the reading levels of some of this material (as high as 13.5), and the heavy use of jargon and unexplained legal terms.

The study data also shows that no matter how complete, comprehensive and user-friendly (standards we are still far from meeting), on-line resources are insufficient to meet SRL needs for face-to-face orientation, education and other support. Enhanced on-line technologies can be an important component of SRL programming – for example the development of sites developed specifically for SRL's making use of interactive technology - but cannot provide a complete service.

8. Legal information for SRL's

It is clear that many SRL's are eager to access further and better sources of legal information. SRL's in the study frequently described themselves as seeking "guidance" rather than "direction". This suggests that the expansion of legal information services (along with the clarification of the legal information/ legal advice distinction, below) has the potential to relieve pressure on more costly public legal services such as duty counsel.

The most common source of legal information for SRL's are court staff, primarily those working at the registry counters but also staff working in court programs such as Pro Bono Ontario, FLIC & LinC in Alberta, and the Justice Access Centres in British Columbia. These excellent services are not always clearly "signposted" in the courthouse or on the

courthouse website; as a consequence some SRL's appeared to have missed the opportunity to use these programs (this was also a problem for mediation services; see below at (9)). SRL's consistently described staff working in these locations as the "most helpful" person they encountered during their SRL experience. However they also complained about the restrictions on the time and scope of information that these staff can offer, because of the limitation on their providing "legal advice" (which results in substantial personal discretion, which some SRL's are better at exploiting than others) or because of the sheer volume of people they are dealing with.

The distinction between legal information/ legal advice which lies at the heart of the job descriptions of staff working on the court counters and in information services is consistently complained about by both SRL's and staff, as at best unclear and at worst practically unworkable. The present situation places an unfair burden on court staff who are required to make constant determinations of how much information they can provide to frustrated SRL's. This leads to inconsistent applications and creates a barrier between SRL's and certain basic information that may be construed as "legal advice".

Court and agency staff providing legal information to SRL's described an almost identical set of frustrations and challenges to SRL respondents. They also accurately identified the primary frustrations and challenges of the SRL's. Court and agency staff are working under enormous pressure in dealing with the growing SRL population and constantly changing court forms and procedures. These are very stressful jobs, for which they are often poorly trained and remunerated.

9. Other support & resources for SRL's

Service providers universally recognized the frustrations of SRL's as a source of pressure on the justice system in general, and on court staff and judicial officers in particular. Improving the experience for SRL's by developing low cost support services for them has the potential to both improve the efficiency and enhance the morale of the entire justice system. SRL's talked about a variety of "non-legal" services that they needed but either were not currently available to them, or did not meet their needs.

SRL's particularly identified the need for orientation and education (aside from legal training) to enable them to better anticipate and plan for what is involved in self-representation. While this study did not evaluate the effectiveness of existing mandatory education programs (eg Parenting After Separation, MIPS), it is clear that many SRL's are looking for different forms of educational workshops to prepare them for the SRL experience. In particular, they are asking for practical tools and skills that they can apply in practice.

SRL's also described a need for one-on-one assistance in the form of "coaching" (eg document review, answering questions) which support them in handling their own case but also provide checks, as well as moral support. For many SRL's who wish to remain in control of their own case, coaching would be an important resource.

A significant number of SRL's say that they were never offered mediation, and/or do not know what it is. This is a clear gap that needs to be urgently addressed (for example in educational workshops and better publicity). Some SRL's were nervous about participating in mediation, and especially where there was a lawyer representing the other side. Some SRL's who were eager to resolve their case expressed frustration that the Bench did not exercise greater pressure on a recalcitrant opposing side to come to mediation.

At present many SRL's bring friends and/or family members with them to the courthouse for moral support, especially on appearance days. There is a great deal of confusion and inconsistency surrounding the role of friends or supporters of SRL's, as well as the potential for an unrepresented person to being a McKenzie friend into the courtroom. This lack of clarity and the wide exercise of discretion by some judges is creating resentment and confusion

Finally, many SRL's do not have access to the types of office facilities that they require in order to represent themselves, including printing services, photocopying facilities and even computers. Some services are presently provided by counter staff (informally) or overburdened court-based programming.

Part 4: SRL's, Lawyers and Judges

10. Delivering legal services to SRL's

This study shows clearly (and consistent with other recent studies) that the primary reason for self-representation is financial. Many SRL's find that the legal services that they can realistically afford to pay for, and/ or prioritize as an area in which they want assistance, are simply not available to them other than in a traditional legal services model. Financial retainers and services billed at a rate of \$350-400 an hour are beyond the means of many Canadians. 53% of the SRL sample who were willing to pay for counsel at first later ran out of funds and/or exhausted their willingness to continue to pay for legal services.

86% of the SRL sample sought legal counsel, either in the form of private legal services of legally aided/ *pro bono* assistance. SRL's are not saying that they do not want lawyers to help them – but that the way in which lawyers are currently offering their services does not fit within their budget. Some are also saying that they prefer to have more control over the progression of their case and resist the traditional assumption of professional control by their lawyer.

Other complaints made consistently by some SRL's who had previously been represented in this action included: counsel “doing nothing”, and no progress being made; counsel being disinterested in settlement possibilities and processes (including mediation); counsel not listening to them or consulting them in decision-making; and a sense that their lawyer was insufficiently familiar in the relevant area of law to be effective as counsel. A further complaint was that lawyers were not truly accountable to the public, and that

efforts to question their competence were often not taken seriously by the courts or the regulators.

When asked in interviews what they would ask a lawyer to do for them now, assuming that they could be provided with an affordable and competent counsel, some SRL's said that they were no longer interested in working with a lawyer. This was usually the result of a negative experience with a legal representative earlier in this action, and their determination now to manage their case themselves. Many more SRL's responded that they would prefer to have legal counsel, if this was affordable, offered them tangible value-for-money as they understood this (ie expertise they lacked and the prospect of a better outcome), and would allow them to remain in control of major decisions about the direction and conclusion of their case.

While many SRL's appreciated the assistance they received from duty counsel or other *pro bono* legal services, the study also found dissatisfaction with the most common model of delivery ie the summary legal advice model. While this model works well for some SRL's, others find a time limited opportunity to speak with legal counsel leaves them more confused, and even panicked, than before. At the same time, court duty counsel models are in serious overload. For both reasons, there is a need for reassessment of how to offer the maximum value to the maximum number of SRL's via the summary advice model.

Respondents frequently questioned the limitations placed on the provision of assistance by para-legals, especially in relation to family matters.

Finally, many SRL's sought some type of "unbundled" legal services from legal counsel; for example, assistance with document review, writing a letter, or appearing in court. Relatively few were successful in accessing legal services on this basis despite a sustained effort. This was perplexing to many respondents, who could not afford to pay a traditional retainer and envisaged that they could undertake some parts of the necessary work themselves, with assistance.

11. Court appearances and interactions with judges

The influx of SRL's into the family and civil courts has dramatically altered the judicial role. Judges, especially in family court, now find themselves dealing with SRL's as often as with lawyers representing clients. This is a huge sea change that some members of the judiciary are clearly adjusting to better than others. The study data is replete with SRL descriptions of negative experiences with judges, some of which suggest basic incivility and rudeness. There are also some examples of judicial interventions such as providing advice regarding court procedure, coaching on presentation, and progress towards settlement, which attract positive comments from SRL's. Other studies show that judges are concerned about showing "favour" towards SRL's and find themselves in a difficult position when one side is represented by counsel, and the other is not.

Most SRL's saw numerous judges during the progress of their case, and many complained that this created inconsistencies and required them to re-establish their credibility at each

appearance. Very few SRL's experienced single judge case management but those who did were far more satisfied with their overall experience.

There was a very widespread sentiment among SRL's that judges are not truly accountable and that the current mechanism for bringing forward a complaint against a judge is highly protective of the judiciary.

12. Social impact and consequences

The study data illustrates a range of negative consequences experienced by SRL's as a result of representing themselves. These include depletion of personal funds and savings for other purposes; instability or loss of employment caused by the amount of time required to manage their legal case; social and emotional isolation from friends and family as the case becomes increasingly complex and overwhelming; and a myriad of health issues both physical and emotionally.

The scale and frequency of these individually experienced consequences represent a social problem on a scale that requires our recognition and attention. The costs are as yet unknown.

Preliminary Recommendations based on these findings are included at the end of this Report.

Part One: The Study and the Sample

1. Study Methodology

a. Background

There have been dramatic increases in the numbers of people representing (self-represented litigants or SRL's) themselves in family and civil court over the past decade, across North America. In some family courts this number now reaches to 80% and is consistently 60-65% at the time of filing.¹

The impetus for this study came from these startling statistics. It also came from two other realizations following review of the existing literature and research on SRL's in North America and elsewhere. The first was that the majority of this literature documented the perspectives and views of judges and lawyers (ie system insiders and experts). Judges and lawyers were not included in this study not because their perspectives are not important and valuable, but because they have already been the subject of several other major studies². In contrast, the perspective of SRL's themselves and their actual experiences is mostly absent from other studies. Those studies that have gathered information about SRL's are either closed-question surveys (often focusing on demographics) and/or small samples³. As a result, the SRL experience to date has been largely a subject of speculation rather than empirical data.

A second realization was that policy is being made on the basis of very little empirical information from SRL's about their needs and challenges in navigating court processes. An initial review of SRL programming revealed that the focus of most new initiatives being developed across North America is to offer SRL's more on-line resources – forms that can be completed on-line, on-line websites and information. While these initiatives are an important part of responding to the phenomenal growth in the number of SRL's, it seemed questionable that such a heavy and singular emphasis should be placed on these types of resources, particularly in the absence of SRL input on what services and resources they actually needed and wanted. It seemed to be time to focus our attention on SRL's themselves, and their own accounts of their experiences, on the basis that "(P)ublic views...are one factor that needs to be considered when thinking about policy change."⁴

¹ For further details, see (3)(a)&(b) below

² For example, Bertrand, L. Paetsch, J. Bala, N. & Birbaum, R. "Self-Represented Litigants in Family Disputes; Views of Alberta Lawyers" Canadian Research Institute for Law and the Family, Calgary, Alberta. http://people.ucalgary.ca/~crilf/publications/Self-reps_Report_Final_Dec2012.pdf; Birnbaum, R. & Bala, N. "Views of Ontario Lawyers on Family Litigants without Representation" 65, University of New Brunswick Law Journal (2013) 99. Bala and Birbaum also surveyed 54 Canadian judges.

³For example, *Self-Represented Litigants in Nova Scotia: Needs Assessment Study* March 2004, Paton A. & Withrop Y.; *The Alberta Legal Services Mapping Project: An Overview of Findings from the Eleven Judicial Districts* Mary Strachan for the Canadian Civil Justice Forum, 2011; Birnbaum R. & Bala N. "Experiences of Ontario Family Litigants with Self-Representation") available at www.probonostudents.ca (the latter contains the most diverse data previously gathered about Canadian SRL's using a survey methodology).

⁴ Tyler, T. with Zimmerman N. "Between Access to Justice and Access to Counsel: A Psychological Perspective" 37 Fordham Urban Law Journal (2010) 473 at 474

a. A note on terminology

The use of the term “self-represented litigant” or SRL is used throughout this Report and is preferred to “unrepresented” or the more traditional “litigant in person”. The term “unrepresented” suggests a level of intention and choice to appear without a lawyer that mischaracterizes the motives of the vast majority of the respondents in this study⁵. The decision to adopt the term “self-represented” as a generic term throughout this Report reflects the conclusions of the Lord Chancellor’s Civil Justice Council Working Group in the United Kingdom which rejected the use of the term “unrepresented”, saying that it assumes that the norm is representation by lawyers⁶. This assumption can no longer be made.

c. Study objectives

The purpose of this study was to enter the world of the SRL’s, and understand the experience of self-representation through their eyes. This meant collecting extremely detailed narratives directly from SRL’s about all aspects of their experience from beginning to end (or, to date).

The study aimed to collect data to answer the following questions from individuals representing themselves in either family or civil⁷ court⁸:

- i. Why are they representing themselves?
- ii. What were their initial expectations and how far are these realized by their experience?
- iii. Have they explored alternatives to court?
- iv. What resources (on-line, paper, people, other) do they use and how helpful are they?
- v. What is their experience of their reception and treatment by judges, lawyers, and court staff?
- vi. What course does their progress through the legal process take? (eg filing, service, settlement conferences, mediation, hearings, trial)
- vii. What is the (financial, emotional, practical) impact on them of self-representing?
- viii. What, in their view, needs to change about the system in order to improve their experience as a SRL?

⁵ See further detail below at (4)

⁶ Lord Chancellor’s Civil Justice Council Working Group, *Access to Justice for Litigants in Person*, 2011 at chapter 3 paras 23-25

⁷ Including but not limited to small claims court, where the upper limit is now \$25,000 in all three participating provinces

⁸ While there are growing numbers of SRL’s in criminal court (see for example “Court Side Study of Adult Unrepresented Accused in the Provincial Criminal Courts” Robert G. Hann, R. Meredith, C. Nuffield J. and Svoboda M. available at http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la2-rr03_aj2/p1.html), the very different narrative of a criminal defendant from a family or civil litigant suggested the importance of excluding this group from the sample. A few criminal SRL’s contacted the Project, but we declined to interview them.

While this study was not designed as a program evaluation of services available to family and civil SRL's in either the courts or the community, a related objective was to develop a picture of the types of services and support that SRL's found valuable. To meet this objective, interviews were also conducted with those offering assistance in a variety of capacities and from various skill sets to SRL's (for example, registry staff, mediators, staff providing legal information, duty counsel, lawyers providing legal advice via community clinics and other programs, para-legals). The study sought out individuals working on the "front lines" of the SRL explosion, such as the staff of services like the Justice Access Centres in British Columbia, the LinC centres in Alberta and the Pro Bono centres in Ontario. These individuals are often not legally trained and qualified and work in fairly low status and poorly remunerated positions.

In this Report these individuals are called "service providers". While these interviews were a secondary focus (more than two thirds of interviews were conducted with SRL's) they offer important insights into working "in the trenches" with SRL's and are integrated into the study findings below.

259 SRL's from the three provinces participated in the study. This includes individuals who participated in a focus group, as well as those who were interviewed in person and by telephone. 230 SRL's provided complete demographic data (below).

Most respondents (almost 90% of SRL's and 100% of service providers) participated in an in-depth personal interview, and the remaining 10% of SRL's participated in a focus group.

When follow-up interviews are included, a total of 283 interviews were conducted with SRL's. A further 107 interviews were conducted with service providers (see **Appendix A**)

d. Research design

i. Selection of the field sites

The first step in research design was the identification of courthouse sites in the three participating provinces. Three sites were selected in each province⁹ to reflect a range of prospective respondent demographics, to include at least one rural and one urban site and to capture some racial and ethnic diversity. Justice ministry staff in each province played an active role in identifying potential sites and facilitating introductions to the courthouse managers. The final list of all sites in all provinces is included at **Appendix B**.

Unfortunately we encountered some difficulties with accessing the selected courthouse sites in Ontario. One of the sites initially selected in consultation with the

⁹ In Alberta we were asked by the Law Foundation of Alberta to add Lethbridge as an additional field site. In British Columbia, Vancouver effectively functioned as a fourth field site, with the Project material was displayed at the Robson Street courthouse Justice Access Centre.

Ontario MAG was apparently unable to facilitate our access following an initial field site visit and so no SRL focus groups were conducted there (although some court staff interviews were conducted on the first visit). Three other courthouses approached by the ministry were reluctant to display the project information on their counters. Finally we were able to work very successfully with two of the busiest courthouses in Toronto, and held focus groups there in the Fall of 2012.

The courthouse sites were intended to serve as the primary means of developing the sample group (of both SRL's and service providers) in each province. It was also anticipated that over time, respondents in other locations would hear about the Project and contact us. This is exactly what happened. The Project received considerable media attention in each province and as a result, SRL respondents came forward from towns and cities all over each province.

ii. Establishing the field sites

Once each field site was identified and initial contact established between the Principal Investigator¹⁰ and the courthouse manager, Project materials (flyers and posters explaining the Project and giving the Project website and toll-free line for contact) were mailed to the courthouse for display at the registry counters. The managers at each field site were extremely supportive in ensuring that the Project material was prominently displayed, and asking their staff to facilitate access to these materials. A French and a Punjabi version of the Project poster was also printed for display at some field sites on their request.

At each site, contact was also established with local programs and services for SRL's – from specialized programs such as the local LinC or Family Mediation program, to other social programming that would likely see SRL's such as the local library, food bank, services for new immigrants, women's groups and men's groups. These contacts lead to both increased publicity for the Project (when the agency displayed our material in their facilities) and also introduced us to other service providers.

Following this initial contact, two visits were paid to each field site (with the exception of the later added Ontario sites and the later added Alberta site, where the work described below was compacted into one longer visit).

1. First site visit

On the first visit to each field site, the Principal Investigator (and in some cases the Project Co-ordinator¹¹) met with the courthouse manager(s) in order to introduce ourselves in person. We described and answered questions about the Project. The managers were then interviewed using the interview template for service providers (**Appendix C**). This is a semi-structured interview template that focuses on a few key

¹⁰ Dr Julie Macfarlane

¹¹ Sue Rice

questions for this group including the pace and impact of change within the SRL population, the impact on their services, and their frustrations and challenges in working with SRL's.

Following these meetings and interviews with managers, we then (by prior arrangement with the managers) interviewed registry staff, as well as (where possible) service providers located in the courthouse (for example staff at Family Law Information Centres in Alberta, Justice Access Centres in British Columbia, or Pro Bono Ontario in Ontario, as well as with court duty counsel). Where possible on this first visit, we also met with and interviewed service providers outside the courthouse who deal regularly with SRL's (for example staff at Family Justice Centres in British Columbia, citizens advocacy and advice services, Native Friendship Centres, domestic violence support services etc).

2. Second site visit

Prior to the second visit to each site, we used local media and publicity in the courthouses to advertise SRL focus groups. The focus groups aimed to generate an initial conversation about participants' experiences as family or civil SRL's, and to encourage them to participate further in the study via a personal interview.

Up to four focus groups were held on the second field site visit. Focus group discussions were structured around five key questions (**Appendix D**). Contemporaneous notes were taken. Participants were asked to complete a short sheet of demographics¹² and the focus group transcript could then link a speaker to these details for inclusion in the Project database.

All focus group participants were offered the opportunity to complete a more detailed SRL personal interview. Many of the focus groups were small enough for us to conduct these more detailed personal interviews on-the-spot using the full SRL interview template (**Appendix E**), either one-on-one, or in very small groups where participants were comfortable speaking about their experiences in more detail in front of others.

Further service provider interviews (especially off-site in the local community) were conducted during the second site visit.

iii. Building the sample

We were fortunate to receive a great deal of local media attention in almost every field site and following both the first and second visits, the Project heard from many more SRL's (as well as some service providers) wishing to participate in the study. Many of these participants came via the Project website, with the remainder via the Project toll-free line (see data collection strategies, below at (e)). The level of interest in participating in the study was very high – some weeks it felt almost overwhelming. We undertook to respond to everyone who contacted us via either the website and the toll-free line and scheduled up

¹² The same information captured in interviews from SRL's – see Appendix E. This captured potentially significant respondent variables including gender, income levels, education, prior experience of legal representation

to four telephone interviews (almost all conducted by the Principal Investigator) a day during the busiest periods.

Interviews lasted between 45 minutes and one hour but sometimes ran as long as 90 minutes. 90% of the personal one-on-one interviews were conducted by the Principal Investigator, Dr Macfarlane. The remaining 10% were conducted by Sue Rice, the Project Co-ordinator and Kyla Fair, the Project Research Assistant while Dr Macfarlane was on vacation for three weeks. Both were first trained and supervised by Dr Macfarlane to ensure consistency. Dr Macfarlane (with the assistance of Sue Rice) also conducted almost all the focus groups¹³.

Some respondents whose cases were ongoing were re-contacted six to eight weeks after their initial interview and offered the chance to update their file by email communication or to take part in another personal interview. Both follow-up interviews and email communications were added to their file in the Project database.

iv. Other sampling questions

A decision was made at an early stage not to develop a control group as part of the sample design. In a qualitative study of this kind it is extremely difficult to establish a truly comparative sample (for example holding constant variables such as dispute type, money at stake, individual parties etc).

It is extremely challenging to ensure a “pure” randomized sample, given the reliance on voluntary participation. Instead the research sample was developed via a range of communication strategies including social media. In a qualitative study of this kind, which demands a considerable investment of time by respondents, voluntary opt-in is the only feasible design.

Given this constraint, the way in which the sample was collected supports the assertion that the study sample was effectively randomized as a result of the myriad points of entry. Whereas five years ago we might have used a targeted mail out (eg to named individuals who filed as SRL’s) to ensure a more traditionally solicited sample, the pervasiveness of Internet access in Canada¹⁴ plus the use of widely displayed print materials and the Project toll-free line allowed very widespread access to the study. This was evidenced in the enormous number of enquiries that we received throughout the data collection phase and continue to receive on a daily basis and to date.

¹³ One additional focus group was conducted by Bernie Mayer and Michael Dwyer in Victoria on September 19th, 2012

¹⁴ In 2010 Statistics Canada estimated that 79% of Canadian households had Internet access. These figures are somewhat higher in urban centres than more rural and isolated communities, borne out by our experience in the course of this research. It is also notable that this figure drops to 54% for households with an annual income of less than \$30,000 (40% of the SRL sample see below at). See <http://www.statcan.gc.ca/daily-quotidien/110525/dq110525b-eng.htm>. Further, almost 90% of the SRL sample reported in interviews that they were comfortable using the Internet to conduct research for their case.

e. Further data collection strategies

Flyers and posters describing the Project to SRL's in family and civil court and soliciting their participation were created and printed (in a different color and listing the field sites for each province). This material made it clear that a SRL in family or civil court from anywhere in the province might also participate. The Project website and toll-free line were provided on the flyers and posters.

A Webmaster (Lois Li) was hired to build and maintain the Project website (www.representing-yourself.org) which was to become a critical element in outreach to SRL's. 43% of SRL respondents came through the Project website. The site email linked directly to the personal email of the Principal Investigator and the Project Co-ordinator and enabled the Project Co-ordinator to then schedule) interviews.

The website also carried details of the field sites in each province and included a listing of local resources for SRL's. In this way we could offer some practical assistance to the SRL's who visited the website as well as solicit their participation in the study. The website has also enabled us to post links to media coverage of the Project.

Initial discussions with court staff in some of the more remote field sites resulted in a realization that the Project also needed to provide a toll-free line for those without Internet access. A toll-free line was set up in March 2012 with a message asking people to leave their details so that we could respond to them. The toll-free line was in place until January 4, 2013, and checked daily for new messages, which were then returned and an interview scheduled. 27% of SRL respondents came via the toll -free line.

In May 2012 we launched a Facebook page (Representing-Yourself-in-a-Legal-Process) in order to build an on-line community for SRL's and enable us to communicate with and reach out to SRL's. It was made clear that comments and debate would be captured (and anonymized) for the Project database. The Facebook page now has more than 160 members, and has become very significant in the development of the Project. Every couple of weeks we have posted a "Question of the Week" for discussion - for example, a link to an article about self-representation, or a question about people's experiences both positive and negative, or a question about future reforms. This has produced a lively dialogue.

Finally, a project blog (www.wordpress/drjuliemacfarlane) was launched in August 2012. This is linked to Twitter and has attracted a number of followers and many comments

f. The Project database

All interviews and focus groups were contemporaneously noted, with an emphasis on collecting as many complete verbatim quotes as possible. These Word files were then entered into the NVivo program for coding and analysis. NVivo (produced by QSR

International) is coding software used widely by qualitative researchers which has become an “industry standard” over the past decade.

A file was created for each SRL and each service provider whom we interviewed or spoke to in a focus group. These files initially comprised the (contemporaneously noted) transcript of that discussion. SRL files were frequently electronically updated with subsequent email communications and in some cases, a full follow-up interview. Where a previously interviewed SRL contributed to a Facebook page discussion, this was also added into their file. Comments made by a SRL who had not been interviewed via Facebook, were held in a separate section of the database. Interviews were then anonymized and are identified in this Report by either these numeric/alphabetic codes or by a specially created pseudonym (in this Report).

The resulting database is very large. The SRL interviews and focus group transcripts, Facebook commentary, and service provider interviews were separated into different source sections in the database allowing us to manipulate the data across and within these sections. This work was managed by Raman Pandher, under the supervision of the Principal Investigator.

An initial set of codes (described in the NVivo program as “nodes”) were created by the Principal Investigator for the SRL interviews and another set of codes for the service provider interviews. Raman began the detailed process of adding these codes to selected text in the files, line-by-line. After the first 20 files had been coded in each section, we reviewed the codes and added some new ones while merging others. The same process was repeated after Raman had coded another 20 files. This brought us to a settled set of codes for each section – SRL’s and service providers. The complete list of final codes is provided at **Appendix F** (SRL Interview Codes) and **Appendix G** (Service Provider Interview Codes). Raman then went back to the beginning and coded all files in each section using these codes.

In addition NVivo allows each file to have a number of variables attached, allowing for sorting and correlations among these, and among variables and codes. This is where the demographics collected for the SRL’s were entered and enable the demographic analysis of the SRL sample presented at (2) below.

g. Methodological and sampling strengths and limitations

Qualitative research has much to recommend it when exploring a topic that implicates personal, subjective experiences (here the experience of self representation), including being able to remain open-minded about what one will discover without *a priori* assumptions. The depth and complexity of data collected in interviews and focus groups has many advantages over information collected via quantitative methods such as closed question surveys. In-depth interviewing with subjects about their experiences can quickly produce patterns and consistent themes. Many important and influential qualitative

studies rely on sample sizes of a few dozen. This study has a very large sample (a total of almost 400 interviews) for a qualitative study.

Moreover, the consistency with which the themes emerge from coding both the SRL and the service provider data is extremely high. In addition and interestingly, service provider data (for example, how service providers describe the expectations and frustration of SRL's) mirrors SRL responses to these same questions in interviews, providing important triangulation.

The demographic data collected from SRL's is described in detail at (2) below. The results are consistent among the three provinces with no significant differences. The study reached a wide range of individuals in both urban and more rural communities who are representing themselves in court. The sample broke down almost exactly 50/50 male/female, and contains a reasonable range of socio-economic and educational variables (subject to the caveat that research studies tend to attract a more educated demographic, see below). The breakdown between family and civil litigants also reflects the general trend.

The sample did not record race or ethnicity. It is not possible therefore to estimate how much or little representation the SRL sample includes of people of color and First Nations people. In several sites extensive efforts were made to connect to the First Nations community, by talking with Native Court Workers, displaying information at Native Friendship Centres and other First Nations agencies. In one case, a field site court worker took Project materials on to local reservations where she spoke about the Project. Nonetheless, we believe the representation of First Nations people is very small in the sample. This is regrettable since many First Nations people find themselves self-representing – in fact the best way we found to connect to these individuals was always by meeting them in the courthouses. Judging by the composition of the focus groups, racial diversity may also be limited.

Qualitative research of this kind does not aim to produce statistically significant findings (the purview of a high volume quantitative study). This means that the findings that are presented below are only occasionally presented in terms of raw numbers or proportions. Many of the themes that the interviews reveal are multi-layered and interwoven, and attaching numbers or percentages to the study findings would be misleading. Instead, in common with practice for the presentation of qualitative research, the term “many” denotes a finding that emerges from more than half the interviews, “most” denotes a finding that emerges from more than three quarters of the interviews, and “some” denotes a finding that, although a common theme, emerges from less than half but more than one quarter of the interviews. Where the Report refers only to “a few” this references a group smaller than one quarter of the sample, but may contain an important and strongly expressed perspective.

Given the context of this research in exploring (in the case of more than 50% of the SRL sample) professional relationships between lawyers and clients, and in almost all cases the interaction of SRL's with members of the judiciary, another important

qualification is appropriate. Clearly, the descriptions that SRL's provide in interviews of their experiences with both legal counsel and judges reflect their subjective perceptions and understanding of what occurred in that relationship or interaction. It is not presented here as "fact" or "reality".

How individuals make sense of their experience is at the heart of the qualitative endeavor. It is important not to dismiss qualitative findings as "only" the subjective "misperceptions and misunderstandings" of lay litigants. That would miss the point. What is more important here is the volume of the study data, the rigor of the data analysis and the consistency of the findings that emerges from this study of the complex and changing relationship between the users of the Canadian justice system and the system insiders (lawyers, judges, court staff).

2. SRL Sample Analysis

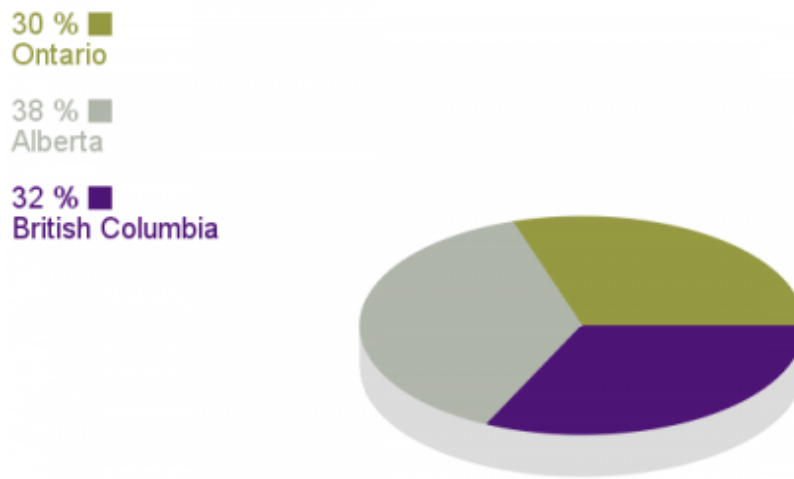
259 SRL's from the three provinces participated in the study. This includes individuals who participated in a focus group, as well as those who were interviewed in person or by telephone. 230 SRL's provided complete demographic data (below). A total of 283 interviews were conducted with SRL's. This number includes follow up and secondary interviews (including follow up interviews with focus group participants), but does not include other forms of informal subsequent communication (eg email). The total interview numbers are provided at **Appendix A**.

27% of the SRL respondents came through the toll free line, and 43% via the project email/ website. The remaining 30% of the sample either attended focus groups at the courthouses, joined the Facebook group and then participated in an interview, or contacted us directly following local publicity.

a. SRL's by province

The number of SRL respondents in British Columbia and Alberta was slightly higher than in Ontario, probably a result of the difficulty accessing courthouse sites in Ontario and the shorter data collection period. Nonetheless, Ontario respondents still constitute almost a third of the total SRL data collected (Fig 1 below). In addition, a slightly higher number of service providers were interviewed in Ontario than in the other two provinces (below).

Fig 1: SRL's by province



By the end of the study, the field sites in British Columbia and Alberta had provided the majority of SRL's respondents in each of these provinces, with a smaller but significant group from "other" provincial locations. These were SRL's who had heard an item on the radio about the Project, or read about it in the newspaper, or who had happened upon the Project website.

In Ontario, SRL respondents from courthouses "other" than the primary three were close in number to those from the field sites. This was probably the result of the time spent trying to secure a third site in Ontario (above) while publicity and media interest reached people in other parts of the province¹⁵. A complete breakdown of SRL respondents by field site and province is included at Appendix A.

b. SRL's by court

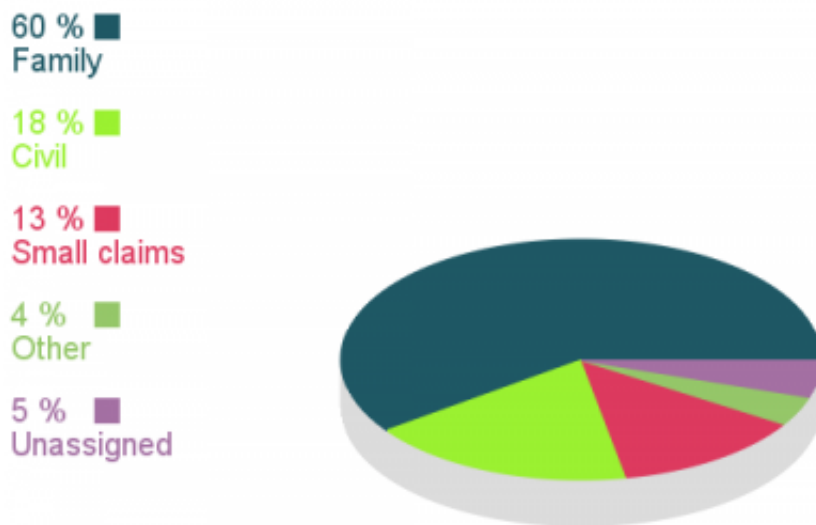
60% of the sample were in family court, either provincial or divorce court. Of this group, a clear majority in each province were filed in the divorce court (65% of BC family SRL's in Supreme, 85% of Alberta family SRL's in Queen's Bench, and 77% of Ontario family SRL's in Superior Court) and a smaller group in provincial family court. The proportions of family / civil/ small claims litigants in each provincial sample group was consistent to within one or two percentage points.

¹⁵ For a complete breakdown of respondents by province and field site, see Appendix A.

The fact that 60% of our sample was appearing in family courts is most likely a reflection of the higher numbers of SRL's in family court compared to other civil courts (above small claims) throughout Canada. For example, in British Columbia 57% of litigants appearing in provincial court under the Family Relations Act (2011 figures) were self-represented, compared with 35% of family litigants in Supreme Court and 21% of general civil litigants in Supreme Court¹⁶. In Calgary Alberta, 39% of litigants in divorce hearings and 46% of litigants in family proceedings were representing themselves on the day of the hearing, compared with 18% of general civil litigants (also 2011 figures)¹⁷.

18% of the SRL sample was appearing in the first instance civil court in their jurisdiction (Supreme, Superior, Queens Bench). 13% were appearing in small claims courts (up to \$25,000) where historically there have been higher numbers of SRL's. A further 9% reported acting as SRL's in tribunals (for example, before provincial Labor Relations Board, provincial Residential Tenancies Tribunals, provincial Human Rights Commissions).

Fig 2: SRL's by court



¹⁶ Figures made available to the author by the Ministry of Justice, British Columbia in October 2012

¹⁷ Figures made available to the author by Alberta Justice in October 2012

c. SRL's by gender

The SRL sample was almost exactly half men and half women (52% and 48% respectively). This was consistent across the three provinces. 63% were acting as plaintiffs or petitioners, and 37% as defendants or respondents. 25% of the cases were concluded at the time of interview, usually fairly recently although a few went back several years. The remaining cases were ongoing and many of these were updated via email, or a secondary interview.

In family court, more men than women were respondents (64% of the men versus 38% of the women) and more women were applicants than men (62% of the women versus 36% of the men). Gender differences also showed up among family court respondents in relation to income (and to a lesser extent in relation to age). 75% of women litigants reported an annual income of under \$50,000 compared to 42% of men.

d. SRL's by age

The largest single group of SRL's by age were the over 50's (45% of the sample). The next largest group was 40-50 (32%). Only 4% of the sample was under 30 year of age. This is consistent with other studies that suggest that SRL's are more often middle aged than young people¹⁸. The Ontario sample was slightly (but marginally) older than the other two provinces.

Fig 3: SRL's by age

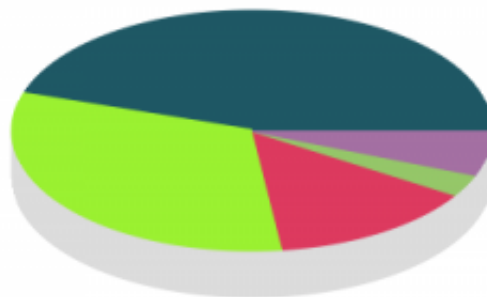
45 % ■
50 plus

32 % ■
40-50

14 % ■
30-40

3 % ■
20-30

6 % ■
Unassigned

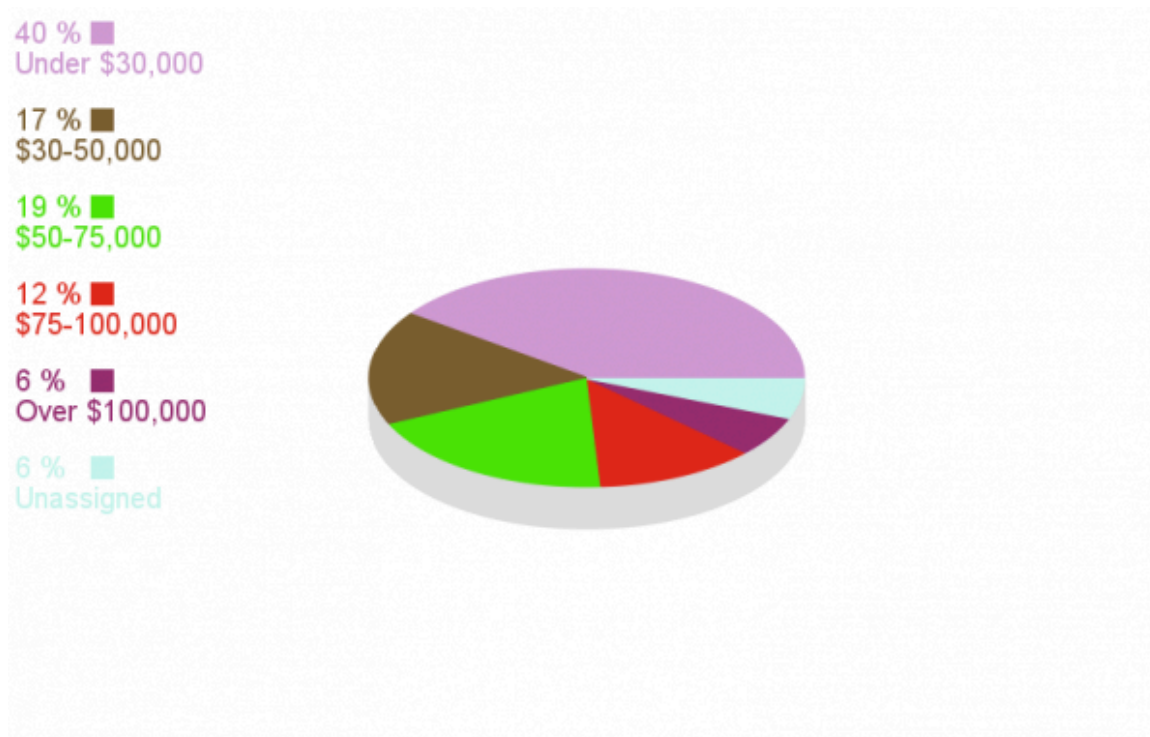


e. SRL's by income

¹⁸

When it came to income, the most significant cluster (57%) in the SRL sample reported income of less than \$50,000 a year and 40% (the largest single group) reported incomes of less than \$30,000 a year.

Fig 4: SRL's by income



This breakdown of income level was highly consistent among the three provinces.

This data is consistent with other studies that have collected survey type data on SRL income. First, most studies concur that SRL's are more likely to be individuals with lower incomes (below \$30-35,000). For example, the British Columbia Supreme Court Self-Help Information Centre Final Evaluation Report (henceforth BC evaluation) reported that 60% of their SRL users had incomes of \$2000 a month and under¹⁹. In a 2004 Nova Scotia study conducted by the Court Services division of the Nova Scotia Department of Justice (henceforth Nova Scotia study), 60% of SRL's had incomes below \$30,000²⁰. The same study reported that 28% of SRL's that responded to a survey had incomes of between \$30-60,000. An early and comprehensive survey of SRL's in the United States, conducted by Bruce Sales, Connie Beck and Richard Haan, for the American Bar Association in 1993 found that half the respondents had incomes under \$30,000 and that SRL's in this income

¹⁹ British Columbia Supreme Court Self-Help Information Centre Final Evaluation Report Malcolmson J. & Reid, G., 2006,

²⁰ Self-Represented Litigants in Nova Scotia: Needs Assessment Study (Department of Justice Court Services Nova Scotia, 2004) at pages 25 -26

range were significantly more likely to self-represent than those in higher income brackets.²¹

However it is also noteworthy that almost 20% of our SRL sample placed their income between \$50-75,000 and 12% between \$75-100,000. 6% reported that their annual income was more than \$100,000. It is noteworthy that many of those in the higher income bands reported spending significant sums on legal fees before becoming self-represented (discussed further below at (4)(a)(iii)). The percentage of SRL's falling into a somewhat higher income bracket appears to be larger in this study than in many others (for example, a New York study in 2005 found just 4% of SRL's in family and housing court in New York City earned above \$50,000 ²²; the Nova Scotia study found just 10% reporting an income above \$60,000²³), but this might be explained by adjustment for inflation/ regional differences in income. The inclusion of more higher income earners in this study may be a sign of the times, as the overall numbers of SRL's in the justice system grows each year²⁴.

The number of SRL's in a higher income bracket reported here reflects the growing gap between the means of middle income earners and the affordability of legal services, as well as the phenomenon of "expended resources" – 53% of the SRL sample in this study had previously retained a lawyer to represent them, but had run out of funds to continue to pay them.

f. SRL's by highest educational level

50% of the SRL sample report having a university degree.

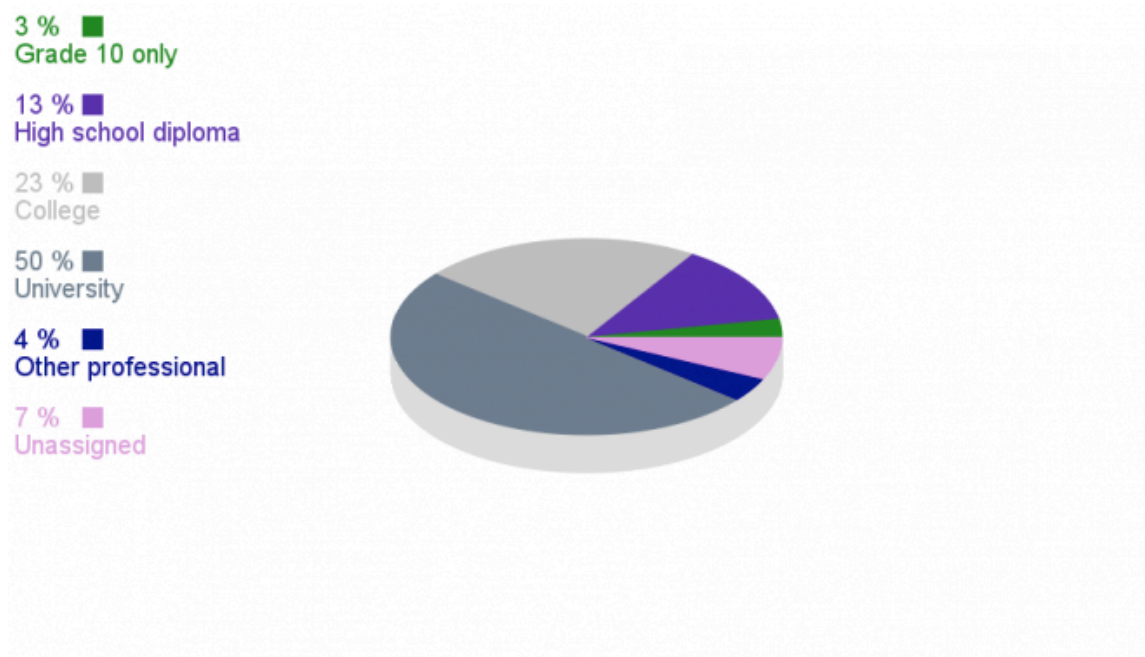
Fig 5: SRL's by highest education level

²¹ Self-Representation in Divorce Cases: A Report for the ABA Standing Committee on the Delivery of Legal Services, Sales, B., Beck C. and Hann, R. American Bar Association (1993). Note that adjusted for inflation, \$30,000 in 1993 would become \$43,300 in 2013 (Bank of Canada inflation adjustor)

²² Self-Represented Litigants: Characteristics Needs and Services – Self-Represented Litigants in the New York City Family Court and the New York City Housing Court, Office of the Deputy Chief Administrative Judge for Justice Initiatives December 2005 at page 4. However note that the New York City Family Court is equivalent to a provincial family jurisdiction ie this court does not grant divorces, so this comparison may be most direct in relation to the (minority) SRL respondents proceeding in provincial court.

²³ See note 20 above at page 26. However note that incomes are generally lower in Nova Scotia than everywhere in Canada aside from PEI (see for example The Chronicle Herald, "Nova Scotians losing the wage race" May 31, 2012)

²⁴ See further details at (3) below.



This level of respondent education was fairly consistent across the provinces, although the Ontario sample reported a slightly lower level of university education than the other two provinces – at 45% - whereas in Alberta 66% of SRL's reported having a university degree and in BC, 62%. If those with either a college or a university education are combined, 78% fell into this group in Ontario, 76% in Alberta and 83% in BC.

The high level of education reported by the SRL sample may be explained in part by the tendency of voluntary opt-in research studies such as this one to attract participants with a higher level of education and comfort with the idea of a research study²⁵. In other Canadian studies, educational levels vary considerably depending on geography. The Nova Scotia study²⁶ found that 17% of SRL respondents had a university degree, 7% at the graduate level²⁷. In the British Columbia study²⁸, 60% had some form of completed post-secondary education (sub-categories are not provided).

There is also evidence to suggest that the educational demographics of the SRL sample are roughly similar to the general Canadian population. Statistics Canada reported in 2008 that 58% of 25-34 year old across Canada had a tertiary education, and 40% of 55-64 year olds²⁹.

²⁵ Regardless of the study topic or method, participation has been shown to be generally higher among those with higher education than the general population. This is attributed in part to greater faith in research, no matter what the topic, and a greater level of volunteerism in general. See Galea S. & Tracy, M. "Participation Rates in Epidemiologic Studies" 17 *Annals of Epidemiology* (9) (2007) 643 at 647

²⁶ Note 20 above

²⁷ However tertiary education levels in Nova Scotia are slightly lower than the general Canadian population. See *Education Indicators in Canada: An International Perspective* (2010) Statistics Canada at page 30.

²⁸ Note 19 above

²⁹ *Education Indicators in Canada: An International Perspective* (2010) Statistics Canada at page 30. Note that tertiary education includes college education; 26% of Canadian adults had a college level tertiary education (reported 2006) and 34% of Canadian adults had a university level tertiary education (reported 2007) (at page 16).

The tertiary level education of so many SRL's in the sample may be reflected in their widespread expectation *at the outset* that they would be able to navigate the justice system without legal representation, even though they might have preferred to have counsel. The reality for many however is that despite their prior education and knowledge they still find the system difficult to understand, and far more intellectually and practically challenging than they had initially expected.

Many SRL's commented that if it were so difficult for them, how much more so would it be for others without a similar level of education? Or for an individual for whom English or French is not their first language? 83% of the sample had English or French as a first language. 13 other first languages were represented amongst the sample.

g. Previous legal representation in this action

At the time of their interview, all the SRL respondents were representing themselves. However more than half – 53% - had retained a lawyer at some point in their case. Three quarters of these had retained a private lawyer (the remainder had been legally aided, but this was now discontinued³⁰). A few respondents had gone back and forth with representation, retaining them when they could afford to or were especially anxious about going forward without representation, but became self-represented once again when their funds ran out. This is a significant finding and its implications are discussed further below.

h. Legal representation of the other party to the action

75% of the SRL's in the sample reported that the other party in their family or civil case was represented by counsel – in other words, that this was a matter in which one side was represented by counsel and the other was not. It was not always clear whether representation by counsel on the other side continued throughout the case – sometimes it seemed that the other side, like the respondent, had counsel make some appearances for them and in other instances they represented themselves. Of the remaining cases, 15% reported that both sides were self-represented (10% were unassigned). Like the other variables reported in this section, this variable is manipulated in the data analysis below to ascertain if it is a significant factor in shaping the particular experience of the SLR.

³⁰ See further detail at (4)(a)(ii)

i. Mental health issues

Researchers elsewhere have found a causal relationship between mental health issues and legal problems³¹. Without the necessary clinical and diagnostic expertise, any reflection on the extent to which mental health issues existed among the SRL sample is, of course, speculative only. That said, the widespread assumption that many SRL's are mentally ill makes it seem important to present a "lay" impression of how many of the respondents in the SRL sample may have been suffering from a mental illness.

A minimum of 45 minutes was spent with each person interviewed – sometimes by phone, sometimes in person – and some interviews lasted much longer (up to 90 minutes). In some cases, there were follow-up interviews and other contacts over email. From this time a sense of the individual's (e.g., stability, consistency, accuracy and emotional lability could be broadly gleaned). It is important to emphasize that this is *not* a diagnostic effort, but a reflection on the part of the interviewer on the stability of the interview subjects.

Of the 259 SRL respondents, just eight individuals stand out as demonstrating enough emotional instability to indicate that they possibly suffered from a mental illness of some kind. None of these respondents are quoted in this Report, although it is interesting to note that many of their insights were fully consistent with other accounts. This figure does not include individuals who were distressed (many were) or depressed (another smaller group) as a result of their experiences as a SRL, including the circumstances that brought them to the courts.

This unscientific assessment suggests that just over 3% of the sample may have been suffering from a mental illness. This is consistent with estimates of the prevalence of mental health problems in the general population that suggests, for example, that 1% of the population suffer from bi-polar disorder and a further 1% from schizophrenia³².

The SRL respondents in this study were sometimes distressed and angry about their experiences, but with very few exceptions they were not, insofar as it could be ascertained from limited contact with them, mentally ill. It does not appear, therefore, that the SRL sample in this study was characterized by a higher prevalence of mental illness than the population at large.

3. The SRL explosion: how many people are representing themselves in family and civil court?

The numbers are extraordinary.

a. Family court

³¹ See for example Pleasance P and Balmer NJ "Mental Health and the Experience of Social Problems Involving Rights" 16(1) Psychiatry, Psychology and Law (2009). The same article points out the causal connection between experiences of the courts and legal issues and deteriorating mental health. See the further discussion below at (12)(b)

³² See for example <http://www.cmha.ca/media/fast-facts-about-mental-illness>

Figures provided by the provincial ministries of justice show that the proportion of litigants appearing *pro se* in provincial family court is consistently at or above 40%, and in some cases far higher. In proceedings under the Divorce Act, the figures are lower but still significant.

For example,

- In Alberta in 2011, 40% of hearings in provincial court on family matters included one or more SRL's. In the Queen's Bench, the figure was 32%.³³
- In British Columbia in 2011, 57% of hearings held under the British Columbia Family Relations Act included one or both SRL's. In the British Columbia Supreme Court, self-representation was running at 35%.³⁴

In both Alberta and British Columbia the actual number of SRL's is probably yet higher, because this data only reflects whether or not an individual is represented at the time of a hearing – we know from interviews with SRL's and court staff that some SRL's will bring an agent to represent them in a hearing, but otherwise handle their case on their own behalf.

In Ontario, data on representation is recorded at the time of filing. Also unlike the other provinces, the Ontario data combines filings in the Ontario Court of Justice and the Superior Court (ie both family and divorce matters).

- Figures from Ontario show that throughout the whole province in 2011/12, 64% of individuals involved in applications under either the Family Law Act, the Childrens Law Reform Act or the Divorce Act were self-represented at the time of filing. In two of Toronto's busy downtown courthouses, Jarvis Avenue and Sheppard Avenue, the figures were 73% and 74% respectively. These numbers are likely to be an under-estimate since both the SRL sample and court staff attested to the significant number of individuals who begin the legal process with a lawyer, but then become self-represented after expending all their resources and/or becoming dissatisfied with their legal counsel³⁵.

Data recording strategies in relation to self-representation are just emerging, and the inconsistency among the provinces in the way in which this information is recorded requires immediate attention. This also makes it difficult to accurately pinpoint the timing of the rise in the percentage of SRL's, but many court staff stated in interviews that they believed that the steepest increases occurred up to ten years ago, reflecting the decline in provincial family Legal Aid budgets. What data does exist seems to be largely anecdotal and collected piecemeal by particular judges or lawyers who were concerned at what they were seeing in the courts. For example, Lynne Cohen writing in *Canadian Lawyer* in 2001³⁶ claims that the number of SRL's in Ontario's Unified Family Court rose by 500 percent

³³ Figures made available to the author by Alberta Justice in October 2012

³⁴ Figures made available to the author by the British Columbia Ministry of Justice in October 2012

³⁵ Figures made available to the author by the Ontario Ministry of the Attorney-General in October 2012

³⁶ Cohen, L. "Unrepresented Justice" *Canadian Lawyer* 25:8 (August 2001))

between 1995 and 1999. David Tavender, a leading Alberta practitioner, stated at a 2012 conference that the number of parties appearing in Alberta Family Law Chambers who are self-represented has increased 160% since 2006.³⁷ The precise basis for these claims is not clear but presumably draws on data provided by the courts to these researchers.

In order to get a more detailed picture of the increase in the numbers of SRL's, it is instructive to draw on figures from the California family court system (North America's highest volume jurisdiction) that go back to the 1970's. In 1971, self-represented litigants constituted 1% of all litigants in California family court. By 1992 this had risen to 46% and to 77% by 2000³⁸. By 2004, 80% of all cases included at least one SRL by the time of judgment.³⁹

b. Civil court

The same trend is spreading to civil courts, with some lower level civil courts reporting more than 70% of litigants as self represented. This goes much further than small claims courts, which are designed to facilitate simple, speedy and inexpensive resolution and in which litigants have traditionally often represented themselves. However, the rise in the small claims court upper limit to \$25,000 in all three participating provinces means that increasingly SRL's in small claims court are managing cases that have previously been handled by legal counsel or para-legals. In British Columbia in 2011, 80% of litigants in small claims court were self-represented at the time of their court appearance.⁴⁰

Self-representation is also growing in the courts of first instance, that is, above the \$25,000 boundary⁴¹. For example in the Ontario Superior Court, figures collected in 1999⁴² found SRL's outnumbering represented litigants by 1.6 to 1. That gap will certainly be far larger 12 years on. In the British Columbia Supreme Court, 2011 figures report that 21% of general civil litigants are unrepresented in their appearance before the court, 19% in foreclosure hearings, and perhaps less surprising, 34% of bankruptcy petitions. This can be compared to figures produced by the British Columbia Justice Review Task Force covering two-week periods in 1999-2001 that showed that the number of self-represented litigants in the Supreme Court varied from 5.5% to 14.2%⁴³. In the Alberta Court of

³⁷ E. David D. Tavender, Q.C. Fraser Milner Casgrain LLP at Pro Bono Law's Meeting with Managing Partners, Calgary, Alberta, March 29, 2012

³⁸ For a review of this data see Hough, B. "Self-Represented Litigants in Family Law: the Response of California's Courts" 1 California Law Review Circuit (2010). An exhaustive and extensive source of data on SRL levels in US courts is Graecen J. Self-Represented Litigants and Court and Legal Services Response to their Needs: What We Know Center for Children, Families and Court, California Administrative Office of the Courts available at <http://www.docstoc.com/do/48509096/Self-Represented-Litigants-and-Court-and-Legal-Services-Responses.cs>

³⁹ Judicial Council of California, Statewide Action Plan for Serving Self-Represented Litigants 2 (2004), available at http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/Full_Report_comment_chart.pdf.

⁴⁰ Figures made available to the author by the Ministry of Justice British Columbia in October 2012

⁴¹ Note that the possibility of raising the small claims limit to \$50,000 is under discussion in some provinces.

⁴² Lynn Hartwell, "A Profile of the Self-Represented Litigant: Highlights of Some of the Relevant Research" (paper presented to the ACCA Symposium in Winnipeg, April 19 2001 [unpublished])

⁴³ Reported in Unrepresented Litigants Access to Justice Committee Final Report Ministry of Justice and Attorney-General Saskatchewan Final Report at page 26

Queen's Bench, 19% of those appearing at civil hearings were representing themselves⁴⁴. A similar trend is spreading to the civil appeal courts, highlighted recently by the Chief Justice of the Federal Court of Canada⁴⁵.

c. Predispositions towards lawyers and other sources of professional advice

Concern is sometimes expressed that the drop in the number of parties with legal representation reflects a general public malaise towards the legal profession – in short, that SRL's are predisposed to mistrust and even dislike lawyers. There is evidence of general public dissatisfaction and skepticism about the value of *all* professional advice (affected no doubt by the access to information provided by the Internet for which professionals have historically acted as gatekeepers⁴⁶), as well as a general decline in deference towards professional advisors.

Alternatively or as well, the trend away from professional services and towards a "DIY" approach may be more closely related to the availability of information on the Internet, and the growing assumption that this allows for self-help in areas that have previously required professional advice and support, than any particular dislike or mistrust of lawyers. The trend towards "DIY" and cutting out professional advisors has been noted by sociologists (who have dubbed "disintermediation") as operating in a variety of arenas formerly dominated by professional advisors including financial planning⁴⁷, real estate and property transactions⁴⁸, and law. The result is fewer gatekeepers or "middle men", displaced by the availability of information on the World Wide Web. Some SRL respondents mentioned that they were initially encouraged to believe that they could handle representing themselves because so much information was available on-line; as one put it, "Google is my lawyer."⁴⁹ This reinforces the trend towards self-representation because it provides an increasingly normative argument to reject the use of legal counsel.

It seemed important, therefore, to establish what, if any, previous experience and pre-disposition SRL respondents had towards lawyers and legal services. We asked all SRL respondents whether they had retained a lawyer in any *previous matter* (prompting them

⁴⁴ Figures made available to the author by Justice Alberta in October 2012

⁴⁵ Chief Justice Paul Crampton was quoted describing ..."thousands of self-represented litigants flooding his court." See "National Pro Se Network being Weighed" Lawyers Weekly March 01 2013, available at <http://www.lawyersweekly.ca/index.php?section=article&articleid=1846&rssid=4> Figures from the US show the same trend, for example data from the Administrative Office of the U.S. Courts show that between 1991 and 1993 the number of pro se litigants in the Court of Appeals (Federal Circuit) increased by 49%.

⁴⁶ See the analysis and discussion in Macfarlane, J. *The New Lawyer: How Settlement is Transforming the Practice of Law* University of British Columbia Press 2008 at 59-60, and 126-129

⁴⁷ Walker, E. "Disintermediation and its Effect on the Stability of Savings Capital at Financial Institutions ", *Studies in Economics and Finance*, Vol. 3 (1979) 63 - 75

⁴⁸ Zwiefelhofer D. "Disintermediation - Removing the Real Estate Agent from your Real Estate Sale" available at http://www.realestatereference.com/real_estate_article.php?id=1&real-estate

⁴⁹ AB57. The experience of many SRL's as they spent more time exploring on-line resources was often disappointing (see further detail below at (7)(b)).

with, for example, writing your will, or a real estate matter?”⁵⁰). 73% said that they had used a lawyer for a previous dispute or transaction. We then asked these same individuals if they could rank their experience as “mostly positive” “acceptable, OK” or “mostly negative”. Fully one third did not provide this assessment or found it difficult to generalize in this way⁵¹. Of those who, the largest group (39%) said that their experience had been good or mostly good. A further 25% said that the experience had been “OK”, with nothing significant to complain about. 35% said that their experience had been bad or mostly bad.

The results for each SRL respondent were then correlated with whether or not they had originally retained legal counsel in *this* matter. 53% of the SRL sample had previously had legal representation (for the most part a private lawyer; see detail at 4(a)) but by the time they were interviewed, no longer had counsel representing them.

Of the group who had previously worked with a lawyer on a different matter or transaction, two thirds or 66% retained counsel for this action, working with them until the relationship ended and they became self-represented. Of those stating that “mistrust” of a lawyer or lawyers in general was a significant factor in their decision to self-represent⁵², only one in five had had prior experience of legal representation.

75 SRL’s had worked with legal counsel on a previous matter and provided their assessment (“good”, “bad” or “OK”) of their previous experience *and* initially retained counsel for this action. The prior experiences of this group with counsel were very mixed. Almost half of of this group (47%) said that their prior experience was “good”, but a further 31% who assessed their prior experience as “bad” also began with a lawyer in the action in which they were now self-representing. Another group (n=39) who provided an assessment of their previous experience with legal counsel *and* who did not retain counsel at any stage in this matter were a similarly mixed bag. 26% assessed their prior experience as “good”, 44% who assessed their prior experience as “bad” and 31% assessed their prior experience as “OK”.

This analysis suggests that where a SRL respondent emphasized factors relating to their experience with a lawyer or lawyers in their decision to represent themselves, they are more likely to be referencing their (earlier) experience with legal counsel in the present matter, than a pre-disposition.

⁵⁰ See the SRL Interview Template at Appendix E

⁵¹ The somewhat primitive scale of “good” “bad” and “OK” was used here to avoid getting into further detail about previous experiences of legal representation; however this made the questions somewhat crude and difficult to answer for some respondents, especially if they had had more than one experience of prior legal representation, with mixed results.

⁵² 20% of the sample described their mistrust of lawyers as a factor in their decision to self-represent (although in most of these cases, money was also an issue: see further detail below at (4)).

When correlated with their decision to retain counsel in the present case it appears that that a prior experience with legal counsel may have had some influence, but was not dispositive in their decision to self-represent. Further, this past experience appears to have had only a limited impact on their initial decision to retain counsel, which was more directly related to what they felt they could afford. Where a SRL respondent emphasized factors relating to their experience with a lawyer or lawyers in their decision to represent themselves, they are more likely to be referencing their (earlier) experience with legal counsel in the present matter, than a pre-disposition.

Where factors other than affordability come into play, the most significant influence on the decision to self represent appears to be negative experiences with lawyers in the present matter, rather than prior experience and pre-disposition. Bob's story is typical.

When Bob⁵³ faced an acrimonious divorce, it was natural for him to retain a lawyer. He earned a good salary – in excess of \$100,000 – and hoped to use mediation to resolve the issues between himself and his wife. One year later, Bob had spent \$80,000 on legal fees and was no closer to resolving a dispute over their assets. He now faced a trial, and with the proceeds from the sale of the matrimonial home in trust, could not afford to pay counsel. Instead he hired a lawyer (at half the regular hourly rate) to sit at the back of the courtroom and advise him while he represented himself in his trial.

d. Considering alternatives to legal process

All respondents were asked what they did prior to commencing or becoming involved in legal action to resolve their dispute. Some clearly felt they were left with no choice because they were named as defendants/ respondents. Those who initiated the case themselves (63% of the sample) could sometimes point to efforts they made – via direct personal communication such as phone calls or letters or emails – to resolve the issue short of court. Some had made these efforts – unsuccessfully – for a significant period of time (up to a year or 18 months) before commencing action.

27% of SRL respondents (the vast majority of them plaintiffs) were coded as having given consideration to alternatives before litigation, including mediation, private arbitration and counseling, and other efforts at settlement with the other side (meetings, letters etc). A somewhat higher level of education appeared to correlate with consideration of alternatives to litigation. 64% of those who considered alternatives were

⁵³ BC21

university-educated, higher than the general level of the whole sample (50%). Similarly 28% were college educated, slightly higher than the level in the whole sample (23%).

We also asked service providers what they knew or believed about the extent to which clients had previously attempted to resolve their dispute short of commencing or becoming involved in ongoing legal action. This question is rarely explicitly asked by a service provider, and even less often at the court registry, so their comments are based on tangential discussions about alternatives with SRL's and their knowledge of individual cases. The almost universal perception, however, is that SRL's often do very little before coming to the court, preferring to turn the problem "over" to the justice system.

"The justice system is the first place that they turn to for help...I think that people are so quick to litigate – but if they knew what it actually was, what would happen, they might look at other options."⁵⁴

"People keep coming to the courthouse because they believe in the system and want to be heard. They still have regard for the authority of the system – who else do you go to for authority? When they get a result, they attribute it to the system, not to the individual or individuals who made it happen. The system begins to substitute for having to deal directly with the other side."⁵⁵

"Very few understand that there are really alternatives – and few have thought about trying to have a conversation."⁵⁶

Part Two: Decision-Making over Self-Representation

4. Why are so many people representing themselves in family and civil court?

What is not in dispute is that the number of individuals representing themselves in both family and civil court has risen sharply. More complex is unraveling the reasons why.

Many of the SRL respondents spoke of more than one reason why they were representing themselves (although some said that it was just about money, and nothing else). It is clear that once a decision has been taken to move forward without legal representation, the experiences of that individual will also shape how they respond to a question about why they are self-representing (for example, with more or less self-confidence, with more or less emphasis on their disappointment with earlier legal services). Responses to the question "why are you self-representing" also reflected a personal sense of just what was possible and manageable for that individual. For example, some were despondent and overwhelmed, a smaller number were defiant and bullish, and

⁵⁴ASP8

⁵⁵BSP13

⁵⁶BSP7

this emotional response also affected the way in which they would describe the reasons for self-representing.

a. Financial reasons

By far the most consistently cited reason for self-representation was the inability to afford to retain, or to continue to retain, legal counsel.

Almost every respondent (more than 90% of the sample) – across all three provinces and whether in family or civil court – referred in some way to financial reasons for representing themselves⁵⁷. This is consistent with other studies, although reported at a higher level here. The reason for this may lie in the research methodology adopted and the way the question is asked. Some people are uncomfortable acknowledging a lack of financial resources, for obvious reasons. In this study, respondents participated in extended (up to 90 minute) interviews which ranged across many aspects of their self-representation experience and the interviewees frequently returned, over and over, to the question of cost and affordability. While cost was clearly a major factor in self-representation for almost every respondent, many SRL's were explicit about their inability to pay for legal counsel, while others were more circumspect and advanced a range of blended reasons for self representation of which money was just one. Sometimes respondents became more open and frank about the impact of cost as the interview went on. This is a different way of collecting this data – and arguable more accurate – than asking individuals to complete a closed question survey.

More than half the interviews, however, contain detailed descriptions of lack of or exhaustion of financial resources.

**“I have no choice. Its not that I think that I can do this better than a lawyer, I have no choice.
I don't have \$350 an hour to pay a lawyer”⁵⁸.**

⁵⁷ For example, in Nicolas Bala and Rachel Birbaum's recent survey of family SRL's in Ontario, they report that 49% of survey respondents stated that financial considerations were the primary factor in their decision to self-represent. See Bala N & Birnbaum R. "The Rise of Self-Representation in Canada's Family Courts" paper prepared for the National Family Law Program, Halifax Nova Scotia 2012 at 10. See also Langan A-M, "Threatening the Balance of the Scales of Justice: Unrepresented Litigants in the Family Courts of Ontario" 30 Queens's Law Journal (2005) 825 reports that 83% of the unrepresented lawyers in Kingston family court reported that they were unable to afford a lawyer. See also similar conclusions reached by Gayla Reid, Donna Senniwi, and John Malcolmson, Developing Models for Coordinated Services for Self-Representing Litigants: Mapping Services, Gaps, Issues and Needs Law Courts Education Society of BC, 2004, available at http://www.lawcourtsed.ca/documents/research/srl_mapping_repo.pdf)

⁵⁸ AB37. This respondent and a number of others referred to their expectation or experience that private legal services would cost in the region of \$300-400 an hour. Some have speculated that individuals who do not retain lawyers because they are concerned about the cost do not in fact have a clear idea of what that cost would be. This sample seemed fairly

“I can’t feed my children –
and the judge is telling me to hire a lawyer.⁵⁹”

i. SRL’s who have self-represented throughout the process

Circumstances under which the costs of legal representation became a primary motivation for self-representation vary from case to case. Some respondents said that they had *never* had the means to engage a lawyer; many of these said that the initial retainer was simply out of their reach, while others said that they realized how quickly the hourly costs would mount up and that they simply could not afford to pay this. Many of these respondents spoke with resentment about the number of times they were told that they “ought to” hire a lawyer to represent them – by a judge, the lawyer on the other side, or by a counter clerk. The same message is repeated throughout many court forms that SRL’s try to complete by themselves. These admonishments suggest that a person representing themselves could afford to hire a lawyer, but chooses not to.

An objective assessment of whether or not legal services are in fact “affordable” by individual clients is of course not possible. Most court administrators and service providers agree that Legal Aid eligibility is now set so low for family and civil clients that many people genuinely cannot afford a lawyer, yet do not qualify for Legal Aid. At the same time a few service providers pointed out that those who came to the court asserting that they could not afford the services of a lawyer nonetheless drove expensive cars or took foreign holidays⁶⁰. Far more service providers however emphasized that if they needed to retain counsel they would be in the same position as the SRL’s they saw – unable to afford legal counsel. Moreover several of the (n=4) lawyer SRL’s in the sample made the observation that they could not afford themselves⁶¹.

Any assessment of what people can “afford” is complexified by the fact that contemporary consumers – and many SRL’s - have expectations of a relationship between service and cost that means that they do not accept that the work performed by legal counsel should be as costly as it is. There is a reluctance to pay rates of \$350-400 an hour for work that the client often feels that they have little control over, and no real means of scrutinizing whether they are receiving value-for-money.

Changes in attitudes towards the role of professional advisors – including the so-called “death of deference” towards professionals and a growing disinclination to pay for “middle man” services such as financial, legal, real estate or other advice (described by sociologists as “dis-intermediation”⁶²) results in significant skepticism among would-be

well-informed about legal costs (and more than half had previously retained counsel and so knew precisely what that had cost them).

⁵⁹ ON64

⁶⁰ ASP20

⁶¹ ON3

⁶² Above note 47 and the further discussion at (3)(c)

consumers about paying counsel at this level that over a period of weeks, months or even years. The resulting costs would, at best, be high if not very high and would probably require other sacrifices that individuals may not be prepared to make. For many low and middle-income families, the eventual costs of legal counsel may be simply beyond the reach of their income. As some of the higher income earners in the sample illustrated, even those earning more than \$100,000 may eventually see expenditures in excess of \$50,000 as a poor use of their resources. One high-income professional described a social gathering at her home in which the guests compared their expenditures on their divorces:

“Of the ten adults (at the party) six had been divorced. The combined spending on legal costs of those six adults - \$1.2 million.”⁶³

It is important to realize that these individuals do not see themselves as more competent than legal counsel – on the contrary, they knew that they were taking on a huge challenge and many were overwhelmed at the prospect (“scared to death”, “absolutely terrified” were common comments about the task ahead). What has changed is that however hard, that self-representation is now at least a theoretical possibility given the widespread access to information on the World Wide Web. Lawyers are no longer the “gatekeepers” for this information.

Some of these SRL’s are making a simple cost/benefit assessment and concluded that by saving legal costs they will still come out ahead, even if they recover less in dollars than they might with legal representation.

“Even if I could not get as much spousal or child support as with a lawyer, if I factored in the legal fees I would be worse off by hiring the lawyers....I did not consider myself as skilled as a competent lawyer, but at the end I figured I would still end up ahead if I represented myself.”⁶⁴

Some of these respondents described trying to find a lawyer who would represent them on an “unbundled” basis⁶⁵ ie without paying a retainer, which they could not afford, and instead working on a task-by-task, hourly basis. Very few SRL’s who had never hired legal counsel at any stage in their case were able to access legal services this way in the first instance and therefore felt they had no alternative but to represent themselves⁶⁶.

ii. *SRL’s who had received Legal Aid*

⁶³ ON60

⁶⁴ AB50

⁶⁵ Unbundling” has been debated for more than 30 years and has been pioneered by Woody (Forest) Mosten. See [Unbundling Legal Services: A Guide to Delivering Legal Services a la Carte](#) , Mosten F.S., American Bar Association 2000. For a Canadian analysis, see Doug Munro [Limited Retainers: Professionalism and Practice](#) (Report of the Unbundling of Legal Services Task Force) Vancouver 2008.

⁶⁶ See the further discussion below at (10)(g)(iii)

13% of the SRL sample had been represented by a Legal Aid funded lawyer earlier in their case, but their Legal Aid entitlement had run out and/or their financial circumstances had changed and they had been told they were no longer eligible for Legal Aid. They were now self-representing because they were unable to afford to pay for private legal counsel. Some still owed money to Legal Aid (where their representation was in the form of a “loan”⁶⁷).

Some respondents had applied for and had been turned down for Legal Aid⁶⁸. Others had not even attempted to apply, assuming that they would not qualify and discomforted at the idea of being turned away (similar anxieties seem to affect some individual willingness to approach free legal clinics or duty counsel, see below).⁶⁹.

iii. SRL’s who cannot afford to continue with counsel

More than half – 53% - of the SRL sample had retained a lawyer at some point in their case. Three quarters of these had retained a private lawyer (the remainder had been legally aided, but this was now discontinued). These respondents had exhausted their available resources and were often resentful that despite significant expenditures, they were still not at the end of their matter.

It is evidently very common for a litigant to begin with private representation (for example at the time of filing an application) but to lose representation later on⁷⁰. These respondents said that they were no longer able to find the necessary funds to continue with legal representation – it was not unusual for them to still owe money to their lawyers and to be paying this back in instalments. Others who had borrowed money from family

⁶⁷ For example, from the Alberta Legal Aid website “Legal aid in the province of Alberta is not free. LAA expects clients to repay the costs of their legal representation. Any services requiring full representation by a lawyer are not free. However, it is important to know that legal services provided by a lawyer through LAA are significantly less costly than hiring that same lawyer privately.” www.legalaid.ab.ca. In Ontario this is called a “contribution agreement” which requires the repayment of some or all of the legal fees. See www.legalaid.on.ca. There does not appear to be a similar policy in BC.

⁶⁸ See further detail below at (10) (b)

⁶⁹ For example, a small number of BC respondents had been legally aided in their original application (eg for a divorce) but could not be legally aided in seeking a variation. The British Columbia Legal Services Society website states that an individual will only qualify for legal representation for a serious family matter once. It also appears that a variation would only be covered for legal representation if it involves a “serious situation involving a child.” (www.lss.bc.ca).

⁷⁰ Note that this suggests that Ontario court recorded data on numbers of family SRL’s is an under-estimate, since this is recorded only at the time of filing (see above at (3)(a)). This trend raises important questions about the circumstances in which lawyers “get off the record”. Professional Codes of Conduct have traditionally dealt with this issue by requiring that a lawyer give reasonable notice to the client (obviously not at issue if it is the client who decides to end the relationship) and a general admonition that withdrawal of representation should not seriously prejudice the client. See for example, Law Society of Alberta, [Code of Professional Conduct](#), Rule 2.07(3) Law Society of British Columbia, [Professional Conduct Handbook](#), Rule 2.07(3). In light of this growing trend, these provisions need re-consideration and clarification. Note that a recent Supreme Court of Canada decision ([R v Cunningham](#) (2010) SCC 10) considered the question of self-representation in *criminal* cases (see www.lawtimesnews.com/200911235858/Headline-News/When-can-counsel-withdraw-from-a-case)

members or friends to pay for legal services had reached the point at which they could not bring themselves to go back and ask for a further loan.

Others ended their relationship with their legal representative when they found that they had reached the point that they would have to dip into other savings to pay for legal services – for example, a college fund for one of their children – and were unwilling to do so.

“I don’t feel like dropping \$12,000 that could be used for my child’s education down the road. Instead to use it on something as meaningless as this – it would not be a good use of money.”⁷¹

“I have some savings to put to good use or I could use it for more litigation.”⁷²

35 interviews record the dollar amount of expenditures on legal services. These numbers range from as much as \$300,000 to \$4000 ⁷³ with eight describing legal costs of over \$100,000 and another ten spending between \$30-100,000.

A smaller group (n=12) were mostly representing themselves but would hire legal assistance at particularly crucial or difficult moments moments in their case. Perhaps they were offered financial assistance by a family member or friend, or were panicked followed a particularly traumatic court appearance, or perhaps they simply made a judgement that they needed help on a particular aspect of their case (document review, a court appearance). It was rare for SRL respondents to find counsel who would work on a task-by-task basis or “unbundle”⁷⁴ services, despite considerable efforts sometimes made to find a lawyer who would work on this basis. Most of the SRL’s who did manage to find a lawyer who would help them on this basis were returning to their former counsel for these services.

Just like the SRL’s who could not afford a lawyer at any stage in their case, the majority of represented clients who become SRL’s did not make this move to represent themselves because they believed that they would do a better job than a competent client or because they felt confident that they could cope alone. Fred’s story is typical.

Fred⁷⁵ was in dispute with his ex-wife over access to their young daughter. The Childrens’ Aid Society had become involved and for a period Fred co-

⁷¹ BC69

⁷² AB15

⁷³ In some cases it felt intrusive to ask about this dollar amount and not every SRL was asked for this number in the earlier interviews; the significance of this issue only began to become apparent partway through the Project.

⁷⁴ Above note 67

⁷⁵ ON20

operated with supervised access. When supervision was removed, his ex-wife refused him access under an interim order. After expending \$80,000 in legal fees, Fred was out of funds.

Despite being well-educated and in a professional job Fred was not at all confident that he was going to be able to represent himself effectively – and the stakes were really high.

“I was scared out of my mind. But I had a hard choice – either learning to do this for myself, or letting my daughter go, forever. I didn't know that even if I learned how to do this, anyone would believe me. But I could not give up without trying.” A year later Fred won access to his daughter after a five-day trial.

One important difference between interview data collected from SRL's who had had counsel at an earlier stage in their case and those who self-represented throughout was that the former group frequently advanced detailed critiques of the legal services they had previously paid for and received.

b. Dissatisfaction with their legal representative

Many SRL's were moderately or very dissatisfied with their legal representation earlier in this action. The overarching theme of these comments is that the legal services they paid for did not, in their view, represent value-for-money. This reflection was sometimes woven into their description of being unable to afford to continue with their lawyer. In these cases, respondent resentment at how much they had already spent, combined with a lack of belief that further engaging their lawyer would actually improve their situation, was an aspect of how they now rationalised their decision to self-represent. The majority of these respondents also made it clear that they could no longer afford to retain counsel.

These respondents made a wide range of complaints about their former legal representatives. These deserve to be set out here in some detail because this data is prominent in many of the interview transcripts. Presenting this data does not assume that it is objectively “true”. Whatever the full story of these individual lawyer/client relationships – which we cannot know - what is clear is that many SRL's felt that their lawyers did a poor job of explaining their role to them, why they were doing (or not doing) particular things, and generally, just why clients were being charged the amount they were for counsel's services.

i. Counsel “doing nothing”

There is an extraordinarily widespread sentiment among many respondents that their former legal counsel did “nothing” to advance their case towards a realistic outcome.

The word “nothing” appears repeatedly throughout the interview transcripts – for example, “nothing happened”; “my lawyer did nothing”; “nothing had been done”; “nothing was resolved”. Many SRL’s described difficulty getting updates from their lawyer as the weeks and months ticked by, despite repeated efforts to contact them⁷⁶.

Sometimes the grievance about “nothing” being done was framed around a related complaint that their former counsel had been unwilling to “stand up to” the lawyer on the other side. This was especially a problem in smaller communities, where clients were often keenly aware of the relationships among members of the local Bar - “we live in a small town and the lawyers all know each other”⁷⁷ - and the inevitable “pecking order” which some believed disadvantaged them if they had a less experienced, junior lawyer representing them. A more extreme version of this same complaint was the assertion made by SRL’s that they could not find anyone to represent them in their town because of the power and prestige of the lawyer on the other side.

ii. *Counsel not interested in settling the case*

Others went further to complain that their counsel had intentionally “dragged things out”, reflecting a common perception that lawyers deliberately slowed the process down in order to make more money from their clients⁷⁸. Connected to this perception that their case was becoming unnecessarily protracted, there was a widespread feeling that some lawyers were less interested than they should be in resolution. Instead, there were frequent observations of aggressive and adversarial behavior by counsel; “the two lawyers were just saber rattling, seeing who could piss the other off the most.”⁷⁹. Many SRL’s bemoaned the general lack of settlement orientation among the lawyers they encountered. “A lawyer should have the wisdom and skill to modify their approach to resolve matters for all parties as opposed to putting fuel in the fire.”⁸⁰

There were numerous references to antipathy towards mediation by counsel. The following comment is typical: “He (this respondents’s former counsel) was not working to resolve the issues, but working for his payment.”⁸¹ Several respondents described commencing their divorce application with a tentative agreement between themselves and their spouse, which then fell apart once each retained counsel⁸². Again, while it is not possible to independently verify these accounts, they contain many common elements (the lawyer not listening to the client, the lawyer ignoring the priorities of the client in favor of pursuing an outcome that the client was less interested in, and the lack of a plan for moving settlement forward).

iii. *Difficulty finding counsel to take their case*

⁷⁶ For example, AB14, AB46,

⁷⁷ BC13

⁷⁸ For example AB34

⁷⁹ AB37

⁸⁰ ON61

⁸¹ AB12

⁸² BC23, BC2

A significant number of SRL's describe "shopping around" for a lawyer but with no success. Some SRL's complained that while they were willing to pay for legal services, they could not find a lawyer willing and competent to take their case on. These respondents described placing numerous phone calls to lawyer's offices – sometimes as many as 15 or 20 – and sought recommendations from friends and from the court, but found that their calls were not returned or that counsel was not interested in taking their case. The reasons they said that they were given varied from "too complicated" to "too sensitive" - in other cases, the unspoken assumption was that the case was too small/ a losing proposition.⁸³.

iv. *Counsel not listening or explaining*

"My lawyer never asked me what my goals or my expectations were." ⁸⁴

There was a general feeling among many SRL's that their former lawyers did not listen to them, either disregarding their specific instructions or, more commonly, not paying attention to what was really important to them. At minimum the narratives of these respondents suggest that their lawyers were not effective (perhaps did not give sufficient time to) explaining and evaluating different strategies with the client as a full partner in that discussion. Instead the lawyer appeared to the client to disregard their views and focus on taking charge. This may reflect an old fashioned perspective on the professional relationship as one between "expert: and "novice" that no longer works for many 21st century client. One respondent noted dryly that when she first "interviewed" prospective legal counsel (a new experience for some lawyers) "A lot of lawyers told me what they wanted to do as if it was *them* making the decision."⁸⁵ (my italics)

Some SRL's struggled with the uncertainty of the legal process. Whereas lawyers are familiar with the difficulty of offering certain results, many clients find it hard to understand how speculative the outcomes might be. At best, their legal counsel appear to have done a poor job of explaining the reasons why they cannot guarantee an outcome, and may exacerbate this by appearing unwilling to work with the client as a partner.

⁸³ BC57, AB56, ON23

⁸⁴ BC42

⁸⁵ BC46

Jacob shopped around for a lawyer to represent him in his claim against his former employer. When he did find some with experience they wanted a very large retainer – \$15-25,000 – and “they did not want me involved in the case.” “They wanted to ensure that they would do it their way, and my input would be not a significant part of the case.”

This left Jacob feeling “Why should I give you \$15,000 without knowing if you can do any good or not?”⁸⁶

v. *Counsel made mistakes/ was not competent*

There were numerous complaints of “sloppy” work by lawyers. Some respondents acknowledged that while they were unable to determine the quality of counsel’s legal arguments, however:

“I am not in a position to judge someone’s legal work, but I can tell if someone had put in careful work, and the affidavits were not even proofed or edited.”⁸⁷

Other SRL’s went further, complaining that the lawyer they retained proved to be unfamiliar with the law and procedure relevant to their case, or even, in their view, “incompetent”. If there were mistakes or failings by counsel, the stress and immediacy of many family cases, and in particular those involving domestic violence, makes mismanagement or error by legal counsel even harder for the client to accept. One respondent described errors made by her legal counsel in making an application for a restraining order, which was subsequently set aside. “This was a very, very difficult time and I don’t appreciate that my safety was jeopardized but also that of my children.”⁸⁸ Inevitably, perception of effectiveness is part of the cost/ benefit assessment made by those who have worked with a lawyer, in contrast to those who have not (above), and exemplified by the following statement: “I was dissatisfied that there wasn’t enough performance, and she was dissatisfied that there wasn’t enough money - so we split.”⁸⁹

These types of negative experience with costly professional services lead to a kind of fatalist despondency among some SRL’s, and provide them with a rationale for taking over their own case.

“I don’t mind lawyers being in charge but none of my lawyers ever had an action plan... Lawyers have poor organizational and customer skills and they

⁸⁶ AB24

⁸⁷ BC37

⁸⁸ BC2

⁸⁹ ON19

charge ten times my hourly wage. Why would I pay (her lawyer) another \$1,500 when she had no plan, no suggestions as to what would work? At this point I decided that I should represent myself.”⁹⁰

“After \$12,000 I was still exactly where I started. I couldn’t keep on paying this kind of cost. It’s a big money grab. So I went back to representing myself”⁹¹

The attitude of many SRL’s who described negative experiences with legal counsel was “how could it be any worse than this if I do this alone?” At least if they were representing themselves they would not be continuing to pay for a service that they believed was not advancing their interests. When asked “what difference would it make now to you to have a lawyer representing you?” some in this group expressed skepticism that it would in fact make any difference at all, once they had come this far on their own. Their belief was that the only difference between their position now as a SRL and their position if they had a lawyer still would be the amount of money they would have expended on legal costs.

c. A preference for handling the matter themselves

Around one in five SRL respondents expressed a personal determination to take their matter forward themselves, in addition to financial constraints that motivated them to self-represent. Typical of this view are sentiments such as “(I)t’s my story and no one knows it better than me – I lived it and breathed it”⁹² and “I wanted to be in control of my own destiny.”⁹³

A small number – around 10% of the SRL sample - expressed confidence from the outset that they could handle their case themselves and saw retaining legal counsel as a poor use of resources when relatively little money was at stake. This view was often associated with prior experiences that the individual believed equipped them well for tackling a court procedure. Sometimes this was direct experience with the legal system – for example as a para-legal or even a lawyer⁹⁴ – as well as previous experience as a SRL.

⁹⁰ AB65

⁹¹ BC90

⁹² BC46

⁹³ AB2

⁹⁴ There were four lawyer SRL’s in the sample

David⁹⁵ felt “completely comfortable” with his decision to represent himself. He had had a number of previous experiences representing himself, and he had worked as a collections agent and as a bailiff. “It didn’t even cross my mind to have a lawyer represent me.”

He was encouraged to represent himself by the wealth of available resources, both on-line and in the law libraries. “You can fall over information just walking down the street in (his city).” In addition the staff at the courthouse were helpful and tried hard to help SRL’s. “In any case in my case (he was suing a landlord for the return of his deposit after a job offer fell through) I did not need much help or explanation as I was familiar with the process.”

In contrast to David, most of those who expressed a preference for handling their case themselves did not reach this conclusion immediately or even in the first few months or years of their experience. Many worked with legal counsel for some time before reaching the conclusion that they preferred to handle their case themselves. Many felt that they were not being listened to by their lawyer (above), and almost all also expressed concern about legal costs.

Despite these other elements, the sense that they were best placed to handle their own matter became an important element in their explanation of why they were self-representing. A common rationalization was that no lawyer could possibly understand the case, and what it meant to them, as well as they did themselves.

“I don’t regret not having a lawyer. This would introduce a new person who doesn’t know about our situation. Why have two people (lawyers on each side) who don’t know or understand them?”⁹⁶

There is an internal tension in some of these SRL narratives. The importance of staying in charge of one’s own case is genuinely important to many SRL’s, perhaps becoming more important as time goes by (in a sense it is the “silver lining” of handling the matter themselves). Yet these same respondents also describe the stress and anxiety they suffer as a consequence of representing themselves – including speculation about the disadvantage they are at when facing counsel on the other side⁹⁷ - and many continue to make reference to the costs of legal representation.

⁹⁵ BC40

⁹⁶ BC18

⁹⁷ Research on the impact of legal representation on outcomes is limited to date and the results inconsistent. See for example [The Importance of Representation in Eviction Cases and Homelessness Prevention](#) Boston Bar Association Task Force on the Right to Civil Counsel, 2012. For a review of current research, see Rhode D. “Access to Justice: An Agenda for Legal Education and Research” forthcoming *Journal of Legal Education*. This study did not analyze the outcomes achieved by SRL’s against a control group. In almost two thirds of the SRL sample, the case was not yet concluded

When asked, “would you like to have a lawyer now if you could afford one and assuming you could find someone competent?”⁹⁸ some SRL’s say that they now find it difficult to imagine that these conditions could be met and are dismissive about the assistance of a lawyer (although note that many more said that they would welcome the assistance of a competent lawyer if they could afford one⁹⁹.) There is a feeling of defiance in some of these respondent interviews, with these SRL’s determined to manage without assistance now, despite the impact on their health and well-being.

5. How do SRL experiences match up to their expectations?

Some SRL’s began with a sense of confidence, which usually drained away quickly when faced with the reality of the court process, often triggered by difficulties completing application forms and understanding the service process. For those who began with fears about their ability to represent themselves, their story just got worse and worse.

a. First steps: initial confidence

Among some SRL’s, there was an initial sense of optimism that they would be able to handle representing themselves, and even, occasionally, a sense that it might be an interesting adventure. To the extent that SRL’s expressed confidence at the outset (17%) this was somewhat correlated with a higher educational level; the largest group expressing initial confidence had university degrees, and the second largest group had a college qualification.

Some rationalized their confidence on the basis of prior experiences (for example, as a workplace grievance officer¹⁰⁰, or as a para-legal¹⁰¹) that allowed them to feel some familiarity with the justice system. Others pointed out that they appreciated that getting into the business of self-representation would take a great deal of time, but that they had this time available to them: “I was retired so I had lots of time to learn this game¹⁰².”

Others talked about how they assumed that their education (especially those with university degrees) and their general life and work experience would enable them to undertake self-representation successfully

“I decided, ‘I can do this. It will be a learning experience – but I am an intelligent person, I can figure this out.’”¹⁰³

When asked about what they typically observed as SRL expectations at the outset, service providers observed this same initial optimism among some SRL’s, describing it as

⁹⁸SRL Interview Template Appendix E

⁹⁹ See the further discussion at (10)(a)

¹⁰⁰ BC44

¹⁰¹ BC52

¹⁰² AB2

¹⁰³ ON18

an unrealistic assessment that they would be able to cope with the process. Some blamed the “overselling” of access to justice.

“They think they can do it because we claim this access to justice bullshit.”¹⁰⁴

Service providers describe SRL naivety in relation to both the complexity of the process, and the resources that the court could provide to assist them.

“It's not a fast food service – (SRL's) expect that they will make one or two court appearances. But in reality this will require multiple court attendances, summonses and a great deal of their time.”¹⁰⁵

Some SRL's talked about being “seduced” by the mantra of “access to justice”, held out via public statements by the justice system. A similar point was widely made by service providers that “over-sell” of the access to justice theme created unrealistic expectations.

“People get information from the website and show up at court with expectations of “Access to Justice”. They imagine they will have everything done for them, including going into court.”¹⁰⁶

Their actual experience usually turned out quite differently (below). “No more fairy tale about having access to a justice system”¹⁰⁷. Even the few SRL's who remained “on top” of their case had many critiques of the complexity of the process and the elusiveness of “access to justice”.¹⁰⁸

Some service providers reflected on this issue of “over-sell” at a deeper level, describing what they understood as a fundamental disconnect between the expectations of the public and the reality of self representation which saw the justice system as a “service” facility, no different from other government offices. This lead them to expect that their own part would be relatively minimal – equivalent to applying for a passport or a vehicle licence – and that the court staff would take care of the rest for them. One duty counsel described this as follows:

“They think of this as coming to get a service and a benefit....(they) believe that you go to courts to get justice services just like you to the motor vehicle office to get a license.”¹⁰⁹

b. First steps: initial fears

¹⁰⁴ ASP20

¹⁰⁵ OSP16

¹⁰⁶ ASP21

¹⁰⁷ ON18

¹⁰⁸ BC30, ON54, JBC40

¹⁰⁹ ASP7

Some SRL's told us that from the very beginning they were afraid of what they would face in representing themselves. As a result many of those who could not afford legal counsel, or had to end their relationship with counsel because they had run out of funds, expressed fears rather than confidence about representing themselves.

Janice¹¹⁰ is a single mother. Her toddler daughter's father did not play a large role in their lives; Janice and her daughter had never lived with him. One day – “like a thunderbolt” – she was served with an application from him seeking joint custody.

A bitter court fight ensued “Once those papers were served, it was like a runaway train. There was no opportunity for us to talk reason.”

Janice was very fearful about what she was facing and retained a lawyer right away. After six weeks she had used up her \$5000 retainer and had received a bill for a further \$24,000. She borrowed money from her family and paid this bill “I desperately needed (her lawyer). She told me ‘if you represent yourself you will be eaten alive.’”

But now Janice was becoming equally scared about the prospect of what continuing legal work was going to cost her. She didn't qualify for Legal Aid – she earned more than \$75,000 – but could not afford to keep paying at this rate. And the process had scarcely begun – she had had just one hearing so far.

Before the next hearing, Janice reluctantly told her lawyer that she was going to have to represent herself. “This was a no choice situation: I just could not afford to pay anymore. I was really scared.”

Janice did eventually find a lawyer who would give her unbundled advice. She would see him every couple of weeks with a list of questions. Janice says that this was the only thing that got her through her nine-day trial.

¹¹⁰ BC37

"I was preparing for it all summer (the trial took place in July). I stayed up until 3 or 4am most nights trying to put everything together." None of her friends and family could be with her in the courtroom with her because they were witnesses. "No one could understand the fear that was in me and how hard the work was. I remember thinking to myself – do these people (the court clerks, the judge, the lawyer on the other side) imagine that I am enjoying this? I am here because I have no other option. I am just a mom, trying to figure this out... it was so complex, daunting, intimidating."

Janice lost her trial.

Janice is not alone in starting with fears about the process. As one service provider put it, by the time that a SRL first presents themselves to the court, "their anxiety levels are already very high"¹¹¹. SRL's described their fears as follows:

"I'm scared because I doubt myself and there is a lawyer sitting on the other side."¹¹²

"I felt scared – there was too much stuff to deal with. I'm really good if I can put a wrench on it, but I couldn't put a wrench anywhere on this problem."¹¹³

Or simply

"I'm scared because I have no idea what to expect."¹¹⁴

c. Becoming overwhelmed

For a few SRL's, their initial sense of confidence survived the bumps and bruises of the process, but they still had many critiques of the complexity and difficulty of the process, as well as the way they were treated by the courts. Two SRL's who found their way successfully to the end of their process and appeared to have retained their sense of composure throughout nonetheless made the following comments:

"I expect to experience prejudice and discrimination as a SRL. But at my age, I'm damned if I am going to back off something that is reasonable and let the system add to the injury I have already received....(E)ven in small claims court, judges and lawyers regard SRL's as a nuisance – they are no more welcome than they are in criminal court."¹¹⁵

¹¹¹ ASP14

¹¹² ON2

¹¹³ AB46

¹¹⁴ B31

¹¹⁵ ON54

“My biggest disappointment – and surprise – is the overwhelming amount of prejudice I have encountered. I have not been taken seriously by both lawyers and judges.”¹¹⁶

Only a small number of SRL’s spoke with any confidence about returning to the courts another time. The majority were, quite simply, overwhelmed. Some said that the process was nothing like what they had expected, and far more demanding of both their skills¹¹⁷ and their time (“all of which involved taking time off work.”¹¹⁸). Even those who began apprehensive told us that their experience turned out to be even worse than they had ever imagined.

“My expectations were that I would have to be sharp but I didn’t think that it would come down like a deck of cards. It’s an extremely sharp game. I had to begin to make my own filing systems – I became a bundle of nerves.”¹¹⁹

“The procedure as I read it sounded easy. I thought it as going to be easy - but it was anything but.”¹²⁰

Four particular stages/ tasks within the legal process featured consistently in stories of feeling overwhelmed. These were: completing, filing and serving paperwork and forms; participating in the discovery process as a SRL (“I was eaten alive”¹²¹); and conducting one’s case at a hearing. Finally there were also many disappointed and frustrated expectations regarding the post-trial process, especially regarding collections. Many SRL’s assumed that having secured an order (this was particularly the case was the order was for the payment of monies) that the court would take responsibility for ensuring the money was paid. Instead, they were often appalled to learn that they now had to take further steps to collect the money themselves¹²². “What’s the point of the judge giving orders if no one is going to enforce them?”¹²³

Another frequently voiced complaint – and surprise - was about the length of time it took to complete each stage of the legal process. Few SRL’s had any idea of just how much time representing themselves would consume, or how long the process would take. To many, the legal process seems (and with unresolved issues, perhaps is) interminable. Many SRL’s expressed disbelief that the process could not be faster, or at least clearer guidelines provided to them about timelines. “It isn’t like this when you buy any other service.”¹²⁴ There was little or no understanding that litigation moves at the pace of the slowest party.

¹¹⁶ BC30

¹¹⁷ AB23

¹¹⁸ AB21

¹¹⁹ AB11

¹²⁰ BC11

¹²¹ AB2

¹²² For example, BC84

¹²³ ON6

¹²⁴ AB16

Some service providers suggested that some SRL complaints about hearings go back to the erroneous belief that having filed an application, they would quickly be brought in front of a judge¹²⁵. But other SRL's had researched and prepared carefully - and were still confounded by what happened when they got to court.

Mustafa¹²⁶ became involved in legal action over the custody of his sister-in-law's young children, after he and his wife learned that she was being assaulted by the children's father. What began as a "good Samaritan" effort (Mustafa and his wife offered to take the children after CAS became involved) turned into a nightmare of litigation and self-representation.

By the time Mustafa was interviewed, he had appeared in court on his own behalf (they did not qualify for Legal Aid) on 14 occasions.

Mustafa tried to research what he needed to do to prepare for court but "(T)he typical procedure in court is not what the books describe—an opening, questioning, and closing. Instead it is just rambling on and on without a clear structure...I still was thinking the judge would ask for my information – I was ready to talk about case law and precedents. I thought the judge would read all the things you have to pay for (in advance), but in fact he doesn't get (the file) until that day. How can you judge something you haven't read? "

Mustafa reflects that he and his wife did the right thing and they have no regrets about that, but "(T)his is not what we expected when we first took this on"

This final quote in this section effectively summarizes both the substantive and emotional content of what many SRL's said when asked about the relationship between their initial expectations of being a SRL, and their actual experience.

"My expectations? I can't even remember my expectations anymore. My life just fell apart."¹²⁷

The bottom line here is that most SRL's simply have no idea what to expect, or that their expectations are inaccurate.

¹²⁵ BSP21

¹²⁶ AB4

¹²⁷ BC28

Part Three: Getting Started: How SRL's Engage with the Justice System

6. SRL's and court forms

a. Overview

A central component of courts administration strategy in dealing with the growth in the volume of SRL's has to be provide an increasing amount of information – forms, procedural guides and other information – on-line. A review of publications and Internet reports on SRL resources reveals that the majority of resources being developed for SRL's in both Canada and the Unites States are on-line.¹²⁸ For this reason alone, an evaluation of this material deserves close attention in this Report. The experiences of SRL's are often dominated by their experience with the user-friendly quality of these on-line resources.

All the SRL's interviewed spoke about their experience with completing court forms, and often numerous subsequent procedural aspects of their case. In many cases, these process issues dominated their experience and thus the interview; in most interviews, the process dimensions of the SRL experience - both negative and positive, but often negative – were talked about a great deal more and at greater length than their outcomes. In the 25% of cases which were concluded by the time of the interview, it was evident that the procedural aspects of the experience - – including the completion of court forms, which was often the first time a SRL realized the scale of the challenge they faced - were at least as important to the individual, as they recalled their experience, as the actual outcome.

This section (6) considers the information gathered by the study on the efficacy and accessibility of court forms, both on-line and hard copy. The next section (7) describes what SRL's told us about their experience with other types of on-line resources, including court guides, legal overviews and primers, and other substantive resources - some of which are offered by the courts and some by other service providers.

In addition to questions asked in interviews and focus groups with SRL's, two secondary projects were conducted to explore the accessibility of court forms and procedural guides. The first of these relates to court forms. The second relates to court guides (see (7)(c) below).

b. The Divorce Applications Project (Kyla Fair)

Kyla Fair is a research assistant to the SRL project who will graduate from the University of Windsor Faculty of Law in 2013.

In the summer of 2012, Kyla – who had just taken Family Law and Civil Procedure

¹²⁸ See for example the programs reviewed in Innovations for Self-Represented Litigants Hough B. and Pamela Cardullo Ortiz P. (eds) Association of Family Conciliation Courts 2012

at law school – was assigned to complete the forms to file for divorce in the three provinces in which we are interviewing self represented litigants (Alberta, BC and Ontario). She was asked to keep a log of her time spent and to record any other comments about her experience as she went through the relevant courts forms, which she could access on-line.

Kyla began her summer assignment with enthusiasm and confidence. She anticipated that this would be a relatively straightforward assignment, and expected to learn a great deal from the real-life experience of completing the court forms. In fact, she found the assignment extremely difficult and very frustrating.

i. Language and terminology

Kyla noted that a significant amount of the language and terminology in the forms was accessible to her only because she had taken Civil Procedure in law school. However there were still many examples in all the forms of terms and vocabulary that she did not recognize¹²⁹. Kyla commented “I saw a number of terms that I did not understand, and many more that a person without legal training would have no idea what they meant.”

ii. Picking the “right” form(s)

Kyla’s second major observation was that in each province, the length and number of the forms quickly became overwhelming. “I was quickly losing track of all the forms I needed to fill out.” This challenge was exacerbated by the fact that it was sometimes difficult to know which form was the correct form to complete, with many possible choices. In one case Kyla described how she spent considerable time completing a British Columbia Supreme Court form which turned out to be only appropriate for an uncontested divorce.

“After reading through steps 1-5 for over 30 minutes, I have learned that this information package is only for an uncontested divorce ie. When you do not need to appear in front of a judge. This was frustrating because I wasted time reading a lot of information that does not apply to me, and I had already filled out forms that do not apply to me.”¹³⁰

iii. Complexity of forms and information required

Kyla noted that all the forms she completed were complex and time-consuming – and singled out a few examples that were especially daunting, even for someone with legal training. For example, after spending 30 minutes attempting to fill out Ontario’s Form 13.1 (application for spousal support) “...I am completely overwhelmed; the amount of detail required about the value of everything you own/ all of your monthly/yearly expenses is extreme. I am only about halfway through the form but I am ready to give up...(for

¹²⁹ For example from the Alberta forms, “Praecipe to note in default”

¹³⁰ Time log of Kyla Fair, July 2012

example), I am required to provide a valuation of every item I owned on the date of my marriage, the valuation date... in reality, this form would take days to complete. At the end of the form, you are required to provide a complete calculation of net family property derived from all of the valuations previously entered. The math alone is complicated, and I feel as though many errors would be made without some legal assistance.”¹³¹

iv. Commonplace and unhelpful notations

Kyla noted some particularly unhelpful notations which she found in virtually all the forms she worked with. For example, there was a frequent mention of “supporting documentation”, without explaining what type of documentation was needed (and what would be inadequate). Similarly there were frequent references to “service” and “serving” of documents, without any explanation for a lay-person about what this meant. Some forms did provide a link to another website where these terms would be explained.¹³²

Kyla made the further observation – heard independently from many SRL respondents in interviews - that each form included multiple references (sometimes on each page) to the need to retain a lawyer. While this is a perfectly reasonable suggestion – especially in light of the difficulties experienced by so many SRL’s with completing court forms and procedures – it is not terribly practical when the individual has no (further) resources for a lawyer, and does not qualify for Legal Aid. Some SRL’s complained that it was irritating rather than helpful to be constantly reminded in this way of a resource that they could not afford.

v. What happens next?

Kyla noted in relation to each form, from each province, that there was little or no information about the next steps in the process or what to expect. For example,

“I am not sure what court I am supposed to bring these forms to, or what the process is after I have filed the forms and served them ie. Does the court contact me? How long will it be until trial? What will the process be at trial? What documentation will I need to bring to trial? After trial, am I legally divorced? What happens if my husband contests the information I provided? Do I get copies of his statements before trial?”¹³³

While it may be difficult for all this additional information to be contained in one place (eg on the court forms), it is important to note that without some guidance as to “next steps” many SRL’s are confused about what to do. Most will simply bring the forms back to the courthouse, where they once again wait in line and absorb a great deal of registry staff time.

¹³¹ Time log of Kyla Fair, July 2012. See Report of the Divorce Applications Project, Appendix H

¹³² For example, http://www.servicebc.gov.bc.ca/life_events/divorce/index.html

¹³³ Time log of Kyla Fair, July 2012. See Report of the Divorce Applications Project, Appendix H

Kyla's complete time log is contained below at Appendix H.

c. SRL experiences with court forms

Many SRL respondents described how difficult they found court forms to complete. The problem is exacerbated by the fact that, as one court clerk put it, "there a million forms out there."¹³⁴ Sometimes the clerk as well as the SRL is also seeing a particular form for the first time. As Crystal described,

"When I took the forms in to the court, the clerks told me that I had filled the forms in wrongly. I burst into tears. The journey from my home to the courthouse was a 150 mile drive and a ferry ride. In fact the forms were fine – the clerks did not actually know the procedure and it turned out the forms were OK." ¹³⁵

Crystal's story was repeated in various ways over and over again by SRL respondents. It seemed that everyone had a story about a disaster (or multiple disasters) with completing and filing court forms, and many of these included a claim that they were given misinformation or information that they thought that they had followed, only to be corrected by another justice officer.

The most consistent complaints from SRL's about court forms and guides were as follows.

i. Difficulty knowing which form(s) to use

Many SRL's talked about the difficulty of ascertaining which court forms they needed to complete.

"I have the choice of three forms – but I don't know which form I need? How would I know? It's so overwhelming. Then you read the question and think, what does this mean? I would pay a lawyer to tell me what I need to do."¹³⁶

¹³⁴ BSP21

¹³⁵ BC53

¹³⁶ ON49

Marie was sent forms to complete by her provincial support enforcement agency. She took three days off work to complete the forms (Marie is a university educated professional). However when she brought the forms into the agency, she was told that she had completed the wrong forms. Marie said “The agency is still giving these packages out to people – even though they are, in fact, the wrong forms.”¹³⁷

Like Marie, some SRL’s complained that they had expended substantial time completing forms that turned out to be irrelevant or inappropriate to their matter.¹³⁸

ii. Difficulty with language used on forms

Virtually every SRL in the sample complained that they found the language in the court forms confusing, complex and, in some cases, simply incomprehensible – referring to terms and concepts with which they were unfamiliar. This reaction was the same across all types of litigant no matter what court or province they filed in (although there were somewhat fewer complaints about small claims court forms and procedures, these were not devoid of criticism either).

In every case, significant time and effort is required to complete court forms. When Kyla Fair the project Research Assistant, was assigned to complete the forms to file for divorce in each province, she approached the task with her knowledge of family law and civil procedure. Nonetheless Kyla’s timelog reveals just how difficult the forms were to complete - frequently containing terms that even as an upper year law student, Kyla was unfamiliar with – and how long each step took her (see also above at (c)).

iii. Complaints about inconsistent information

While many SRL’s were appreciative of the assistance they were provided by court staff and especially counter staff at the court registry, a number complained that they were given contradictory information by different clerks.

“Two people look at your forms, one accepts it and one says this is wrong”¹³⁹.

One SRL said that she had got into the habit of leaving parts of her forms blank until she went to the counter, because of the likelihood of being told by the clerk she saw that day that her previous information had been incorrect.¹⁴⁰ There were also complaints that information about completing court forms was sometimes inconsistent between judges and court staff. This was a complaint echoed by court staff in interviews who told us

¹³⁷ AB14

¹³⁸ This was also a challenge for the Project Research Assistant Kyla Fair, see above at (c)

¹³⁹ ON2

¹⁴⁰ BC58

that sometimes a SRL would come to the counter and ask for a form that “the judge said I should get” – but which did not exist.¹⁴¹ This further adds to the pressure that counter staff are experiencing, and sometimes results in expressions of frustration directed at them by SRL’s.

iv. *Consequences of difficulties completing forms*

When a form is incorrectly or inadequately completed, the consequences can be significant.

“The judge said that she saw no safety issues preventing me seeing my son – but that I had filed the wrong application. It should have been a application to vary, not an application for access. So she made no order. I lost not because of what I said about my son, but because of a technical thing about law.”¹⁴²

Some SRL’s tell stories of working on their papers, and then submitting what they had thought were the right documents, correctly completed, to the court – but when they took a day off work to appear at a hearing, being told that they could not be heard because their paperwork was incorrectly completed. Service providers note that this causes a great deal of aggravation and frustration¹⁴³, and suggests that a procedure for checking forms and alerting SRL’s to evident errors or omissions beforehand would save considerable judicial as well as SRL time. Along these lines, one court program is considering establishing a position of “SRL Navigator” in order to review forms with SRL’s and prepare them for next steps¹⁴⁴. A similar approach is taken by using a First Appearance Clerk at Jarvis Street¹⁴⁵ where SRL’s appear before a clerk who reviews their paperwork before their first OCJ appearance. ““I don’t ready anyone for their appearance before me, I ready them for afterwards. I can also offer them more resources to help them self represent after their first appearance.”¹⁴⁶

The final story in this section comes from a university-educated SRL with a physical disability, who represented herself in (first instance) civil court because she could not afford to hire a lawyer.

¹⁴¹ OSP31. Also BSP16

¹⁴² BC59

¹⁴³ OSP16

¹⁴⁴ ASP16

¹⁴⁵ OSP26

¹⁴⁶ OSP26

"I have to say that as a person with a chronic illness it has been challenging to learn about court procedures and laws. I chose to represent myself because I am on a fixed income (disability) and can no longer afford counsel. I have spent all my life savings and more on a five-year divorce process...

The saddest part is that it is difficult to get accurate directions that allow me to get relevant information to help me make educated decisions. Forms are available on line if you know which ones you need. Filling them in properly is another issue. I know I am not the only one feeling this way." ¹⁴⁷

d. Service providers comments on court forms

It is not just SRL's who are affected by the complexity of court forms. One veteran courthouse manager told us, "The forms are ridiculous. The lawyers can't do it either. It creates more work for the counter staff. In Queens Bench it got so bad that we gave up using the four different forms and instead created our own single affidavit system."¹⁴⁸ Moreover, court staff talked at length in interviews of the tension between the overwhelming difficulty some SRL's had with completing the forms, and constraints on them assisting them to do so. Many court staff said that SRL's often came in expecting that the counter staff would complete the forms for them¹⁴⁹, and were disappointed and sometimes angry when they discovered that this was not a part of their job. Some SRL's appeared hopeless in the face of the requirement that they complete their own forms in order to file.

"I can see in their face that if I have given them information, but they still have to complete their forms, they are completely at a loss."¹⁵⁰

Many counter staff at the court registries spoke about how upsetting it was to be constantly faced with SRL's who were unable to complete their forms. They often feel very sympathetic towards them, but at the same time have clear instructions not to complete forms for litigants. Some counter staff told us that they wished that their job description could be changed to reflect the reality that many SRL's needed more assistance with their forms¹⁵¹. A few courthouses are experimenting with a station at the registry that offers assistance with form filling to SRL's.

Working under their current constraints, however, is often stressful for counter staff. They are often looking at a long line stretching out behind a SRL who is begging them

¹⁴⁷ ON62

¹⁴⁸ AS2P0

¹⁴⁹ ASP15

¹⁵⁰ ASP7

¹⁵¹ BSP1

for help that they cannot give. One courthouse manager told a story of an effort she made personally to try to alleviate the difficulty for one elderly couple.

“I see the greatest problems for the older litigants – I think it’s generational....I also see all the time that the way that a self rep handles their preparation has a lot to do with their perception of the court and the justice system – so we have an interest in making that a positive experience, when we can. The other day, I was driving back to X from Y, and I stopped at Z to meet an elderly man who is representing himself in a dispute over a line fence. He said to me “I don’t even know if I will still be alive by the court date.” So I stopped at the side of the road and met him and his wife and helped them with the forms.”¹⁵²

7. On-line self-help resources for SRL’s

There is a huge amount of information available on the World Wide Web that is either designed for, or used by, SRL’s in preparing their case. Some of this takes the form of resources prepared by the courts as procedural guides for SRL’s (see (d) below). Some is provided by private law firms. Other websites are maintained by individuals and yet others are archives of specific resources, for example Canadian caselaw.

a. What on-line resources do SRL’s identify as most helpful?

Each SRL respondent was asked to identify any especially useful or helpful on-line resource that they used. By far the most frequently mentioned site by SRL’s in all three provinces was Can Lii¹⁵³. The next most frequently mentioned sites were all from British Columbia: they were the Justice Education Society of British Columbia’s video collection¹⁵⁴; the British Columbia Legal Services Society family law website¹⁵⁵; and JP Boyd’s family law website (a privately maintained website)¹⁵⁶. In Alberta, a number of SRL’s said that they had found the Alberta Court Services (and especially Family Justice Services/Family Legal Information Centre) on-line resources to be very helpful¹⁵⁷. In Ontario, some respondents mentioned the Ministry of the Attorney General website¹⁵⁸, but not always positively (“adequate” was a typical description) and various private law firm sites that provide basic information.

Respondents found that these favorably mentioned websites were helpful, invaluable even, to them because they did not have the deficiencies and limitations described below.

b. Website deficiencies and limitations

¹⁵² ASP20

¹⁵³ A site devoted to Canadian caselaw

¹⁵⁴ See [www. SupremeCourtBC.ca](http://www.SupremeCourtBC.ca).

¹⁵⁵ See <http://www.familylaw.lss.bc.ca>

¹⁵⁶ See <http://www.bcfamilylawresource.com>

¹⁵⁷ See <http://www.albertacourts.ab.ca>

¹⁵⁸ See www.attorneygeneral.jus.gov.on.ca

The sheer volume of information available on the Internet is problematic. It is often difficult for SRL's to know which site to use and how to move from one to another without finding apparent contradictions or gaps. Another problem is that it is clear from interviews that SRL's ability to navigate and utilize information and forms provided on-line is affected by their emotional condition as they proceed through a contentious matter. In addition, a small number have no access to the Internet outside public facilities and/or are not comfortable using the Internet. This underscores the problem of over-reliance on on-line resources without also offering SRL's face-to-face assistance and support.

In addition to these general themes, there were many detailed complaints about websites. SRL's consistently complained that on-line resources:

- (i) Emphasized substantive legal information but did not include information on practical tasks, for example how to serve a document, or presentation and procedure, for example how to present your case in court, how to address the judge, what to bring to court and how to prepare¹⁵⁹;

"I have read many different family law books and have been on lots of family websites, but I am still not clear about the procedure. These resources don't tell you how to write a motion, or the wording to use."¹⁶⁰

A related problem is understanding how to apply substantive information in the absence of FAQ's or other question-and-answer formats which would anticipate common questions and misunderstandings from the perspective of a SRL.

- (ii) Did not include strategic coaching and or advice on how to talk to the other side, how to approach settlement, and whether and how to use mediation;
- (iii) Often directed users to other sites, giving rise to inconsistent information and difficulties navigating between sites;

"When you read information on the Internet and then it refers you to something else – which refers you to something else – by this time you are overwhelmed. It is endless mayhem."¹⁶¹

"We need to develop a website to put all the resources into one place, one site. The information is too disparate."¹⁶²

¹⁵⁹ The Justice Education Society of British Columbia's website videos were the one resource that SRL's mentioned that was helpful in this respect (procedural information and tips). See www.justiceeducation.ca. Further and better resources are being added all the time; see for example <http://www.justiceeducation.ca/resources/administrative-law-bc>

¹⁶⁰ ON62

¹⁶¹ BC45

¹⁶² ON10

- (iv) URL links were frequently broken or not working (including on government sites);
- (v) Generally, on-line resources often required some level of understanding and knowledge in order to be able to make best use of them.

“What about someone without my research capabilities? I did all this research and I still had just questions – it was scary.”

c. The Court Guides Assessment project

This project was conducted by Cynthia Eagan, an information technology specialist residing in Windsor, Ontario who works in the Detroit Public Library system. Cynthia contacted the Project after reading a local media article about the study in July 2012 and graciously offered her expertise and assistance on a voluntary basis. After a series of discussions, we decided that she could utilize her considerable experience with reviewing the accessibility of information as an information technology specialist to assist us in evaluating a selection of (on-line) procedural guides provided by the courts.

Together Cynthia and the Principal Investigator developed a template of questions that she would apply to a Court Guide from each provincial ministry. The questions used for Cynthia’s evaluation were:

1. Does the material use accessible and easily understood language?
2. Does the material avoid technical and legal jargon?
3. Is the use of language and terms consistent throughout the guide?
4. Do there seem to be any important unanswered questions?
5. Is there a reference point for further questions?
6. What is the material’s “reading level”?¹⁶³
7. What is the experience of navigating amongst URL’s cited in order to complete the form?

The three court guides that Cynthia evaluated using these criteria were:

1. From British Columbia, “Applications to Court” page 9 “Get Help with Your Case” at <http://www.supremecourtbc.ca/sites/default/files/web/Applications-in-Supreme-Court.pdf>

¹⁶³ For this assessment, Cynthia used the Flesch-Kincaid Grade Level test. This test rates text on a U.S. school grade level. For example, a score of 8.0 means that an eighth grader can understand the document. The formula for the Flesch-Kincaid Grade Level score is: $(.39 \times \text{ASL}) + (11.8 \times \text{ASW}) - 15.59$ where: ASL = average sentence length (the number of words divided by the number of sentences) ASW = average number of syllables per word (the number of syllables divided by the number of words)

2. From Alberta, *Alberta's Family Law Act: An Overview* at <http://www.albertacourts.ab.ca/cs/familyjustice/FLAOverview.pdf> and Child Support Order kit (for both the applicant and the respondent). It can be downloaded at <http://www.albertacourts.ab.ca/forms/Kit-Directory-CTS3854.pdf>
3. From Ontario, the guide to making a claim in small claims court available at http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/Guide_to_Making_a_Claim_EN.pdf

Cynthia's assessment turned up many of the same issues that SRL's complained about. In auditing the Court Guides for jargon and difficult and inconsistent language (questions 1-3 above), Cynthia found many problems ranging from unclear grammatical expression through to numerous technical terms that are not explained (for example, "adult interdependent partner"¹⁶⁴; "endorsement record"¹⁶⁵).

Cynthia's assessment also turned up many "important unanswered questions" (question 4 above). On some occasions a description given in the Court Guide was too vague to be helpful to a lay-person (for example, "Remember that preparing for and attending at a chambers application will cost you time and money". In other instances it was incomplete (for example, "You should request costs in the event that your application succeeds" but no information on how¹⁶⁶, or instruction to have a 'sworn affidavit' without information on how to go about this process¹⁶⁷) begging the question of how a SRL would put this information into practice. Occasionally (but by no means always) a further reference point was provided (question 5 above), but in some cases these URL's were broken or not working (question 7).

Cynthia found that the reading level of some of these on-line guides (question 6 above) varied widely and in the worst cases was probably set too high for some users. For example, she found that the reading level of an excerpt from the overview of the family law system provided by the Alberta courts¹⁶⁸ is 13.6 (meaning that it could be only read and understood by a reader reading at a Grade 13 level); in the Ontario Ministry of the Attorney-General guide to serving documents it is 8.9¹⁶⁹; and in British Columbia's Guidebook for Representing Yourself in Supreme Court Civil Matters¹⁷⁰ it is 5.1 (easily the most accessible on this measure).

Cynthia's complete report (Report of the Court Guides Assessment Project) is contained below at Appendix I.

¹⁶⁴ Example from <http://www.albertacourts.ab.ca/cs/familyjustice/FLAOverview.pdf>

¹⁶⁵ Example from

http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/Guide_to_Serving_Documents_EN.pdf

¹⁶⁶ Example from <http://www.supremecourtbc.ca/sites/default/files/web/Applications-in-Supreme-Court.pdf>

¹⁶⁷ Example from

http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/Guide_to_Serving_Documents_EN.pdf

¹⁶⁸ Example from <http://www.albertacourts.ab.ca/cs/familyjustice/FLAOverview.pdf>

¹⁶⁹ Example from

http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/Guide_to_Serving_Documents_EN.pdf

¹⁷⁰ <http://www.supremecourtbc.ca/sites/default/files/web/Applications-in-Supreme-Court.pdf>

d. Conclusions

On-line information and resources for SRL's clearly have great potential as a means of delivering information. Creative use of on-line technologies including videos and interactive websites offer further promise.

However there are currently many deficiencies in the substantive quality of the material available to SRL's. Moreover on-line material is being developed in a piecemeal fashion – even within particular courts or ministries – and SRL's complain that it is difficult to know just what to read and what to prioritize. There is duplication in some cases and important information missing – especially on “how to” and procedural matters – in others¹⁷¹.

While doing everything we can to enhance the accessibility and utility of on-line information, it is important to recognize the limitations of even the very best of these resources. One SRL made the important observation that in order to operate competently in a new “culture” (ie the courts) she needed more than simply information.

“It's the unspoken protocols that you can't read about. These are the kinds of things that are so critical. If it's not your culture, it can reflect badly on you.”¹⁷²

This type of orientation is not easily provided on-line. Instead, “I needed somewhere to go and ask questions – and she (an individual in court information service) answered them. She told me to go into the court and watch. I learned things like, the judge does not like to be interrupted, and when it was my turn to speak.”¹⁷³

Many other SRL's expressed the need for more than on-line resources, however good – a need for human contact and support as they navigate the justice system and prepare their case to the best of their ability. This reality was continually recognized by service providers.

“You can set up all the websites you want, but often sitting face-to-face with someone is what people really need.”¹⁷⁴

8. Legal information for SRL's

a. Overview

The most frequently accessed source of face-to-face “legal information” for SRL's are the staff who work at the registry counters, and to a lesser extent (that is, more informally) the court clerks. In addition to these longstanding roles inside the courthouse positions, there are now a number of “non-lawyer” staff positions in in-court and

¹⁷¹ AB73

¹⁷² AB58. Also ON32

¹⁷³ AB39

¹⁷⁴ ASP14

community programs who interface continuously with SRL's. These include Family Justice Services (offering and Justice Access Centres (offering both family and civil assistance) operated by the Ministry of Justice in British Columbia; Alberta Family Justice Services, which includes the Family Legal Information Centres, and Law Information Centres (providing advice on civil matters), all operated by Alberta Justice and staffed by the Alberta courts; and Pro Bono Ontario (operating Law Help Ontario), Family Legal Information Centres (operated by the Ontario Ministry of the Attorney-General) and Family Law Service Centres (operated by Legal Aid Ontario). In addition, some especially busy courthouses (for example, Brampton Ontario, Jarvis Street Ontario) operate a "triage" / information desk positioned immediately after entry security screening. One or more staff are located at this desk and deal all day with an endless line of confused and anxious people, acting as "traffic cops" who direct them to the right counter/ service.

Relative to other justice system actors such as lawyers and judges, all these positions are poorly remunerated and staff receive minimal training to prepare them to interface on a daily basis with SRL's. The impact of the growth in numbers of SRL's is having at least as significant an impact on the work of court and program staff as on members of the Bar and Bench. Day after day they are facing a deluge of anxious, upset and often increasingly frustrated people. Registry and program staff were eager to be interviewed by the Project – in part to describe the difficulties they faced, and in part, one felt, just to get a break from the stress and pressure of the counters for thirty or forty minutes. Interviews with registry staff in all three provinces exposed the pressure and stress of these positions; there was frequently a feeling of siege and even desperation in these interviews.

It was striking how directly the experiences and perspectives described by SRL's and by registry and program staff in interviews and focus groups were mirror images of one another – for the SRL's from one side of the counter, and for the registry staff/ legal information centre staff from the other. When asked to describe what they saw as the major frustrations of the SRL's, counter staff were always able to accurately describe the same issues that SRL's talked about, in particular difficulty completing court forms; false expectations that the counter staff could do more to assist them in this and other respects; bruising experiences with judges; and general despair over how to navigate the court process with so little knowledge and understanding. Their own frustrations stemmed from trying to do the best job they could to assist upset and anxious SRL's who expected a great deal more from them than they could offer, both in terms of time and in relation to legal advice/ information.

Staff working at the registry and in other parts of the courthouse with SRL's often experience an emotional toll that is also a mirror of the stress and upset experienced by some SRL's. Many talked about taking work "home", where they continued to worry about individuals whom they encountered in various stages of desperation. Some further complained that they receive insufficient support following particularly upsetting incidents.

“I had been working here for six months and a woman got dragged out by knifepoint by her husband. We got no debriefing or support. It was the most traumatic thing I’ve seen....*The emotional baggage that they (SRL’s) come in with is only matched by our own*”. (my italics)¹⁷⁵

Managers described in interviews how registry staff positions have historically been very stable, with many court workers serving for ten, twenty or even thirty years. Some of these long-term workers were interviewed by the Project (below). However managers also observed that these positions were becoming increasingly transitional as a result of the very high stress of the job. This means that it is commonplace for staff to be away on stress-related leaves, leaving the counters short-staffed. As staff turnover increases, courts and programs are constantly training new workers who inevitably begin with a more shallow knowledge than more experienced staff – and may then leave after a short time only to be replaced with others.

b. The legal information/ legal advice distinction

At the heart of the job description for each “non-lawyer” staff person is the dubious distinction between “legal information” and “legal advice”. This constraint operates for registry staff and court clerks as well as for non-lawyer staff at a variety of court and community programs serving serve SRL’s (see above at (a))¹⁷⁶.

Many registry and program staff complained in interviews – some of them in dropped voices, aware that they were questioning an important orthodoxy of their role – that there was no clear or meaningful distinction between what they were allowed to dispense (“legal information”) and what they were not permitted to talk to SRL’s about (“legal advice:”). The SRL Survey conducted by Trevor Farrow et al for the Association of Canadian Court Administrators found that 55% of court workers found the distinction they were provided with between these two activities either inadequate or non-existent¹⁷⁷.

Many court staff said in interviews that they felt hamstrung in their dealings with SRL’s at the registry counter and under pressure to refuse simple yet critical “advice”, for example about which form to complete or how to complete the form. Others complained that in the absence of clear directions that determined how much assistance of this type they should give SRL’s, they had little choice but to err on the side of withholding, especially given the volume of SRL’s standing in line each day. One family justice worker described this pressure as follows:

“Everyone’s kids are a priority to them, and they think that they should have special treatment. We understand, but they don’t realize that everyone else in line has kids

¹⁷⁵ APS20

¹⁷⁶ Note that this is not an exhaustive list but includes the most significant programs in the three provinces in terms of service provision

¹⁷⁷ See Addressing the Needs of Self-Represented Litigants in the Canadian Justice System” A White Paper prepared for the Association of Canadian Court Administrators, Trevor Farrow et al 2010

too.”¹⁷⁸

If registry and program staff experience difficulty with the legal information/ legal advice distinction, this is even less meaningful for SRL’s. Many are frustrated by what they see as the unwillingness of the counter staff to assist them – whereas the counter staff feels that to give further advice would go beyond their constraints imposed on them. One SRL who appreciated this tension described it as follows:

“I understand that the counter staff cannot give legal advice but most people do not. Instead, they think that what they are asking is a simple question and that the counter staff are just passing the buck.”¹⁷⁹

A further consequence of the ambiguity and uncertainty of the legal information/ legal advice distinction is that in effect court staff are constantly exercising personal discretion in their dealings with SRL’s¹⁸⁰. How much help should they give Mr A who is elderly and has already stood in line for an hour? How much should they say to Ms B who is confused about which forms she needs to complete and what information she needs to provide, and is having difficulty concentrating as she has a cranky two year old in tow? A constant problem is how far registry staff should go to review documentation before it is filed. If they do not, it may be rejected and the SRL will be back in line again in a few weeks time, more frustrated than ever. If they do, are they providing legal advice? And what about all the others in the line who want the same help?

A number of SRL’s pointed out that whether or not they reached someone who was willing to go a little further in assisting them was “...a matter of luck – whether you get a helpful person or not is a lottery”¹⁸¹. Again, the comments of the registry staff themselves bear this out. Some SRL’s – usually those who can present themselves sympathetically, and may be higher functioning and with better social skills - will get more help and attention than others. This is borne out by the stories of SRL’s who managed to get a little extra help from counter staff by establishing personal relationships with them; for example presenting themselves as “a pleasant person”¹⁸² in an effort to gain more help.

c. Interaction between SRL’s and court staff

When asked in interviews “who was the most helpful person you encountered as a SRL?” the majority of SRL’s described someone who worked at a courthouse registry, in a courthouse information program, or as a court clerk. While some SRL’s complained that staff were not sufficiently patient or friendly (below), the majority appear to understand the pressure that court staff are working under and appreciated their kindness.

¹⁷⁸ ASP6

¹⁷⁹ AB24

¹⁸⁰ A problem pointed out by John Graecen. See John M. Graecen, “No Legal Advice from Court Personnel: What Does that Mean?” (1995) 34 Judges’ J. 10, online: American Judicature Society <http://www.ajs.org/prose/pro_graecen.asp>; John M. Graecen, “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84 Judicature 198

¹⁸¹ BC11

¹⁸² BC72

“People working at the court counter are completely overwhelmed. At the beginning you think you have the right to help, and don't understand why no one is offering it – but then you see how overwhelmed they are and understand how they could not possibly help everyone.”¹⁸³

Some SRL's talked about relationships they developed with particular staff who they came to rely on for help but also for moral support. One man described the counter staff at his courthouse as “the angels.”¹⁸⁴, another woman as “the little fairies”¹⁸⁵. A few SRL's recognized that as they returned over and over, the patience and resources of the court staff to help them began to run out. Similarly courthouse staff talked in interviews about SRL's who would come to the counter over and over and whom they began to wish to avoid.

Some SRL's are also very aware that the people who help them the most are those on the lower end of the courthouse hierarchy.

“It is the grade 12 girls – the clerks – that really have the brains and the compassion to make things happen. They knew how to short cut certain things, and if they could see that you were getting a dirty deal, they would sort it out for you.”

There were some noticeable differences between data collected that relates to registry staff (who may have begun their careers at a time when SRL's were the exception rather than the rule), and staff working in court-based legal information program directed at helping SRL's, such as the Justice Access Centres or the Family Legal Information Centres. Those in the latter group understand their job as helping SRL's, and by and large accept the trials and stresses of the job. For example, “It can be very rewarding to help people. I ...deal directly with people and although it's always challenging, I am always learning new things. Most people are very happy when we help...It's like we are all at war together – it's tough, but we have fun.”¹⁸⁶

Like this young woman, staff who have been hired specifically to work with SLR clients tend to be more engaged and willing to interact with this client group (compared to some staff who have worked at the registry counter for several decades and are now required to adjust their expectations). This relates to establishing clear expectations in a job description but may make an important difference to the quality of customer service. This difference was suggested by SRL comments about the assistance they received from legal information programs. SRL's were for the most part very positive about these programs, and especially the JAC's, FLIC's and LinC's. A few were frustrated by the constraints on how much assistance these programs could give them (the same tension around legal information/ legal advice described above) but most SRL's appreciated the kindness and professionalism shown to them by the staff in these programs.

¹⁸³ BC48

¹⁸⁴ BC44

¹⁸⁵ BC45

¹⁸⁶ BSP14

Similarly, offices that have been designed to serve the SRL population tend to be differently laid out and organized than traditional courthouse facilities and may be more hospitable and practical for SRL's. For example, the Vancouver Justice Access Centre has a check-in counter, but there is no glass between the client and the staff person, whose job is to refer each client to the appropriate resources / person within the Centre. There are two rooms containing computers and printers which can be used by SRL's where professional staff circulate, offering assistance and answering questions. This set-up is both more conducive to SRL's working for themselves and more welcoming in terms of offering help than a traditional line up in front of a desk.

There may be some generational differences in expectations that are reflected in different styles of dealing with SRL's. One fascinating discussion among a group of courthouse and agency staff in a smaller centre illustrated this well. One older and senior agency staff (also a lawyer) suggested that SRL's "should make affording a lawyer a priority. So maybe you have to sell your four wheeler?"¹⁸⁷ A younger registry clerk shifted uncomfortably in her seat. "I couldn't afford a lawyer. And I'm not sure you can tell people what to spend their money on."¹⁸⁸

At the same time, many long-serving court staff have clearly adapted to the new SRL reality. Virtually all courthouse staff came across as compassionate and empathetic towards SRL's in their interviews. What they are able to offer in practice, however, may vary from day to day and reflect both their workload and their personal stamina. A few SRL's complained that the counter staff were only interested in helping "people in suits"¹⁸⁹ (ie lawyers) and that they were treated without interest or compassion. There was a sense from some SRL's that the counter staff were unwilling to try to understand their position.

"Some clerks, if you don't phrase the question correctly, they will not rephrase it to help you out."¹⁹⁰

One SRL proposed that the counter staff "should be like crossing guards and be helping us cross the street."¹⁹¹ Some accept this role, while others may be less willing to do so. One SRL who effectively summed up what many SRL's say they are really looking for from courthouse staff, whether or not this includes "legal advice" or "legal information".

"More kindness is needed in the system. Its OK to give guidance, and not all guidance is legal advice."¹⁹²

¹⁸⁷ APS20

¹⁸⁸ APS20

¹⁸⁹ BC40, BC25

¹⁹⁰ AB24

¹⁹¹ ON2

¹⁹² AB31

d. Other stresses for court staff

Court staff frequently complained about the difficulty of keeping up with the ever-changing law and procedure in their area, and especially in family law. These personnel are required to be familiar with an enormous amount of information, with little formal training and supervision. It is hardly surprising that SRL's complain that they are sometimes given inconsistent information by different counter staff, as well as inconsistent information between a judge or master and the counter staff.

9. Other resources for SRL's

a. Mediation services

Court-based mediation services are also seeing increasing numbers of SRL's. One mediation program manager commented that she was seeing more and more clients who did not have lawyers, and that the primary factor was "...legal costs. They say that fees are astronomical and by the time they are through with legal costs, there are not many assets left....(and) more recently there is this huge mistrust of lawyers, because they've spoken with people with bad experiences or have themselves have had a previous bad experience."¹⁹³

Many service providers talked about the value of offering mediation once legal action begins. There was a widespread sense that mediation was often very effective, but that there was still limited knowledge among SRL's about how they might use mediation: "some are not open to mediation because they ...don't understand the purpose of know that it may help – people don't realise what mediators actually do."¹⁹⁴ This means that cases that could be settled tend to get "stuck" in the system because the SRL does not have the skills and tools to effect a settlement (see also below). A clerk at a busy urban courthouse pointed out,

"If people could afford a lawyer, the lawyer could work out a consent for them so two weeks later they aren't back in court again – but they don't know how to do this and just keep coming back over and over again."¹⁹⁵

Among some SRL's there is a sense that mediation is more intimidating than going to court – "they are mistrustful of the mediation process."¹⁹⁶ "It's human nature to want to avoid confrontation and it seems easier to go to court."¹⁹⁷

All SRL's were asked in interviews whether they had either considered or had been offered a chance to mediate. Many said that they did not know about mediation, and/or said that it had not been offered to them. From field trips to courthouses it was evident

¹⁹³ OSP1

¹⁹⁴ OSP21

¹⁹⁵ OSP26

¹⁹⁶ OSP20

¹⁹⁷ ASP5

that there is an uneven provision of on-site mediation services, with larger centres such as Jarvis and Sheppard offering mediation services all day, five days a week, and other more rural centres such as Wetaskiwin only able to offer mediation on one day a week.

Even among those who were aware of mediation and in some cases eager to use this as a possible means of resolution, many problems were noted. Most frequently SRL's said that they wanted to try mediation but the other side would not co-operate. This is a familiar refrain in other mediation studies and of course cannot be objectively verified. What is clear is that "Mediation means nothing if the other person doesn't want to mediate or is not willing to settle."¹⁹⁸

Other comments by SRL's about mediation that came up fairly consistently suggest different challenges. A number described what they saw as a culture of opposition to mediation among the legal profession, either discouraged from mediation by their own lawyer or rebuffed by the lawyer on the other side. Some complained that even when they asked about mediation, their legal counsel (if they were represented at the time) or counsel on the other side did not take it seriously. Some complained that mediation was simply used as an opportunity to stall by experienced parties¹⁹⁹ or counsel²⁰⁰. Even when mediation did take place, in some cases the parties did not participate, as this woman describes:

"The lawyers are making a farce out of mediation....The present mediation system does not work. Lawyers are treating it as a silly game and thinking of ways to beat the system. They are making a mockery of what should have been a good solution. Litigation lawyers do not want it to work. ...What is the advantage to them?... I think if I had been allowed in the mediation I would have been able to settle at that time."²⁰¹

Others complained that mediation was costly (several SRL's²⁰² spent a significant amount on mediation but the case did not settle – obviously this is always a risk) and some had specific complaints about mediator competency. A few made the perennial complaint that mediation agreements "had no teeth" and that the other side was able to default without consequence²⁰³. The overall sense of all comments made about mediation programs and the work of mediators is that these services are still not offered at a consistently professional and credible level, and are only just beginning to gain public trust.

¹⁹⁸ ON48

¹⁹⁹ BC48

²⁰⁰ ON65, BC63

²⁰¹ ON55

²⁰² BC21, AB13

²⁰³ AB14, AB58

A few SRL's spoke about how helpful they found mediation to be. One businessman who used mediation to resolve his case commented

"(T)his is my second experience with mandatory mediation, and in each case the process was very fair. The ability to be heard without restrictions is so helpful, and healing. The positive outcomes for my side are a bonus."²⁰⁴

A larger number of SRL's who had not been able to use mediation – because the other side refused or because they were not offered mediation – spoke about their belief that mediation should be mandatory – in order to bring the other side to the table and at least try to settle – or at least pressed much harder by judges and court staff.²⁰⁵ The sentiment expressed by this frustrated SRL was reiterated by others:

"Mediation needs to be pushed by the court. Give me a good reason why you can't do mediation. Domestic violence? Do shuttle mediation. You are wasting the court's time, (and that means) taxpayers dollars."²⁰⁶

These comments suggested a future in which mediation would be normative and even assumed. As one SRL who had had a number of experiences in the courts for small claims matters over several decades put it,

" (Mediation is) a star glowing on the horizon - but it never gets any closer."²⁰⁷

Obviously mediation will not resolve all matters, but many SRL's were of the view that at least it would be tried. Many also understood that this will take a stronger push from the court services and the Bench. With increasing recourse, one might also expect the standard of professional services to rise.

b. Community-based support for SRL's

This study engaged some of the community agencies that operate in the locale of the courthouse sites, among them advocacy centres for both men and women (including domestic violence programs and men's groups), Native Friendship Centres, the Elizabeth Fry Society, and public libraries. The support of domestic violence support groups was especially critical to some female SRL respondents²⁰⁸, and a few male SRL's spoke about the importance of the support provided by a men's group²⁰⁹. We also interviewed staff at some unique agencies offering resources to SRL's such as the Justice Education Society of British Columbia, and others that did not have a brief for assisting SRL's but nonetheless frequently encountered clients who were pursuing legal action without representation (usually family matters), for example Prince George Action Against Poverty, Nanaimo

²⁰⁴ AB75

²⁰⁵ BC67, ON11, ON62, AB48

²⁰⁶ BC69

²⁰⁷ ON54

²⁰⁸ ON6, ON64, BC8

²⁰⁹ AB29, ON14

Citizen Advocacy, Peel Poverty Action Group. The project materials were distributed to many of these agencies, and some interviews conducted with staff.

Every individual interviewed from a community agency attested to the rapid growth in the numbers of SRL's they were seeing, and the "downloading" of some areas formerly served by public legal services to their agencies. . One domestic violence worker described how they had formerly referred women to Legal Aid lawyers, but as the program was cut, so her role changed.

"Our previous role was supportive – to go with women clients to see their lawyers. Now women don't get lawyers – now we are the "lawyers"!"²¹⁰

While welcoming the introduction of "legal advocate" (advocates who accompany women to court, not qualified lawyers) programs for women who suffer domestic violence, another domestic violence worker emphasized the need for women facing abusive partners to have legal representation.

"They need lawyers. Everyone in family court does but domestic violence victims absolutely need lawyers. They need a family court process that understands that their situation is not the same as those who have not experienced domestic violence."²¹¹

As the numbers of SRL's continue to rise, we may see some community agencies starting to develop new resources to assist this population. In addition, public libraries are frequently used by SRL's and anecdotally librarians report many more queries related to legal procedures²¹². Future research could consider ways in which the library system might meet some SRL needs, for example by providing Internet access to on-line resources, specialist librarians, and access to other "office" facilities such as printing and photocopying.

c. Access to law libraries

A significant group of SRL respondents used their local law library for research. Several singled out the law librarian for especial praise.²¹³ Some SRL's clearly became regulars at their local law library.

A law librarian who contacted the Project asking to be interviewed had some interesting observations about the SRL's whom he regularly assists at his court library.

"The ones that come to the library and make an attempt (to research) - they clearly have some sense that there is a gap in their knowledge and they are there because they recognize they need help..... Money is far and away the primary motivation. (to

²¹⁰ BSP16

²¹¹OSP25

²¹² Conversations with librarians in public libraries at the field sites.

²¹³ AB12, ON24, AB39, AB37

self-represent). From what I see, only a small fraction of SRL's think that they are smarter than the lawyers, or think they don't need a lawyer, or have an ideological axe to grind that a lawyer may not buy into....(the rest) are so desperate for assistance that they trust their fate to a stranger (ie a law librarian) who they think will help them".²¹⁴

d. Support person

All SRL's were asked if they customarily took a support person with them when they went to the courthouse, either for an appearance or to file documents or any other appointment (for example at a help service). We were interested to know how often a family member or a friend who was there for emotional or psychological support rather than to offer expert advice was a part of process. An anecdotal observation from spending time in the courthouses was that there were many people in the hallways and waiting rooms who were not litigants themselves, but were there to give support to litigants. Whereas friends and supporters might also attend a hearing where a person is represented by legal counsel, the role of a friend for a SRL is somewhat different and may present different needs and challenges for court services staff. We were curious about the role played by the "friends of the SRL's".

Only 37% of SRL's reported that they regularly took a support person with them to court. This was sometimes a friend, sometimes a family member, or sometimes members of a wider support group (for example, a father's rights group, or a women's support group). One SRL said that she took along a friend "who dresses and looks like a lawyer."²¹⁵

Many other SRL's said that they had initially taken along a family member or a friend, but the process was taking so much time and was so stressful that they felt that they could not keep on asking for this type of time and support²¹⁶. Several commented that the only person who could possibly have the time to attend all the hearings with them would be someone who was retired or unemployed²¹⁷. Among the 55% who answered "no" therefore were a significant number who had previously had a support person accompany them, but no longer had this resource. Instead, they made do with a sense of solidarity with the SRL's around them: "The other people in the line – they are your buddies."²¹⁸ Interviews with court staff confirmed that many informal friendships get struck up among SRL's as they wait in line or for a hearing²¹⁹.

Where they did have a dedicated support person with them, SRL's reported the assistance in a variety of ways, including helping them to figure out forms and procedures, keeping them company, helping them to stay calm and focused, having another person listen to instructions to ensure that they got them right, or assisting them with language

²¹⁴ ASP11

²¹⁵ BC84

²¹⁶ AB74

²¹⁷ BC76

²¹⁸ AB14

²¹⁹ ASP5

issues. One described the benefit of having friends or family in the hearing room: “You need someone in the crowd to focus on.”²²⁰

For the court staff on the other side of the counter, or the clerk in the hearing room, the presence of a support person can be both positive and negative. Some counter staff commented that it can be difficult to deal with two people at once, especially when the support person “wants to do all the talking”.²²¹ As another put it, “some of them want to be lawyers” and “you find that you can’t get a word in edgewise – people bring their moms, their new girlfriends, their cousins etc.”²²² Where the support person is “egging them on” this can be a problem²²³ – but in most cases, court staff and service providers see the presence of a support person is a positive development. The SRL “buddy” usually has the “cooler head”²²⁴ and their primary role is to keep the SRL calm and centred.

The next most common function for a support person is to provide translation services for SRL’s whose English (or French) is weak²²⁵. In the absence of clear rules and parameters for the intervention of a support person, especially in initial interviews with duty counsel or in hearings, there is a sense that a person whose role is to translate will generally be allowed more latitude and greater access. A few service providers told us that unless the buddy is there to provide language assistance they will generally not allow a support person to accompany a SRL into an interview²²⁶.

A few SRL’s described the benefit to them of bringing along a friend or family member who has had some legal training:

“My friend is my “technician” who makes sure that my paperwork is “spot on” – I could not have done this without him.”²²⁷

“I did the desk order with my dad, who is a lawyer – this saved me \$20,000. I did all the research and made the major decisions about what would be included in my affidavit and what was the right thing to do. I was vey privileged...how people do this without money or resources I do not know...it would have made me sick from the very beginning.”²²⁸

²²⁰ AB71

²²¹ BSP22

²²² OSP2

²²³ BSP7

²²⁴ OSP4

²²⁵ ASP10, BSP8, OSP6

²²⁶ OSP26, BSP11

²²⁷ AB19. Also ON37, BC59

²²⁸ AB48

A small number of SRL's reported that they brought their support person into a hearing with them in order to act as a "McKenzie friend"²²⁹. There was some confusion about the role and limits of the input of a McKenzie friend (for example, most judges will not allow them to speak in court but they may whisper advice and provide moral support²³⁰). A discussion on the Facebook page in February 2013 illustrated the lack of widespread knowledge about the concept and the confusion over what they could and could not do. Some SRL's reported in interviews that they asked for a friend to be able to sit at the front table at their hearing but were told that their friend must instead sit at the back of the courtroom.

"I tried to go into help my friend who's case I have been helping her with and I wasn't allowed to sit beside her in court or help her find something. If an attorney can have their assistant help them find something, why can't a self rep have someone beside them to assist with the paperwork or to take notes?"²³¹

It may be very helpful for court services and service provider staff to contemplate a more complete research study aimed at collecting more data about the role of support persons, and how they might be educated to be constructive in the process. The relationship between a "friend" or support person and a McKenzie friend also requires clarification.²³²

e. What other resources are SRL's asking for?

i. SRL orientation and education

Some SRL's expressed an interest in receiving earlier orientation that would enable them to better anticipate what lay ahead of them.

"The ... government... should hold a no fee group information session (for SRL's) – talking about forms needed, time limits, what evidence is, etc. This would be an opportunity to learn about the system."

These suggestions consistently emphasized orientation to the procedural and even cultural aspects of self-representation (for example, how to behave, what to wear, what to expect) rather than substantive learning "about" law. Others suggested workshops that helped family SRL's to prepare a parenting plan, or a budget, a proposal for creating child

²²⁹ A McKenzie friend is a lay person who stands with a person who is otherwise unrepresented and assists them in court. The expression derived from the English case of *McKenzie v McKenzie* (1970) 3 All ER 1340. The original McKenzie friend was an Australian barrister who was not entitled to practice in the English courts. The principle has developed into a general right of assistance for SRL's but substantial discretion is exercised by individual judges. In Canada see *Children's Aid Society of Niagara v P(D)* (2002) 62 O.R. 3d 668 and *Moss v NN Life Insurance Co. of Canada* (2004) 180 Man.R. 2d 253.

²³⁰ . See the guide created for Pro Bono BC by David Mossop, available at www.clasbc.net/publications/stream

²³¹ BC2

²³² See the remarks on this subject by the Alberta Rules of Court Project, *Self-Represented Litigants*, Alberta Law Reform Institute 2005 available at www.law.ualberta.ca/alri/docs/cm12-18.pdf

support, or a proposal on property distribution, that would be offered by financial planners, psychologists and other appropriate professionals rather than by lawyers.²³³

This type of early orientation could provide some “realty-checking” before individuals begin to self-represent.

“We have marriage courses, pre-planning for funerals but no one knows what will happen when you go into the courts. If they did know, they may not choose to go though it.”²³⁴

Even where they have no choice but to continue to self-represent, early orientation and information would at least allow them to begin the process with more and better information than they have at present (SRL’s frequently told us that they really had no idea what to expect²³⁵).

“We need more services to prime or prepare you, before you dive in to the court process.”²³⁶

One speculated that SRL orientation might save the system time and money.

“If resources were redistributed to SRL education and support in the beginning then you would spend less money later. This would make a difference to the entire process.”²³⁷

A Facebook discussion on the idea of an orientation program drew many favorable comments but some resistance to the idea that it should be mandatory²³⁸.

ii. Office facilities

Some SRL’s describe struggles with accessing computers and more describe not having access to a printer or a photocopier. Office facilities inside the courthouse that would enable SRL’s, perhaps at cost, to access the Internet, print out documents, make copies etc would be extremely useful and would reduce the stress of trying to independently utilise commercial facilities outside the courthouse.

iii. Coaching/ mentoring

Another type of assistance described by some SRL’s emphasized one-on-one contact but was focused less on legal advice or even information, and more on “coaching” ie helping them to make their own decisions about procedure and strategy, review of their

²³³ AB14

²³⁴ ON2

²³⁵ See the further discussion above at (5)

²³⁶ BC42

²³⁷ B48

²³⁸ As in one Maryland courts: see <http://www.selfrepresent.mo.gov/page.jsp?id=37293>

work to date. For example, “person to person assistance with walking through my paperwork” and checks on “my lawyer homework”²³⁹. The important distinction here from a traditional advisor is that this person would “coach me to do it myself. Someone ...who knows what questions I should expect, who can give really practical advice on what to say and what not to say...”²⁴⁰

A similar idea - of assistance provided by a person who is not a lawyer and does not take control of the case, but instead guides and supports the SRL - is described by some SRL respondents as “mentoring”.

“There should be a mentor program available, not so much for the legal expertise, but more of a hand to guide you on the path through the process.”²⁴¹

A related idea described by other respondents would be for SRL’s (at their request) to be assigned a “buddy” offering moral support rather than advice or information, for example accompanying them into the courtroom for a hearing. Some SRL’s bring supporters or friends with them to court (see above at XXX) and others meet and make friends in the registry line-up. A more formalized protocol for including friends or assigning a volunteer SRL “buddy” – perhaps using the model of victims services – would add value for some SRL’s and would enable consistent expectations and practice (a problem in some courthouses).

Part 4: SRL’s, Lawyers and Judges

10. Delivering legal services to SRL’s

a. SRL recourse to legal services

More than half the respondents in the SRL sample (53%) had a lawyer who acted for them at an earlier stage in their case. One quarter of these were Legal Aid clients. Private clients typically ran out of funds to continue to retain their counsel, and Legal Aid clients had reached the end of their Legal Aid entitlement and/or their financial circumstances had now changed and they could no longer access Legal Aid.

In a small number of cases where they were privately represented, SRL’s continued to refer to this counsel for occasional advice as they proceeded on their own. Most of these previously represented individuals sought free legal advice in some form once they became SRL’s (64%) although 35% said that they did not (some of these may have been using private “unbundling” instead, below). The reason most commonly given for not seeking *pro bono* legal services was that the respondent assumed that they would not be eligible. Some SRL’s expressed embarrassment at the idea of applying, and then being rejected for, free legal assistance.

²³⁹ON2

²⁴⁰ BC50

²⁴¹ BC44

While 37% of the whole sample did not retain counsel at any stage in this matter (primarily because of the cost; see back at (4)) many of these individuals sought legal advice in a variety of ways. Some tried (for the most part unsuccessfully in the absence of a prior relationship) to persuade a private lawyer to give them “unbundled” advice. 60% of this group sought free legal advice via in-court programming, duty counsel or some other agency. Again, among those who did not seek free legal assistance the most common reason was an assumption that they would not qualify.

This data establishes that most respondents (86% of the sample) attempted to access legal advice services in some form, depending on their means. 53% had counsel representing them at some stage; a further 33% sought *pro bono* assistance. Those who neither retained a lawyer to represent them at any stage in their case (usually for financial reasons) nor sought free legal advice (usually because of concerns over eligibility) – represented just 14% of the sample.

A closer examination of the 33 files that comprise this 14% is very revealing. Virtually every respondent in this group said that the reason they did not have a lawyer was because of financial restrictions. Of the 33, about one in five added that the amount at stake in their case made it appear not worthwhile to hire counsel and have to pay them out of anything they won. A further one in five added that could not find a lawyer to represent them with whom they felt comfortable (having tried to find a lawyer at an earlier stage) and/or preferred to handle the matter themselves.

Just one in five of this group (n=7) voiced a specific criticism of lawyers as factoring into their economic decision to self-represent (most commonly concerns about not knowing what they would have to pay/ lawyers “overcharging”; and concerns about lawyers being ineffectual around settlement and raising the “ante”: for example, “having lawyers involved in cases escalates the matter and is detrimental”²⁴².)

This data shows that at the beginning of their SRL experience, most respondents were either positive or neutral towards the idea of lawyers acting for them. They were acting alone not because they disliked lawyers or rejected the idea of legal advice services, but for practical reasons – they could not afford to retain or continue to retain counsel. Many in this group then sought *pro bono* legal advice services, unless they believed that they did not qualify for such assistance.

SRL attitudes towards lawyers and legal services may change during the course of their SRL experience. When asked in interviews what they would ask a lawyer to do for

²⁴² AB75

them now, assuming that an affordable and competent counsel could be provided to them, some SRL's said that they would no longer be interested in working with a lawyer – usually reflecting a combination of a bad prior experience, and their own determination now to manage their case themselves.

Many more SRL respondents responded by talking about the ways in which a lawyer could help them. They stated that they would have preferred to be (or continued to be) represented by counsel.

“Oh my goodness yes, in a heartbeat.”²⁴³

In summary, a majority of the SRL sample would have preferred to have legal representation, if they found this affordable, offered them tangible value-for-money as they understood this (ie offered them expertise which they lacked and which brought the prospect of a better outcome), and would allow them to remain in control of major decisions about the direction and conclusion of their case. Unfortunately, a smaller but significant group simply did not believe that these criteria would or could be met in legal representation.

b. Legal Aid

13% of the SRL sample (and one quarter of the 53% of the sample who said that they had previously retained counsel in this matter) said that their prior representation had been via Legal Aid. Their access to Legal Aid had been discontinued or had run out, and these individuals were now representing themselves. Typically they had been legally aided for their original divorce application, but were unable to receive public assistance for a subsequent variation²⁴⁴, or their financial circumstances changed (for example they began to receive support, or went back to work) and they no longer qualified for Legal Aid²⁴⁵.

A number of other SRL's in the sample (principally in family cases) described applying for Legal Aid but being refused because they owned a home, received a pension, or a disability benefit. Unsurprisingly, many in this group were dissatisfied with the criteria applied to them that excluded them from the provision of Legal Aid.

While some were very happy with their Legal Aid lawyer, and regretted very much that they no longer qualified for representation, a significant group expressed dissatisfaction with quality of legal services they had received from their Legal Aid lawyer. Some said that their assigned lawyer was not sufficiently experienced or knowledgeable in

²⁴³ BC75

²⁴⁴ For example, the website of the British Columbia Legal Services Society makes it clear that in most cases, an individual will only qualify for legal representation for a serious family matter once. It also appears that a variation that is not based on a serious situation involving a child would not be covered by legal representation, but rather legal advice. www.lss.ca

²⁴⁵ Financial eligibility for legal aid advice and representation is set at under \$2060 monthly income for a family of four in Ontario; \$3340 for a family of four in Alberta; and \$3230 for a family of four in British Columbia. All figures current from the 2012 websites of the Legal Aid Societies (www.lss.ca; www.legalaid.on.ca; www.legalaidab.ca)

the area of law required for their case. A few stated their belief that Legal Aid lawyers were generally of a lower quality than other private lawyers. The most frequent complaint was similar to the complaint made about private lawyers – that the lawyer was unresponsive, did not seem to care about their care, and did not “do” much.

An obviously highly intelligent young woman, Frances was perplexed by the difficulty she had in establishing any real communication with her lawyer.

Frances was relieved when she was told that she qualified for Legal Aid in order apply for full custody of her two young children from a common law relationship. The relationship had been abusive and she was concerned about sharing custody with her ex. She wanted to have a woman lawyer represent her, and picked a name from the list provided by Legal Aid.

However Frances found that her lawyer “really did not communicate with me, and I could not see what she was actually doing.”. She wanted to know more about what was happening in her case, but instead found herself “shut out” from any information. “My lawyer just seemed really withdrawn from me. So I asked her “Do you want this case? If not, maybe I should find another lawyer.”

The lawyer responded that Frances’ case was very demanding and required a lot of attention. Frances didn’t understand – she could not see what attention the lawyer was giving her case.

As the case progressed, Frances increasingly felt that she and her lawyer were not on the same page. Her lawyer told Frances that she should not be asking for sole custody - “you will lose” - but did not give her a clear explanation. In the end, Frances walked away from her Legal Aid lawyer and represented herself. “I wanted to be in charge of her case so that I, and not my lawyer, could decide what was right.” She said “Even if I was offered another Legal Aid lawyer now, I would try this on my own – I want to be in control of this. I am not confident – but I am determined.”²⁴⁶

Some of these dissatisfied individuals said that they were no longer interested in working with a lawyer after their Legal Aid ran out, and that they had “lost faith in the legal system and lawyers.”²⁴⁷ Others went to a private lawyer when their Legal Aid ran out, before expending all their available resources and becoming self-represented.²⁴⁸

²⁴⁶ BC43

²⁴⁷ AB18

²⁴⁸ For example AB16 and BC45

c. Duty counsel and summary advice services

During the time we spent in the courthouses during this project we met a number of duty counsel, and conducted formal interviews (usually by follow up phone call) with five. Much of the time duty counsel was simply too busy to speak with us at length. We also met and interviewed twelve personnel from in-court service providers²⁴⁹ who offered summary advice services, usually a pre-booked appointment with a volunteer lawyer. Finally we conducted interviews with a further ten individuals who worked for outside programs that offered a summary advice model. Many of the comments made by SRL's about their experience with these forms of assistance – duty counsel and free summary advice inside or outside the courthouse – are relevant to assessing the future efficacy of these types of legal services, and so they have been combined below.

By far the most common model for delivering legal advice services to SRL's is a summary advice model, where a lawyer will spend a limited time (usually 30 minutes) one-on-one with a SRL providing guidance on how to progress their case. Most of these programs are by appointment only, and many will only permit one session (although some SRL's told us that they persuaded services to bend this rule). Some of these programs operate inside the courthouse (for example Pro Bono Ontario is located in some Ontario courthouses, and the Justice Access Centres that operate in some British Columbia courthouses). Other programs offering similar services are located outside the courthouse (such as Pro Bono Alberta, the Legal Guidance clinics in Alberta and community legal clinics in Ontario).

The most common “walk-in” summary advice model is family duty counsel, staffed by provincial Legal Aid lawyers and offered in most family courts, (although not on a daily basis in smaller courthouses; for example, family duty counsel is available just once a week in Wetaskiwn, Alberta).

33% of the SRL sample used of *pro bono* legal services, most of them (27%) by accessing duty counsel in the courthouse. A small number of respondents said that they had been told that they did not qualify for free advice from duty counsel because of their income level, although others told us that duty counsel was persuaded to talk to them in any case²⁵⁰. In two instances, a SRL said that they could not use duty counsel in their courthouse because the other side (their ex in a divorce case) had already used the same duty counsel²⁵¹. This is likely to become an increasing problem as the proportion of SRL's in family court increases.

Some of those using duty counsel also used other *pro bono* services via in-court programming or in the local community. A further 6% described using these services but not duty counsel. These programs included university law school clinics and a variety of

²⁴⁹For example, the Family Legal Information Centres / Law Information Centres in Alberta, Pro Bono Ontario in Ontario and the Justice Access Centres and Family Justice Services in British Columbia

²⁵⁰ For example, BC38

²⁵¹ ON32 and BC44

community legal guidance clinics. In Ontario, a few respondents had used the Lawyer Referral Service (now the Law Society Referral Service) to obtain a free half hour summary advice session. In-court programs – for example Pro Bon Ontario, the Family Law Information Centres in Alberta, or the Justice Access Centres in British Columbia - appeared to be more widely used by respondents than community based services (instead those described by SRL respondents were more typically domestic violence support services for women or men’s support and advocacy groups (see below at (9)) rather than legal advice resources).

d. SRL evaluation of the summary advice model

Many SRL’s had positive comments about duty counsel and their willingness to assist them in a time of stress and anxiety. Some individuals working in these positions are clearly very dedicated and their clients sense that commitment to them²⁵². This SRL explained how duty counsel helped her. Interestingly, she frames this as a coaching experience for her, rather than duty counsel telling her what to do:

“I went to duty counsel to try to present my case so I could properly follow procedure to try to get things settled. Talking with duty counsel helped me confirm that I was understanding what was going on. I have no previous knowledge of the procedure or the language. ...The duty counsel was the best resource in helping me to know that I was doing this right.”²⁵³

This positive view was not shared by all respondents. Some SRL’s were evidently able to make much better use of limited advice sessions than others. Those respondents who were most satisfied with the value they got from the summary advice model spoke about preparing their questions in advance, anticipating additional information that they needed; being ready for the fact that duty counsel/ pro bono counsel would have limited time available for them; and going in for the meeting “with a resolution agenda, not an emotional agenda.”²⁵⁴

Among those who seemed pleased with the assistance they received from duty counsel/ a limited time advice session with *pro bono* counsel were a number who made the important point that individuals with mental health issues and/or poor cognitive abilities would have great difficulty absorbing all the information that they would receive in a summary advice session²⁵⁵. They would likely also have difficulty planning how to use the session effectively to answer their questions.

Indeed, other SRL’s the sample spoke about feeling “overwhelmed”²⁵⁶ and confused”²⁵⁷” after talking with duty / *pro bono* counsel. These same respondents were

²⁵² For example, ON49, BC56

²⁵³ BC27

²⁵⁴ BC23

²⁵⁵ BC69

²⁵⁶ BC69

²⁵⁷ BC84

also more likely to complain about feeling rushed (“if you get ten seconds than you are lucky.”²⁵⁸) and generally feeling poorly served. Some SRL’s told us that they would often think of a pertinent question only after their session is over, and feel exasperated about how long it would take them to be able to get another appointment. This dynamic is corroborated by agency staff. “They call and say, I have just have one question and want an answer and don’t want to make an appointment for just one question.”²⁵⁹

Another factor in the usefulness of summary advice is the timing of the meeting in relation to key SRL tasks and actions. A number of SRL’s described experiences in which they discovered mistakes only after they had completed and submitted court forms, or made assumptions about making their case which they were now told were erroneous. Earlier assistance would have enabled them to complete forms accurately²⁶⁰, and/or reassess their evidence and arguments, saving both the SRL and the court considerable time and energy.

A discouraging number of SRL’s complained that they believed that lawyers working in public legal services, either as volunteers or employees, were of a poorer quality than those in the private bar. Similar comments were made about lawyers assigned to respondents by Legal Aid. Some SRL’s understand that these positions are not well compensated and they appear to believe that this affects the quality of counsel available to them via publicly funded services. This may be a very unfair criticism but it is reported here because it was made by a significant number of SRL’s.

“Duty counsel –I think they are punished by being there. ..the service they provide is dismal at best, confusing at worst, really no use at all.”²⁶¹

“Duty counsel was rude and abrasive to me. (C)ourt services provide very little service...what is deemed a s service in the courthouse is very far from it in my opinion.”²⁶²

While these comments may be unfair given the stress that duty counsel and pro bono lawyers often work under, it is also the case that many in this group are relatively junior lawyers gaining experience – and managing a 30 minute interview with an anxious and often emotional SRL is a challenging task for even the most experienced lawyer.

Even SRL’s who had good experiences with duty counsel often made the point that their services were too limited to be really helpful to them. For example, the high demand for duty counsel services means that in some courthouses, duty counsel will not appear with a SRL in court but provide advice before only. Others complained that duty counsel

²⁵⁸ AB7

²⁵⁹ BSP15

²⁶⁰ This may not require a qualified lawyer: “There should be someone to review the paperwork and say “we need a, b and c. You don’t need a lawyer but the courthouse needs someone to review the documents – it could be relatively simple – yet there is no one there to say “this is complete” or not.” ON38

²⁶¹ ON27

²⁶² ON38

could only see them on the day of their appearance and they needed more assistance to prepare beforehand²⁶³. Others commented that duty counsel in their courthouse only provided one session and could not help them if they came back on another day. Some were upset that when they returned for more help duty counsel was less helpful than the first time. “Initially duty counsel very sympathetic and gave me priority...“I could not have got a restraining order without her – I could not have filled out all those papers. But the next time I had to appear she said “I don’t have the time today”. ²⁶⁴ The growing volume of SRL’s makes this restriction is problematic for those who must return to the courthouse on numerous occasions, as this woman (who was seeking a restraining order against her spouse).

These comments raise the question of how much value duty counsel and summary advice models bring to SRL’s - and whether this represents the best use of the available resources for SRL’s. A more complete cost/benefit analysis would be necessary to answer this question conclusively. However this data suggests some modifications that might maximize the value of this model – which represents a significant volunteer contribution by some members of the Bar - and for more SRL’s.

e. What might make the summary advice model more effective?

Duty counsel and *pro bono* summary advice are certainly “lifesavers” for a significant number of SRL’s and the interviews contain many statements of appreciation and thanks for these services. However there is also a significant group for whom these types of services do not seem to be “working”. The types of modifications suggested by both SRL’s and service providers that might enhance the value of the duty counsel/summary advice model of legal services include:

i. Preparing SRL’s

SRL’s who would like advice on how to prepare for a interview with counsel could be offered this assistance, either by other staff at the service provider or as part of courthouse orientation and education for SRL’s.

ii. Specilaized training for counsel

Particular training and experience is necessary to undertake the considerable challenges of working with SRL’s. Instead of regarding this work as the purview of younger, junior lawyers or law students, it is critical for this type of work to be seen as specialized, difficult and attracting additional educational and mentoring support. This might include developing training programs with the input of the clients themselves, in order to focus on their particular needs which may be quite different to traditional clients of private legal services.

²⁶³ ON24

²⁶⁴ BC35

For example, many SRL's have already conducted some of their own research and may not present as traditional deferential clients. Their research may be incomplete or even wrong – but the fact that the client has already acted on their own behalf means that the professional relationship is a different one. One para-legal working with SRL's observed "Many SRL's do not want the advice, they know what they want to do they just need to know how to do it."²⁶⁵ A similar comment is made by a courthouse service provider:

"After a while, some SRL's don't want to listen as they no longer system so long some feel they "know" what they are doing."²⁶⁶

SRL's who have been working on their own for some time are also likely to be extremely invested and emotional regarding their case, and demand skilful and patient listening and careful explanations. They may also be looking for understanding and support, especially if they are being given "bad news" by counsel.

All these skills are less likely to be developed in younger and less experienced lawyers. Again, this suggests that the type of service offered by *pro bono* counsel requires specialized training and support.

iii. Building in flexibility

The timing of summary advice is clearly a problem in some cases, where it comes too late to avoid the filing of incomplete forms, or to deter an action that may have little merit. The sooner that an SRL can receive advice and assistance, the better able they are to assess the potential risks and rewards of their case. While this requires the type of listening and explaining skills described above at (ii), it is probably easier to deliver at an earlier stage before a SRL has already expended time and energy of working on their case.

The limit on advice sessions to one per client – a stricture clearly circumvented by the most persuasive SRL's who can talk their way into more sessions – is too rigid/ limited. Assessment on a case-by-case basis is time consuming and gives discretion to the "gatekeepers" who set appointments, but could be governed by guidelines that provide criteria for booking more than one appointments in some cases. At present the system seems to be *ad hoc*.

Most programming does not offer a lawyer to accompany a SRL to court (with the exception of court-based duty counsel models). Many SRL's said that this was what they most wanted help with, because they were extremely intimidated of standing up and speaking for themselves in court. When asked in interviews, "How would you use a lawyer now, if you could have one? What would you ask a lawyer to do for you?" a majority of respondents who specified a particular form of assistance replied that they would like a lawyer to come with them to court and speak for them. This suggests that more thought

²⁶⁵ ASP4

²⁶⁶ ASP10

should be given to the balance between offering in-court representation and the present model of summary legal advice.

Finally, it is noteworthy that community-based support services for the most vulnerable SRL's – often women facing domestic violence – operate a somewhat different service model that emphasizes ongoing advocacy and support rather than one-off technical advice. These services are often delivered primarily by counselors and domestic violence workers, who have access to lawyers for legal advice and in-court representation²⁶⁷. Some SRL's may need support and advocacy more than they need (or want) legal advice, and certainly more than they want a single limited legal advice session²⁶⁸.

f. Private legal services

i. SRL critiques

There was a great deal of very negative comment in the SRL interviews about the conduct of both their own (previously retained) counsel, and counsel on the other side. The broad themes of criticisms made of legal counsel whom they had previously retained are described above at 4(b). The general tone of these comments was that respondents who were critical of their former legal counsel were extremely resentful that they had spent so much money (in a few cases more than \$75,000, with a significant group expending more than \$20,000) on legal services that they felt did not represent value-for-money. Looking back, they did not understand why they had paid so much and achieved, in their view, so little in return. This resentment was sometimes heightened by a complaint that their lawyer had not listened to them or taken their input seriously, but had instead behaved as if it were “their” decision(s) to make.

The highest response to any one of our regular Facebook “Question of the Week” came to a question we posed in October 2012 about the education of future lawyers who would encounter SRL's. The question read:

“Law school does not teach prospective lawyers very much about the needs of clients, and nothing about working with a self represented litigant on the other side. What would you like a law student and prospective lawyer to be taught about working with self reps? If you were addressing a law school class, what information would you offer them that would help them to approach self reps with understanding and professionalism?”

The emphasis in the many comments posted by SRL's was on respect. For example,

“I would like to tell future lawyers that when working with a self-represented litigant, that they should show them the same respect and courtesy that they would

²⁶⁷ For example, in the fieldsite locations, South Fraser Legal Services, Luke's Place, Osahwa, Hiatus House, Windsor Ontario

²⁶⁸ OSP25

to another lawyer. I would encourage them to negotiate with a self-rep. and go forward with a focus on mediation as opposed to trial.”²⁶⁹

“Treat us with the same respect you want. Don't assume we are stupid just because we have not gone to law school... Be prepared to face a person who will not back down and wants this resolved quickly and soon. They are not in it to make money but to get their lives back in order.”²⁷⁰

Despite these criticisms, most of those SRL's asked in their interview if they would want a lawyer to help them if they could now be provided with affordable, competent counsel responded in the affirmative²⁷¹.

ii. Comments about opposing counsel

In addition, there were many complaints by SRL's about the conduct of opposing counsel in the 75% of cases where there was a legal representative on the other side. A few spoke about the helpfulness and civility of the lawyer on the other side – but these were a minority group. Many others described behavior and tactics that they understood as intentionally designed to bully and intimidate a person who is representing themselves. For example,

“As soon as he knew I was representing myself, he went in for the kill.”²⁷²

“The lawyer for the plaintiff uses tactics such as harassment and bullying to try to confuse and intimidate me. It is very sad.”²⁷³

References abound in the transcripts to lawyers' using what SRL's describe as “tricks of the trade” such as “snowing” them in paperwork, last minute cancellations, threatening them with costs, and refusal or delays in providing information. These comments may be understood as “merely” reactions to the inherently adversarial nature of legal proceedings, but nevertheless SRL's response to this type of behavior lowers the reputation of the legal profession and raises public ire (see below, “complaints”).

Some SRL's go further to claim that judges and lawyers see themselves as above the rules, whereas they are strictly imposed on a SRL.

“My ex's lawyer treated me very poorly. When I pointed out to him that he needed to provide me with information and within a specified period, he responded “You're not a lawyer, we don't have to follow the rules.”²⁷⁴

²⁶⁹ BC47

²⁷⁰ ON22

²⁷¹ See above at (10)(a)

²⁷² BC2

²⁷³ ON29

²⁷⁴ BC46

The small group (n=four) of lawyer SRL's expressed the greatest shock - and sometimes disappointment - about the behavior of opposing counsel.

"The lawyers strategize to marginalize you because you are a SRL. And in fact, destroy one's procedural rights by painting you as the angry stereotype SRL. I am shocked at the success of this stereotyping and how negative it is. Its unbelievable the contempt I am treated with.²⁷⁵"

From the perspective of some counsel, SRL's are given an unfair advantage because some judges will take more time with them and even "bend the rules" for them²⁷⁶. Unsurprisingly, lawyers generally see the problem from the perspective of difficulties faced by counsel when there is an individual without representation on the others side. For example, should they provide them with any information or guidance? How should they communicate with them? Can they negotiate on equal terms?

However this issue is framed – and both perspectives without doubt have validity – the obvious response is to engage the Professional Code of Conduct for lawyers in each province. The Code could provide clear guidance to lawyers and should also entrench a commitment to respectful behavior by counsel towards SRL's. Some excellent initial proposals have emerged over the last few years²⁷⁷; a sustained effort is now needed to bring this material into the provincial Codes.

iii. Unbundled legal services

Many SRL respondents described a fruitless search for a lawyer who would "just" help them with a [art of their case – for example, reviewing their documents, checking their forms or coming with them to a hearing or court appearance. None called this "unbundling", a term of art developed to describe the delivery of legal services on a task-by-task basis but that was exactly what they were describing. Respondents described seeking assistance with completing forms; reviewing completed forms and other documents; writing a letter to the other side; answering questions of law; preparing for a hearing; and representation in court for one hearing only (or someone to work with them in court, as one SRL called it "a switch-hitter" for his trial²⁷⁸)

Those who were unable to find a lawyer who would provide services on this basis were both frustrated and perplexed. Part of their frustration related to not understanding why a lawyer could not give them some type of reasonable estimate of cost in advance.

²⁷⁵ ON60

²⁷⁶ Carson G. & Stangarone M. "Self-Represented Litigants in the Family Courts: is Self-Representation an Unfair Tactic?" available at http://www.macdonaldpartners.com/articles/articles_georgina_carson.html

²⁷⁷ See for example Wilding, K "Tips for Dealing with the Self-Represented Litigant" Ontario Bar Association Continuing Legal Education 2010, available at <http://www.oba.org/oba/CDMarker/CDfiles/10INST2010/856110INST2010547123421538/PUBTab2B.pdf> and "Canadian Code of Conduct for Trial Lawyers Involved in Civil Actions Involving Unrepresented Litigants" American College of Trial Lawyers, 2009. Note that among many promising provisions in the latter document, there is no mention of a duty to respect the SRL (just the court), which is one of the issues most frequently mentioned by SRL's.

²⁷⁸ ON47

“A mechanic will tell you how long it will take and about how much it will cost – a lawyer won’t do that.”²⁷⁹

SRL’s who had previously retained legal counsel were generally more successful in finding a lawyer (often their former legal counsel) who would assist them on an unbundled, task-by-task basis, for example, by making a one-off court appearance or reviewing documents. Even this group was small – just thirteen respondents in total. Each considered the input they received from a lawyer on an unbundled basis to be critical in enabling them to proceed effectively.

Janice²⁸⁰ had previously retained legal counsel in her dispute over custody with her daughter’s father with whom she had had a brief relationship. Having spent \$29,000 on counsel within a few months, she could not longer afford him.

As the date of her trial (scheduled for nine days) approached, Janice (in the final trimester of a new pregnancy) searched for a lawyer who would give her unbundled advice. She knew she could not afford to pay for a lawyer to represent her at trial, but she needed at least to find someone who would help her to get ready and organized. One day she worked with her former lawyer’s secretary, who helped her organize her binders (she paid her at a lower hourly rate than the lawyer for this assistance).

Finally Janice found a lawyer who would give her unbundled advice. “Before the trial, I saw him every couple of weeks with a list of questions. This was what got me through the trial.”

iv. Para-legal services

Para-legals usually work under the supervision of lawyers in Canada and the United States, typically undertaking tasks that focus on legal procedures and paperwork such as drafting, assessing and filing documents, preparing motions and other paperwork. In other jurisdictions (for example the United Kingdom²⁸¹) the development of para-legal work outside the supervision of the profession has meant its expansion into areas that would traditionally be considered “legal work”, such as providing legal advice and opinions.

In contrast, Law Societies in Canada have been diligent in prosecuting the “unauthorized practice of law” where notaries, consultants and other para-legals venture outside the narrow scopes of practice that presently restrict them. In Ontario, the Law Society offers a licensing process (creating “licensed para-legals”²⁸²) which is compulsory

²⁷⁹ ON2

²⁸⁰ BC37. Her story is also told above at page 71

²⁸¹ For information see www.nationalparalegals.co.uk and www.theiop.org

²⁸² <http://www.lsuc.on.ca/licensingprocessparalegal/>

for any paralegal wishing to act as an advocate in a court or before a tribunal. The licensing process enables the Society to have oversight of para-legals and explicitly prohibits them from taking on any family work, restricting their practice to small claims, traffic and tribunal work, along with some provincial offences.

Some SRL's complained that they did not understand why they needed to pay a lawyer's hourly rate for some tasks which they believed could be carried out by a para-legal. advance – and another part questioned the need for a person with the qualifications and hourly rate of a lawyer to undertake certain relatively simple tasks.

“Why can't I get a sworn affidavit for \$60? Why does a lawyer have to do it?” ²⁸³

A few SRL respondents talked about their interest in assisting other SRL's as a para-legal, and three told me that they were developing a small business assisting SRL's. One former SRL who is now assisting others commented that she was often shown lawyers correspondence by other SRL's who asked her to help them understand what was written, and that she often ended up advising people how to deal with their lawyers. She commented:

“Many of my clients have lawyers, but they do not seem to understand them, or the clients feel they are not getting a straight answer to their questions. They end up asking me to coach them to deal with their lawyers. Some of these lawyers are charging \$400-500 an hour and their clients ask me “Am I being duped?” ²⁸⁴

Three SRL respondents were themselves para-legals. Each commented that this was somewhat helpful since they already had some familiarity with legal procedure. In addition the study interviewed three para-legals, one from each province. Each of these individuals felt that there was an urgent need to re-examine present restrictions on para-legal work in light of public need for less costly legal services. Further, they each pointed out that the type of assistance that they could provide without formal legal qualifications was often just what some SRL's actually wanted and needed in handling their own case; “(most people) do not want the advice, they know what they want to do and they just need to know how to do it.”²⁸⁵ Another pointed out the appearance of conflict if the determination of the parameters of para-legal activity remains solely in the hands of the profession:

“I do not trust the Benchers to decide the appropriate role of para-legals in the public interest – there is too much conflict of interest.”²⁸⁶

This study suggests that further study is needed of the extent to which para-legal assistance could be utilized by SRL's, the types of existing para-legal activity are seen as

²⁸³ BC60. In some provinces (eg British Columbia) notaries do offer this service for a lower cost than a typical hourly rate for counsel. Presumably this respondent was unaware of this.

²⁸⁴ BC52

²⁸⁵ ASP4

²⁸⁶ OSP35

most helpful by SRL's, as well as a re-examination of the public interest in setting parameters for para-legal assistance.

11. Court appearances and interactions with judges

This study did not interview judges²⁸⁷. This was not because their views on the topic of SRL's are not extremely important – but because the study focused on the experience from the perspective of the SRL (as well as the observations of court staff working with SRL's on a daily basis). The following section summarizes this data.

a. Negative experiences: overview

Whatever the stress and anxiety created by completing forms, filing and serving documents, and communicating with a lawyer on the other side, it is appearing in court – whether at a preliminary hearing or a full trial – that is always the most intensely anticipated and intimidating aspect of the SRL experience. Aside from a couple of individuals whose cases had only just commenced, almost all the SRL's in the sample experienced appearing before a judge – and in many cases, multiple judges.

Even the most self-confident SRL's experienced anxiety about speaking for themselves in front of a judge. Those who felt that they were well-prepared for the experience told us that they were surprised at how nervous they became as their court date approached, often losing sleep and sometimes becoming fixated on their case and arguments. This more confident and well-educated group also reflected that if they experienced this level of stress, how much harder it would be for others without their skills and advantages. One university-educated, confident and articulate SRL spent six years working on a case that required her to appear before a number of different administrative tribunals and judges.

“It was tremendously, tremendously difficult. I am an educated individual – but I go to court all the time with other people who are just way over their heads...(H)ow can a person handling issues like this on their own figure this out?”²⁸⁸

Many SRL's described themselves as terrified about the prospect of appearing in court. Some broke into tears in our interviews just thinking about it²⁸⁹. Many recounted being unable to sleep for several or many nights before their appearance; shaking with nerves as they stood to speak; leaving court feeling upset, shaken and even humiliated; and experiencing stress-related symptoms for days afterwards.

²⁸⁷ However for a view from the Bench see for example, The Honorable Madam Justice Jennifer Blishen “Self-Represented Litigants in Family and Civil Disputes” 25 CFLQ 117 (year?) and the Honorable Madam Justice Trussler “A Judicial View on Self-Represented Litigants” 19 CFLQ 547 (year)

²⁸⁸ AB71

²⁸⁹ For example, ON64

“Everyday I went to court I was shivering and shaking all day. I was always concerned about what I would say – I just wanted to get it over with”²⁹⁰

Most tellingly, the small number of SRL’s in the sample who also practice law described similar bouts of nerves. All these respondents described the difference they experienced between appearing as a professional on behalf of a client, and presenting an argument which had personal emotional and practical import. One lawyer-SRL, the applicant in a family dispute, described the impact of appearing on his own behalf – “even on uncontested motions, even for a case conference” – as follows.

“Every hearing, the week before and the week after, I’m a wreck. After one appearance, I went back to my office and started to work on a file. I realized I couldn’t focus and then that I couldn’t remember anything about the file. In the end, feeling like an idiot, I went to the emergency room. I had temporary amnesiaI lost my memory for 24 hours. Even coming in here today for this interview (this respondent was interviewed in a courthouse), I felt sick to my stomach”²⁹¹

The impact of unpleasant experiences in court is recounted many times in SRL interviews. The following story, recounted by a well-educated businessman in his 50’s, sets the scene. This respondent broke into tears as he spoke about his experience.

Paul’s lawyer said he could no longer represent him because he did not want to continue with a case that appeared to be heading to trial. Paul asked for an adjournment – giving notice to the other lawyer – in order that he could find another lawyer.

The experience of asking for an adjournment “was the worst experience of my whole life...it was embarrassing and humiliating. The judge blasted me as an incompetent father – I was shaking. I had never been treated like that in my whole life. He sent me out of the court and told me not to come back until I had a lawyer.”²⁹²

It is clear from interviews that anxiety is a natural consequence of the fact that SRL’s generally have less understanding of the hearings process than trained lawyers or judges. However, this anxiety has a very significant impact on the hearings process itself (including how a SRL feels when the hearing is over, a feeling that is often carried into subsequent hearings), as well as the overall SRL experience of “access to justice”. SRL appearance anxiety needs to be carefully analyzed in order to explore its multiple causes to enable consideration of ways in which it might be reduced, in the interests of all parties (including members of the judiciary).

²⁹⁰ BC35

²⁹¹ ON3

²⁹² ON65

SRL anxiety about court appearances was related to a number of common themes, described below.

i. Feeling like an outsider

The mildest expression of anxiety about appearing in court focuses on the feeling of being an outsider, unable to properly participate due to the unfamiliar language, procedures and customs of the courtroom. One SRL described this as “(L)ike going as agnostic to a religious court”²⁹³ Some SRL’s worried about appearing impolite to the Bench as a result of their lack of knowledge (see (b) below).

Many SRL’s commented about the impact of legal language used by judges and lawyers which they felt distanced them from the proceedings and made it hard for them to be sure they were following what was happening in the courtroom. In contrast, they observe, “(T)he lawyers and the judges speak the same language.”²⁹⁴ While it is inevitable that lawyers and judges will use legal expressions that may not be familiar to SRL’s, this unfortunately contributes to a feeling of exclusion and even (from a SRL perspective) “collusion”²⁹⁵ between lawyers and judges. “There is the appearance that the lawyers get special treatment because they understand the language.”²⁹⁶ One SRL reflected this sense of disadvantage when he commented that going into court without counsel “(I)s like going into a gunfight armed only with a knife.”²⁹⁷

Whereas some judges were complimented for going to some lengths to ensure that a SRL appearing in their court felt comfortable and understood the proceedings, others were described as behaving in ways that exacerbated the distance between the SRL and the court process. Sometimes the use of legal language appeared to be an intentional strategy to position the SRL outside the conversation.

“The judge told me to go and look up “*res judicata*” in the library. The lawyer for the other side wrote it on a piece of paper and tore it off and gave it to me”.²⁹⁸

Other examples of judicial behavior described to me which created distance / exclusion included the judge talking primarily with the lawyer on the other side²⁹⁹, cutting off the SRL when they asked a question (many described being told to “sit down”³⁰⁰ in an abrupt and discourteous manner), or simply remaining aloof and distant in a way that created a feeling of exclusion (“the judge stayed on his throne”³⁰¹).

²⁹³ ON54

²⁹⁴ BC44

²⁹⁵ Add ref

²⁹⁶ AB66

²⁹⁷ AB46

²⁹⁸ BC14

²⁹⁹ For example, ON14, AB33

³⁰⁰ For example, AB15, BC17

³⁰¹ BC37

One SRL respondent made the interesting comment that this sense of exclusion could be addressed by the Bench simply showing “more kindness and compassion”³⁰² towards SRL’s appearing before them.

ii. Not knowing how to behave

Many SRL’s told us that despite their best efforts, they did not know how they were expected to behave in court. Some worried about appearing impolite or discourteous. “I was so confused. I didn’t know when to sit and stand – I didn’t want to appear rude or disrespectful – I was so worried about that”³⁰³ There were frequent complaints that this aspect of court procedure – for example, how to address the judge, when to stand and when to sit – was not covered in available on-line resources. “There’s nothing that says, “This is what you are supposed to say at trial.”³⁰⁴

The anticipation that they would not be able to properly manage their court appearance created further anxiety among SRL’s, and sometimes resentment.

“When I tell myself my story, it makes sense. So I think that when I stand up in front of a judge and tell my story, I can explain myself. But I am so worried that when I stand up, I shall be cut down and not be able to make myself clear and stand up for myself.”³⁰⁵

iii. Emotional investment

Some SRL’s spoke about the difficulty of managing their emotions when they were so personally invested in the outcome of their case. Most understood that if they presented their case with a great deal of emotion, they would almost certainly not succeed. Some described how they had trained themselves through a series of appearances to go to court with their emotions carefully checked.

“It’s hard but you have to wait your turn to speak and present yourself without emotion. When you do that, you can play on their field”³⁰⁶

A number of SRL’s made this same point – “keep your emotions out of it.”³⁰⁷ when asked what advice they had for other SRL’s.

³⁰² BC31

³⁰³ BC13

³⁰⁴ BC57

³⁰⁵ ON65

³⁰⁶ AB30

³⁰⁷ ON8. Also AB3. A similar point is made in relation to all forms of communication with the other side. For example, “Remove emotion from your communication, state what you want, when you want it and when you want an answer.” BC42

iv. *Multiple judges*

There were many complaints about the difficulty of appearing before multiple judges, especially in family matters. As one SRL put it, “Its like a box of chocolates – you never know what you are going to get.”³⁰⁸ Some family SRL’s complained that they felt as if they had to begin afresh each time they saw a new judge – in part by reviewing the facts but also, crucially, in developing a relationship with the judge and establishing their own credibility.

Occasionally a SRL found themselves in a case management system that meant that they saw the same judge several times over. This was always highlighted and welcomed. Aside from the practical efficiency, this continuity was extremely important in creating a sense of confidence in the system and reducing anxiety.

v. *Judge did not read materials*

There were many complaints that the presiding judge had not read the materials the SRL had worked on in advance.³⁰⁹ While this may sometimes be difficult given demands on judicial time, this left some SRL’s feeling that their efforts in preparing materials were for naught.

“The judge came into the courtroom and the first thing she said was “I haven’t read anything”. “I was shocked, I was naïve enough to believe that the judge would at least have an overview of why the parties were there.”³¹⁰

This problem becomes further exacerbated when multiple judges sitting at different points during a single case. In the most extreme example,

“One time in court, the judges switched after a break and the new judge didn’t even look at the file. She had no idea of what had happened previously, or what point we were at.”³¹¹

A few SRL’s told us that they believed that the judge only read the materials provided by legal counsel, and not by SRL’s, and many believed that their materials were treated as less important by the judge than materials provided by a lawyer on the other side³¹².

³⁰⁸ BC71

³⁰⁹ For example AB23

³¹⁰ BC52

³¹¹ AB40

³¹² Add refs. See also vii below

vi. *Prejudged by the judge*

"I really don't think that judges like SRL's. The judge appeared annoyed with my attempt to self-represent and showed total (sic) bias and condescension in his tone. He had already subconsciously tagged me as an idiot." ³¹³

Many SRL's told us that they were not taken seriously by the judge. This leads to a widespread belief among SRL's that since they are going to be really listened to, they cannot expect a positive result.

"From my limited experience representing myself so far, I find that the judges sometimes go with the source that they perceive as "credible" – this means that big corporations or government with lawyers are always going to win"³¹⁴

In one case this assumption was made explicit by the judge.

"There was a settlement conference scheduled but the judge ordered that I must get a lawyer to represent me, or not take any further steps in the matter. The judge said 'All self represented litigants lose.' I did not reply - I was stunned."³¹⁵

SRL's who had spent many hours preparing for their hearing felt disappointed and discouraged when they encountered this attitude from the Bench.

"The judicial case conference was my first appearance...The master belittled me – he made a comment "just because you are a self rep, don't expect any leniency here." In fact I was well prepared. But he gave me a lecture instead."³¹⁶.

Some SRL's described particular non-verbal behaviors by the judges who heard their submissions that left them feeling, just like this woman, "belittled."³¹⁷ One described how "the judge rolled his eyes and played with his elastic band all the way through"³¹⁸ as she presented her case. Several talked about what they experienced as an inappropriate use of humor/ laughter, usually between the judge and the lawyer on the other side. Others felt offended by the disregard they saw conveyed by the judge's body language, for example; "He (the judge) sat back, swinging his chair, and eating candies, while he handed down his decision about where my children would live."³¹⁹ Another SRL described a similar experience as she watched another case involving two SRL's.

³¹³ AB2, also AB27

³¹⁴ BC44

³¹⁵ ON50

³¹⁶ BC46, also AB51

³¹⁷ For example BC88

³¹⁸ BC8

³¹⁹ AB44

“At the Court of Queens Bench I observed two self representing parties. The judge had mentioned she had a 12:30 appointment and asked the people to 'make it quick'. The gentleman was seeking the court's help as his wife was taking his kids to Turkey. However, time was up and the Judge needed to move on. If I hadn't seen it for myself, I wouldn't have believed that a decision of this magnitude could be addressed with proper consideration.”³²⁰

While there is often time pressure in the courts, there may be a failure in some instances to provide this explanation to the parties in a way that they can understand. In the absence of this clarity, some SRL's believe that this means that the court does not care about ordinary people and their problems.

vii. *A “two-tiered system”*

Many of the complaints about not being taken seriously were associated with the observation that the judge preferred to talk with a lawyer (the other side was represented in 75% of the sample).

“Judges used to be lawyers, and they are biased in favour of the lawyers. The judges are only interested in talking to the lawyers. One judge actually said to me “I have no time for you.”³²¹

At best, as one SRL put it, “I was always going second”.³²² Others complained that they were not permitted to speak at anything like the same length as the lawyer on the other side³²³, and/or that they were cut short in their presentations, and/or that they were not consulted on procedural issues like adjournments or scheduling future events. Some complained that they believed that lawyers were given more leeway regarding procedural requirements while the SRL was held to a more rigid standard³²⁴. The following is a typical example of such a complaint:

“On my last appearance the lawyer on the other side did not show up. The Master made me wait for four hours and then the lawyer rushed in at the last minute. If it had been the other way around this would not have happened.”³²⁵

A practical example of the consequences of the more natural conversation and interaction between judge and counsel - which came up in several interviews³²⁶ - relates to the drafting of consent orders. The usual procedure with both parties represented is for this document to be exchanged and approved by each prior to filing with the court. Where only one side has legal counsel, the practice appears to be developing that that

³²⁰ AB70

³²¹ ON50. Also ON54

³²² AB33

³²³ BC61

³²⁴ AB4, BC19

³²⁵ AB51

³²⁶ For example, BC91

representative will draft the order and submit it to the court. In several cases, this meant that the order was then filed without any review by the SRL (who then raised issues about its content and accuracy). Inevitably, this led to further disputes³²⁷. This particular problem – and its possible solutions - is a good illustration of the interdependency of enhancements for SRL's and efficiencies for the court.

The sensitivities of the larger and larger numbers of public visitors to the courthouses challenge some of our previously uncontested assumptions about access and privilege. Some SRL's described the courthouse as having an embedded "apartheid" that privileged legal counsel. The examples they gave included: a registry counter system with lines for lawyers – shorter and faster – and lines for SRL's; different security lines to enter the courthouse (again, the longer lines are the public lines); and even access to a water cooler at the front of one courtroom deemed "lawyers only". Even the siting of the barristers lounge could raise hackles. For example, in Brampton, the comfortable couches and coffee machines inside the barristers lounge are clearly visible to members of the public through large plate windows as they wait in long security lines outside the courthouse.

viii. Experiencing hostility

Fiona was owed almost \$300,000 in support arrears - her ex-husband had stopped making any payments to her years before. After suffering a brain injury in an accident, Fiona was no longer able to work. She began an action to try to collect her support. She told me that she imagined at the outset that they would negotiate an agreement over the arrears; her main concern was to ensure that her ex-husband began to pay her support now that she no longer had an income.

Fiona was represented by counsel for more than two years, but ran out of money to pay her lawyer. She said that in this period, "nothing had changed – there had been no proposals for settlement, no meetings, no negotiation". So she began to represent herself.

Fiona asked for a settlement conference, but nervous about her ability to manage an appearance, she asked her former lawyer to come with her just for that day. "I just couldn't stop crying."

³²⁷ For a different (and unusual approach), see AB4

Fiona's fears of handling the settlement conference solo turned out to be well founded. As a person with a brain injury, she needed to take notes for her future recall, but the judge would not let her and told her, "Put your pen down." Fiona explained why she needed to take notes and asked if someone else might sit with her and take notes on her behalf. The judge refused this request as well. "You must respect the court and you should not take notes when I am talking."

Fiona tried one more time to explain that she had a brain injury. "You look pretty good to me" said the judge. "Sit down".³²⁸

While stories that could be described as illustrating "hostile" attitudes towards SRL's were far less common than those that suggested irritation, impatience, or dismissive attitudes, a few – like Fiona's - stand out. A few judges appear to have adopted a siege-like mentality towards SRL's, treating them rudely and harshly (a point also made by many service providers and court staff³²⁹).

This hostility was illustrated in various ways in SRL narratives, including conflicts over the scheduling of hearings (for example conflicts with medical appointments or child care responsibilities³³⁰), allowing multiple adjournments against the wishes of the SRL³³¹, accepting evidence that was out of time or improperly served documents – and sometimes in direct interaction between the SRL and the judge.

"The judge told me 'Don't bother coming back to court tomorrow if you're not wearing a tie' – this was his opening remark to me. It was just hostility, all the time."³³²

ix. Experiencing moral judgment

A very consistent theme among SRL respondents was that many judges seemed to view SRL's as a nuisance and an irritation. Many report being told by judges – sometimes over and over in the course of their case – that they "ought to" retain counsel, along with an implicit or explicit statement that the fact that they were not represented was their "fault." The SRL often described their attempt to explain that they could not afford a lawyer, but found their explanation dismissed.

³²⁸ ON1

³²⁹ For example, BSP20, OSP36. See also the further discussion below at (c)

³³⁰ For example, BC78, BC82

³³¹ For example, AB18, AB45

³³² BC14

“The judge I appear before keeps telling me that I need a lawyer. I keep saying that I cannot afford one. The judge asked me about my assets in court in front of other people, which was embarrassing – and then said that she does not understand why I don’t qualify for Legal Aid.”³³³

Another described this as “.. a catch 22 - you can’t afford to hire a lawyer, but the courts don’t want you to represent yourself - and you can’t qualify for Legal Aid.”³³⁴

Judicial attitudes may stem from the continued assumption that individuals who are self-representing are “choosing” this course of action and “rejecting” legal counsel. As this study clearly shows, this is rarely the case; financial constraints are far more likely to be the real reason why an individual is self-representing (and many will have previously used counsel until they ran out of funds).

The persistence of the assumption that SRL’s want to “take on the system” may be the reason that so many told us that the judge not only failed to take their efforts at advocacy seriously (above), but also communicated their moral disapproval that they were representing themselves. One SRL reflected on the pervasiveness of this attitude, which so many experience and feel offended by.

“I’m afraid it only takes one influential judge to influence the others in coffee break chatter – that SRL’s are a bunch of dimwits. Then the standard is established and although they may be judges – and you would think they would be above this type of blanket perception – in the end, they are just people.”³³⁵

A few respondents speculated on the rationale for this pattern of behavior by judges. One mused,

“They (judges) seem to assume that if SRL’s lose, we shall have less of them. But its not working that way.”³³⁶

Several respondents who then went on to retain or to rehire lawyers (having had bad experiences in the first hearing representing themselves), talked about now being “a good girl/boy”³³⁷ now that they were represented.

“You have to have a lawyer so you can be part of this club...and appear to the judges to be a more conforming person.”³³⁸

³³³ ON21

³³⁴ AB35

³³⁵ AB2

³³⁶ BC52. A more likely rationale is that some judges may feel concerned that they might be charged with showing “favour” towards a SRL, and go to some (perhaps extreme) lengths to avoid this.

³³⁷ AB2

³³⁸ AB38

b. Positive experiences: overview

Some – although sadly far fewer – SRL's described a good experience with a judge who showed them understanding and kindness, and/or specifically helped them in some way. Where a SRL appeared before multiple judges, they fairly often (but by no means always) could identify one judge among the total (usually three to six different judges/ masters) who they felt had treated them kindly. This comment – showing kindness - was the most commonly cited positive experience. We asked for further information about what that judge did that was particularly helpful³³⁹.

i. Respectful communication

"I recently attended a Family Court application with my self rep clients in X before Justice Y. He was absolutely wonderful to my self reps, he gave them time to speak, as well explained the procedures very clearly to them and treated them very respectfully."³⁴⁰

Many SRL's in their negative comments about judges emphasized that what they were seeking was respectful communication, rather than particular assistance or aid. For example, many emphasized the importance of being taken seriously,³⁴¹. This para-legal (above) reflected on a good experience in which the judge provided some information to SRL's but also, crucially, treated them "respectfully."

ii. Assisted in problem-solving and settlement

A few judges were singled out for special thanks for assisting the parties move towards a settlement, a goal expressed by many SRL's but often without a clear sense of how to achieve this. For example, this judge used a settlement conference to advance the resolution of a family case.

"She did more in one conversation – through some direct questions to the parties separate from their lawyers, in essence to interview them – more than my lawyer could do in three years." ³⁴²

A few family judges were complimented for demonstrating a real commitment to put the rights and interests of children first. "The judge was amazing. She wasn't on my side, but she was on the side of 'what's good for this kid.'" ³⁴³

³³⁹ See the excellent study by John Greacen "Effectiveness of Courtroom Communication in Hearings Involving Two Self Represented Litigants" Greacen and Associates for the Self Represented Litigants Network, published by the National Center for State Courts 2008. Greacen and his researchers watched judges in 15 hearings in US courtrooms dealing with self-represented litigants and found that the most effective judges developed a range of communication practices with SRL's including asking questions, framing the issues, explaining the law, explaining their decisions, and describing compliance and effects of non-compliance.

³⁴⁰ ASP4

³⁴¹ Being listened to and taken seriously is a well-established aspect of "voice" according to procedural justice research. See for example, Lind, E.A. & Tyler, T., *The Social Psychology of Procedural Justice* (New York: Plenum Press, 1988

³⁴² BC2

iii. Coaching

Some SRL's commented on assistance they received on their presentations. This was a small number, challenging the assumption in some parts of the legal profession that judges uniformly assist SRL's, thereby giving them an unfair advantage³⁴⁴. An even smaller number said that they received any help with legal argument; most of this assistance was in the form of style, not substance. For example, one SRL who was, by her own account, very upset and strained as she argued her case over custody, was told by the judge "If you change how you talk to people, then they will want to talk to you – you are making me bristly." She appreciated – and adopted - this advice³⁴⁵.

Some SRL's commented that in their experience judges were generally more patient, understanding and respectful towards them than lawyers – perhaps because they have more experience than lawyers in dealing with SRL's every day in their courtrooms³⁴⁶.

c. Comments from court staff and service providers

Consistent with data from SRL interviews, court staff and service providers spoke about some judges who were willing to be helpful to SRL's and others who were "getting better"³⁴⁷ – and others who had no time for them at all. Some saw judges expressing anger towards SRL's³⁴⁸. One group of service providers described SRL's commonly feeling "scolded" by judges – "because they are not organized or do not know what to do."³⁴⁹ While a few court staff and service providers named a particular judge whom they saw as going to great lengths to help SRL's – sometimes too far, in their view – far more often they described judges as being disconnected from the reality of the SRL experience.

"Judges need to be less afraid and roll up their sleeves and deal with the public. ...Judges need to be dealing with the human side first - keep the formality, but be respectful of the human condition." ³⁵⁰

When asked "what do you think are SRL's most common frustrations?" a significant number of court staff and service providers mentioned judges³⁵¹. They talked about a widespread assumption among SRL's that they would be able to speak directly to a judge and "make them understand".³⁵²

³⁴³ BC69

³⁴⁴ For example, Carson, G. & Stangarone, M. "Self-Represented Litigants in the Family Courts: is Self-Representation an Unfair Tactic?" available at http://www.macdonaldpartners.com/articles/articles_georgina_carson.html

³⁴⁵ BC8. Also ON42

³⁴⁶ BC63

³⁴⁷ ASP5

³⁴⁸ BSP20

³⁴⁹ BSP7

³⁵⁰ OSP16

³⁵¹ BSP10, BSP16

³⁵² BSP21

Some court staff complained that information they gave to SRL's was sometimes contradicted by the judge, or that the judge might tell a SRL something that they could not achieve for them³⁵³. This added to the frustration of the SRL and hence to the burden on counter staff.

d. Conclusions

"There are all these buildings – the courthouses - that are like false front buildings, like they have at Universal studios – they are supposed to help you, but they don't."³⁵⁴

The negativity of so many SRL comments about judges make for upsetting reading, but they point to some deep-rooted problems that require our urgent attention. Read alongside the poor experiences of many SRL's with legal counsel, they suggest that public confidence in the justice system is damaged, and diminishing further day by day.

A critical first step is to address the widespread misapprehension among members of the Bench and the Bar that SRL's have other (better) choices to representing themselves. This fundamental misreading of the SRL phenomenon in 2013 leads to many other unhelpful assumptions – that SRL's are intentionally bringing a feeling of chaos to their courtrooms, which they use to take unfair advantage. These assumptions are reflected over and over in the comments that SRL's make about their treatment by judges. One SRL who had had a number of successful experiences in the past in small claims court said that he now saw a different climate in the courts, with judges "...corrupted by this SRL stereotype and (using) it to justify (their) own logic."³⁵⁵

Judicial appointment and education needs to reflect the new reality – especially in family court – that judges now deal with SRL's on a daily basis. This is a huge change from 20 years ago and an unwelcome one for some judges. Discussing a matter with trained professionals is a completely different process – and one that judges have been well trained to undertake – than communicating with an (often) emotional and overwhelmed SRL. Some useful work has already been done to create judicial guidelines for working with SRL's³⁵⁶, and it is hoped that the conclusions of this study will feed into this ongoing work. However far more work remains to prepare judges for working with SRL's (see Recommendations, below).

A few especially busy courts³⁵⁷ are beginning to offer a less intimidating forum for SRL's at first appearance, with a special clerk assisting them to get ready to speak to a judge. This is a sensible development and should be considered more widely.

³⁵³ For example APS20, OSP37

³⁵⁴ BC8

³⁵⁵ ON54

³⁵⁶ See for example E. Richardson "Self-represented parties: a trial management guide for the judiciary" Melbourne, County Court of Victoria 2004

³⁵⁷ For exmple the OCJ in Jarvis Street, Toronto

A few SRL's³⁵⁸ point to a systemic problem. The foundational principle of the justice system (even in family matters) is adversarial advocacy. Judges and lawyers are accustomed to framing every interaction in these terms. SRL's who lack training in law do not fit easily into this framework; and when they make efforts to adopt this strategy, they are often seen as unreasonable, ignorant and obstructive.

12. Personal and social impact on SRL's

SRL respondents described a wide range of impacts and consequences for them arising out of their decision to self-represent. Many if not most of these were unanticipated, at least to the degree that they became a problem. The experience of speaking with so many SRL's over the 13 months of data collection left the Principal Investigator with a very real sense of the impact experienced by many. At the same time, few SRL respondents saw any other choice. Where there were negative consequences for their lives they therefore saw these inevitable. This did not mean however that they did not carry a sense of grievance – and in some cases, embarrassment and astonishment – over the extent of these consequences.

a. Personal health issues

Many SRL's describe stress-related consequences of acting as a SRL including depression and physical ailments (e.g. sleep disorders, headaches, weight loss, and depression). Some of these appear to be similar to the symptoms of post-traumatic stress disorder³⁵⁹.

"It's a traumatic experience every time I walk into the court. The last time I went to court I couldn't get out of bed after for three days."

"The stress was making me stutter in court....you are so stressed, out of your mind, it all becomes a confusing mess. if I have to go to trial I just don't know if I'm able to do it." (in tears)

"For a while (after the trial) I could not physically go within a two block perimeter of the courthouse in X....I could not go on the computer after the trial either – I had spent so much time on that computer. I got rid of it and had no computer for six

³⁵⁸ ON54

³⁵⁹ PTSD is characterized by extreme anxiety, depression, difficulty concentrating, difficulty sleeping, and panic attacks that are "triggered" by a particular experience. There is an ongoing debate over the "stressor criterion" which is the "gatekeeper" for the American Psychiatric Association's definition of PTSD. The most recent (1994, 4th edition) Diagnostic and Statistical Manual of Mental Disorders describes a traumatic event as any incident that involves "...a threat to the physical integrity of self or others." Others have argued for a broader definition to include non-life threatening events; see Anders, S.L., Frazier, P.A. & Frankfurt, S.B. "Variations in Criterion A and PTSD rates in a community sample of women" 25(2) Journal of Anxiety Disorders (2011) 176. A much anticipated 5th edition will be published in May 2013 that may reflect this debate. The second part of the APA definition is that "... the person's response involves intense fear, helplessness, or horror".

months. Then I bought a different computer and put it in a different place in my house.”³⁶⁰

It is important to understand these symptoms as beyond the control of the individual. It also appears to be the case (as for example with PTSD) that these symptoms are not related to a pre-existing depressive or anxiety condition or vulnerability. Several SRL’s spoke about their amazement that the experience produced such strong emotions in them. In an interview with Macleans magazine in February 2013, one of the study respondents, a mild-mannered middle-class professional whom we have met and spoken with on several occasions described his experience this way:

“I truly believe I became borderline psychopathic,” he says. “I felt so frustrated, so limited in what I could do. I could write a blockbuster story about the nasty, mean thoughts that went through my head.”³⁶¹

A number of others described having to take time off work to recover from their symptoms, and a few gave up work altogether³⁶².

The experience for some of the small number of lawyer SRL’s in the sample was equally intense, despite the fact that they were accustomed to appearing in court on behalf of clients.

“I would say I was traumatized. I was sick for a long time, and I’m not over it.”³⁶³

All the SRL’s in the sample had families and friends who were also affected by their experience.

“Judges, policymakers and justice system officers would benefit from the knowledge that intimidation, prejudice and not taking people seriously are not only stressful (and harmful) to those immediately involved, but to those people who love and support them as well.”³⁶⁴

b. Financial implications

Some SRL’s describe having already expended their savings on legal counsel in earlier litigation. A few have now given up work in order to concentrate on preparing for their court case. One woman who is a Human Resources professional described how her increasingly acrimonious custody case – where her ex-husband is represented by counsel – “created so much work for me (like many SRL’s, she felt obligated to respond to everything she received from the other side lest she suffer some disadvantage) that it was impossible

³⁶⁰ BC37

³⁶¹ “Why people representing themselves in court are clogging the justice system” Macleans magazine February 04 2013, available at <http://www2.macleans.ca/2013/02/04/courting-a-crisis/>

³⁶² B32, BC82

³⁶³ ON3

³⁶⁴ BC30

to keep working.” The consequence as she described it is “that my son and I are being pushed into poverty.”³⁶⁵

Others describe the impact of the time they spend working on their case on their work responsibilities, including days taken off to attend court and exhaustion from long nights spent preparing their case. Others say that they cannot look for work while they are absorbed with their legal action.

c. Social isolation

Despite their large and growing numbers, SRL’s have little contact with one another and their preoccupation with their legal case often isolates them from family and friends. As one respondent acknowledged:

“I dwell on it all day, every day. There is not a day that goes by when I don’t research this, think about it, I am basically fixated on this.”³⁶⁶

“I became so overwhelmed that I kept talking about it all the time and alienated myself from my friends.”³⁶⁷

At the same time, some family SRL’s suggested that it was inevitable that they would become “fixated” on their case if they were to commit the time and energy that they believed that it required especially if the matter came to trial.

“I lost touch with my sons during this time, I was so taken up with the trial. My relationship with my new girlfriend suffered. I was totally immersed in it, *but I had to be.*”³⁶⁸ (my italics)

The Project Facebook page has gradually developed a community of people who want to talk to one another. As further evidence of the extent of this isolation for some SRL’s, many said that they needed some face-to-face contact – and a sympathetic ear – even if they could access all the information they needed electronically³⁶⁹.

d. Failing faith in the justice system

The depth of skepticism being expressed in these interviews about the justice system is difficult to over-state. While some of the most extreme reactions border on the paranoid, many SRL’s appraise their experience in a rational and balanced way in coming to the conclusion that the justice system is “broken”. Their basic complaint is clear - that instead of a user-friendly, practical means of resolving disputes the courts offer a false promise of “access to justice”.

³⁶⁵ BC83

³⁶⁶ ON47

³⁶⁷ BC29

³⁶⁸BC21

³⁶⁹ See above at (7)(b)

“No matter how right your cause is, you do not get the justice you deserve because it is about your resources.”

This loss of faith is further expressed and reinforced by accounts of negative experiences with justice actors, primarily judges and lawyers. It is deepened by a widespread sense that judges and lawyers are not accountable for their behaviors. A very large number of those complaining about the actions of their own lawyer, the lawyer on the other side, and/or a judge who heard their case described their sense of injustice that there was in their view no effective process to hold this person accountable, anticipating that existing regulatory procedures for bringing a complaint would be ineffectual and a waste of their time, citing what many called “the old boys club.”³⁷⁰ A few SRL’s have brought forward formal complaints, either regarding a lawyer or a judge; all but one have been unsuccessful. Just one respondent in the sample had succeeded in an action against her former counsel for negligence³⁷¹.

The final story in this section synthesizes many of the points made above. It comes from a very sophisticated respondent who was pursuing a relatively “trivial” claim for property damage. It illustrates the way in which some SRL’s get pulled into the vortex of a case that then begins to impact their life to a far greater extent than anything they could have imagined.

Sonia³⁷² was horrified when her artist’s studio was damaged in a fire. The fire had been accidentally caused by the landlord, and the resulting smoke and water damaged many of her paintings beyond repair.

While the landlord accepted responsibility for the damage, he did not want to make a claim on his insurance to meet Sonia’s claim for compensation. They negotiated for a while – she was asking for \$1200 to cover the damage to her studio - but the relationship began to get acrimonious and Sonia realized she wasn’t going to resolve this by agreement. However “(A)s artists, we had no money to pay for a lawyer.” Sonia thought about dropping the case when she discovered how much work it was actually going to be – but she had had some other experiences in which she felt she had been taken advantage of – an accident in her car and another on her bike – and she now felt it was time to stand up for herself. So she decided to press ahead. “I felt at the time, “I can’t keep backing down, I need to stand up for myself.”

³⁷⁰ AB27

³⁷¹ AB65

³⁷² BC48

Despite her education and determination, Sonia found the process far more complex than she had expected. Filing the forms and serving the documents was difficult and time-consuming, but this was just the beginning. Sonia's case began in a BC tribunal, moved into the small claims court, and then was appealed by the landlord into the BC Supreme Court.

When Sonia appeared in court for the first time, "I was terrified. It was so strange to find yourself in a courtroom and suddenly I felt like I had done something wrong." All the paperwork filed by the defendant was about her character and made allegations about her truthfulness. By now the defendant was also representing himself and would not settle. In a full day mediation he proposed that both sides drop their claims. Sonia felt she could not give up and accept this.

They went to a three-day trial in the small claims court. "I felt like I was in a comedy law series, because the plot they had spun was so out of control but the problem was, it was being taken seriously. I had to pull in my whole family to help me – there were allegations being made about me that had to be addressed." Sonia says that she was fortunate to appear before a patient and effective judge but he could not persuade the defendant to settle either.

Sonia won in the small claims court but the landlord appealed. She considered again hiring a lawyer, but was worried that it would be "cripplingly expensive". By now, "I felt trapped – if I dropped out now, I might end up paying his costs". She felt that she needed to finish this. Eventually the landlord's appeal was dismissed. However Sonia never received any money from her judgment against him.

"If I have reached such an emotional breaking point over such a trivial issue, where no one was hurt and only a small amount of money is involved, what is it like for people who have lost significant amounts and have had real trauma? I was stuck in the system and could not get out. ... I would never ever bring anything into the justice system again, but if there is something really important at stake, that is where the system should be working."

Part 5: Preliminary Recommendations

There is an urgent need to address the consequences of the large and growing numbers of people representing themselves in both family and civil court. Current initiatives are having some impact but are insufficient in terms of both scope and creativity. All parts of the justice system are affected, including courts administration but also members of the legal profession and the Bench.

These preliminary recommendations propose some first steps towards a proactive approach, while recognizing that the complexity of the shift away from representation by agents towards self-representation involves many unknowns. An overarching recommendation therefore is that in order to address this issue we remain open-minded, willing to innovate and experiment, and open to listening to the SRL experience. Taking a systems approach to the challenges we face is also more likely to be effective over the long-term than apportioning blame or privileging any single analysis.

Hopefully, the Dialogue Event (“Opening the Dialogue: the SRL Phenomenon” to be held at the University of Windsor May 9-11th 2013) will build on and strengthen these preliminary recommendations.

How SRL’s engage with the justice system

1. Court forms

Study findings:

While on-line court forms appear to offer the prospect of enhanced access to justice, many forms are complex and difficult to complete, and SRL’s often find they have made mistakes and omissions. The most common complaints include difficulty knowing which form(s) to use; apparently inconsistent information from court staff/ judges; difficulty with the language used on forms; and the consequences of mistakes including adjournments and more wasted time and stress. These widespread difficulties result in frustration for SRL’s and additional burdens on court personnel, including registry staff and judges.

There has been some progress made towards developing user-friendly and simplified court forms, but it is far too little. Many court staff commented that they (and some lawyers) also had difficulty completing complex and lengthy court forms and keeping up with constant changes. In her assignment to apply for a divorce in the three provinces (The Divorce Applications Project), Kyla Fair also found that even with legal training, the forms were confusing, contained terminology she did not understand, and required an enormous amount of work and concentration.

Court guides are an important step towards assisting SRL’s complete forms and understand court procedure but these too are often written in a confusing and complex

manner. In her "audit" of three sample Court Guides, Cynthia Eagan found problems very similar to those highlighted above by SRL's regarding court forms (see (2) below).

Preliminary recommendations:

- 1(a) "Best practice" standards are needed that recognize the nature and scale of SRL problems with comprehending and completing court forms. Best practice standards should reflect systemic problems (above) and include: reducing the multiplicity of forms; simplifying language used on forms which is sometimes at a very high (grade 12 or 13) reading level and frequently includes legal terminology that SRL's do not understand; ensure that information (and vocabulary) is consistent. Where forms are provided on-line, these should also follow the best practice standards adopted for on-line resources (above at (1)(a)).
- 1(b) It is not helpful for SRL's who cannot afford to pay for legal counsel to be constantly faced with the admonition on each court form (and sometimes on each page of each form) that they "should" retain legal counsel. While this advice is important, there may be more sensitive and effective ways to bring it to the attention of SRL's.
- 1(c) Complementary court guides for court forms and procedures should adopt the same standards. Where guides are provided on-line, these should also follow the best practice standards adopted for on-line resources (above).
- 1(d) Individuals (laypersons from a range of educational backgrounds) who have acted as SRL's should be included in planning and reviewing materials and formats in order to develop and to achieve best practice standards.
- 1(e) The consequence of improperly completed forms is often severe for SRL's, including delays in hearings and their access to a decision. A system for reviewing court forms and documentation prior to submission would save a great deal of judicial and administrative time and ensure that when SRL's take time away from their employment and other responsibilities to attend court, they are not adjourned because of deficiencies with their paperwork. Providing a "form checker" to SRL's would require some resources but would probably be more cost-efficient than allowing unchecked paperwork to go forward.

2. On-line resources

Study findings:

A large amount of the assistance presently made available to SRL's by the courts (and some service providers) is in the form of on-line information and related technologies (on-line forms, informational websites, and some video material). New initiatives in programming and support for SRL's in both Canada and the United States are largely based on the premise that access to the Internet can promote access to justice for SRL's.

While many of these initiatives are in relatively early stages of development, this study suggests there are significant limitations and deficiencies to this material. SRL's who anticipated that the proliferation of on-line resources would enable them to represent themselves successfully became disillusioned and disappointed once they began to try to work with what is presently available on-line. In particular, they identified the following weaknesses: an emphasis on substantive legal information and an absence of information on practical tasks like filing or serving, advice on negotiation or a strategy for talking to the other side, presentation techniques, or even legal procedure; often directed them to other sites (sometimes with broken links) with inconsistent information; and multiplicity of sites with no means of differentiating which is the most "legitimate". On-line resources often required some level of understanding and knowledge in order to be able to make best use of them.

The study data also shows that no matter how complete, comprehensive and user-friendly (standards we are still far from meeting), on-line resources are insufficient to meet SRL needs for face-to-face orientation, education and other support. Enhanced on-line technologies can be an important component of SRL programming – for example the development of sites developed specifically for SRL's making use of interactive technology - but cannot provide a complete service.

Preliminary recommendations:

- 2(a) Continued development of on-line materials for SRL's (by courts and other service providers) needs to take into account the considerable difficulties faced by many SRL's in navigating and utilizing existing resources. In order to address these difficulties, "best practice" standards should be developed to include: eliminating legal jargon, ensuring consistency, enhancing the procedural "know how" aspect of on-line resources (presently focused primarily on substance), consolidating information as much as possible to avoid duplication and navigation among multiple websites, maintaining active links, and ensuring an appropriate reading level to enable accessibility for SRL's with a range of levels of education.

- 2(b) Individuals (from a range of educational backgrounds) who have acted as SRL's should be included in planning and reviewing materials, formats and the development of best practice standards.
- 2(c) Questions and answers (including, for example, both a "decision-tree" style to direct users to the correct procedures/ forms and "FAQ's") are essential to assisting SRL's. Development of FAQ's (frequently asked questions) for websites is another obvious way in which those who have had their own SRL experience could assist in the development of better resources for others.
- 2(d) Websites could play a larger role in directing SRL's to the appropriate resources available in their community (mediation services, legal advice and legal information services).
- 2(e) There is the potential for greater interactivity in on-line platforms, as well as links to personal support via chat and phone. This would enhance the accessibility of on-line material and while not equal to face-to-face contact could help to personalize the experience and convey the sense that this material is fashioned *for* SRL's, rather than treating them as "intruders" into the world of legal rules of procedures.
- 2(f) There is a similar potential for SRL's to support and even mentor one another using on-line platforms. The experience of the Project Facebook (now more than 160 members and still growing) demonstrates that SRL's appreciate the chance to develop a sense of community and mutual support.
- 2(g) Technical support and maintenance (eg maintaining live links, updating) for on-line resources is also lacking and requires investment and enhancement.

3. Access to legal information

Study findings:

It is clear that many SRL's are eager to access further and better sources of legal information. This fits with the aspiration of many SRL's to continue working on their case themselves once they have determined that they cannot afford to pay (or continue to pay) a private lawyer. SRL's in the study were often seeking "guidance" rather than "direction". The amount of work that many SRL respondents were prepared to do demonstrates their commitment to "get it right" – but they often lack the necessary resources and in particular, information. The expansion of legal information services (and the practical clarification of the legal information/ legal advice distinction, below) has the potential to relieve pressure on more costly public legal services such as duty counsel (see below at (4)).

The most common source of legal information for SRL's are court staff, primarily those working at the registry counters but also staff working in court programs such as Pro Bono

Ontario, FLIC & LinC in Alberta, and the Justice Access Centres in British Columbia. These excellent services are not always clearly “signposted” in the courthouse or on the courthouse website; as a consequence some SRL’s appeared to have missed the opportunity to use these programs (this was also a problem for mediation services; see below at (4)). SRL’s consistently described staff working in these locations as the “most helpful” person they encountered during their SRL experience. However they also complained about the restrictions on the time and scope of information that these staff can offer, because of the limitation on their providing “legal advice” (which results in substantial personal discretion, which some SRL’s are better at exploiting than others) or because of the sheer volume of people they are dealing with.

The distinction between legal information/ legal advice which lies at the heart of the job descriptions of staff working on the court counters and in information services is consistently complained about by both SRL’s and staff, as at best unclear and at worst practically unworkable. The present situation places an unfair burden on court staff who are required to make constant determinations of how much information they can provide to frustrated and even angry SRL’s. This leads to inconsistent applications and creates a barrier between SRL’s and certain basic information that may be construed as “legal advice”.

Court and agency staff providing legal information to SRL’s described an almost identical set of frustrations and challenges to the SRL sample from their own perspective. They also accurately identified the primary frustrations and challenges of the SRL’s. Court and agency staff are working under enormous pressure dealing with the growing SRL population and constantly changing court forms and procedures. These are very stressful jobs, for which they are poorly trained and remunerated.

Preliminary recommendations:

3(a) It is critical to ensure that local information services are clearly signposted both in the courthouse and on the court website, with a toll free number widely posted in the community.

3(b) The conventional distinction between legal information and legal advice requires urgent re-examination. It should be possible to achieve the assumed objective – constraining the “unauthorized practice of law” – in a more consumer-friendly and feasible way. In addition it may be important to revisit exactly what this constraint should mean in the new context of widespread representation without agents (for example discussing court procedures – or predicting what a judge would say?). Court staff need more and clearer guidelines to help them to determine, consistently and fairly, what they may and may not provide as information and in response to SRL questions.

3(c) Court staff – whether working on the counter, as court clerks, or in general or legal information services - require training that prepares them to deal with members of the public on a regular basis, including dealing with distressed and emotional people.

3(d) Regular training updates - whether on court forms or procedural changes - should be built into staff development budgets, to avoid staff being faced with forms and questions with which they are unfamiliar / cannot answer. This type of substantive and procedural updating could be offered on-line using a suitable web-based learning platform.

3(e) Court staff should have access to support services (for example as a part of an EAP) offering counseling and stress management programs.

3(f) Each courthouse should examine its present security systems (both inside the courtrooms and also at the counters) to ensure that staff can feel secure in the event of a disruptive person causing a disturbance.

4. Other support & resources for SRL's

Study findings:

SRL's talked about a variety of "non-legal" services that they needed but either were not available to them or in their present form, did not meet their needs. Service providers recognized over and over in interviews that the frustrations of SRL's are a source of pressure on the justice system in general and on court staff and judicial officers in particular. Improving the experience for SRL's by developing low cost support services for them has the potential for improving the efficiency and enhancing the morale of the entire justice system.

SRL's particularly identified the need for orientation and education (aside from legal training) to enable them to better anticipate and plan for what is involved in self-representation. While this study did not evaluate the effectiveness of existing mandatory education programs, it is clear from the study data that many SRL's are looking for different forms of educational workshops to prepare them for the SRL experience. In particular, they are asking for practical tools and skills that they can apply.

SRL's also described a need for one-on-one assistance in the form of "coaching" (eg document review, answering questions) which support them to handle their own case but also provide checks and moral support. For many SRL's who wish to remain in control of their own case, coaching would be an important resource.

A significant number of SRL's say that they were never offered mediation, and/or do not know what it is. This is a clear gap that needs to be urgently addressed (for example in both educational workshops and better publicity). Some SRL's were nervous about participating in mediation, especially where there was a lawyer representing the other side. Some SRL's who wished to try to resolve their case expressed frustration that the Bench would not exercise greater pressure on a recalcitrant opposing side to come to mediation.

At present many SRL's bring friends and/or family members with them to the courthouse for moral support, especially on appearance days. This is a reflection of the need expressed

by many SRL respondents for some type of protection against what many experience as a lack of compassion and kindness in the system, especially from some judges. However there is a great deal of confusion and inconsistency surrounding the role of friends or supporters of SRL's, as well as the potential for an unrepresented person to being a McKenzie friend into the courtroom. This lack of clarity and wide exercise of discretion by some judges is creating resentment and confusion.

Finally, many SRL's do not have access to the types of office facilities that they require in order to represent themselves including printing services, photocopying facilities and even computers. Some services are presently provided by counter staff (informally) or overburdened court-based programming.

Preliminary recommendations:

4(a) Educational workshops

If educational workshops are to be attractive to SRL's they should focus on offering practical skills and information, offered by instructors who can provide a skills-based focus, with opportunity for interactivity and asking questions, in group sizes that permit this. Workshops should not be mandatory but SRL's could be strongly encouraged to participate in such sessions. If SRL's perceived such workshops to be useful to them in preparing for their SRL experience, they would participate.

An SRL orientation workshop should be offered in every courthouse (perhaps less frequently for smaller courthouses) for all individuals filing without representation. Given that so many SRL's evidently begin with representation (53% in this study) such information should also be provided to any individual at the time of filing, whether represented or not. An orientation workshop should be framed less as a legal information seminar and more as an orientation to what lies ahead, and might be best offered by non-lawyers. Such workshops should include time for questions and answers, which may or may not require the presence of qualified lawyers. SRL's need to be better informed about the many challenges they will face, including the amount of time required to complete the necessary preparation, the potential impact on their work commitments, the emotional toll of self-representation, the potential impact on social relationships, and even the mental health consequences. At the same time (and this is a difficult balance) it is very important that SRL orientation is not designed to discourage or deter self-representation – but rather to be clear and concrete about its challenges.

Another critical area of SRL education presently lacking is how to progress one's case towards an acceptable negotiated outcome. SRL's receive little or no information about how to resolve their case and how to talk to the other side about a possible settlement (which may be especially intimidating if the other side is represented by a lawyer). A workshop or workshops could prepare SRL's for thinking about settlement and how to make effective use of available settlement processes, including how to prepare for and behave in mediation and judicial settlement conferences, how to negotiate directly with the other side about settlement, how to generate settlement proposals, and how to finalize

settlement agreements by consent order. Where a court offers mediation services, this program should consider offering an orientation workshop that offers practical skills and tips to SRL's.

SRL education should be the responsibility of the justice ministries and ideally promoted and offered in the courthouses. Programming could be provided by outside specialists with the input and assistance of court staff. In developing programs and workshops, those who have had the experience of being a SRL should be consulted.

4(b) Coaching

Rather than focusing on legal issues and procedures, coaching could be offered by specialists in (e.g.) communication, negotiation, and presentation skills (all areas that SRL's described as important but often lacking from their own experience and expertise). In particular, one-on-one coaching for settlement / preparation for mediation / strategic assessment of resolution options would be extremely valuable for many SRL's who wish to pursue settlement, but do not have the tools and skills to do so.

4 (c) Mediation services

It is critical to ensure that local mediation services are clearly signposted both in the courthouse and on the court website, with a toll free number widely posted in the community.

Mediation services should consider offering initial orientation and training specifically designed for SRL's, to enable them to participate more fully and confidently in their programs. This could take the form of an initial session with the mediator in their case. Competent and experienced mediators are already accustomed to accommodating any additional time that some parties require for coaching and preparation before mediation without compromising neutrality.

SRL's who have had good experiences in mediation should be invited to provide "testimonials" to other SRL's who may be nervous about the idea of using mediation.

Where one side is interested in mediation, the Bench should consider using their persuasive powers to encourage the other side to seriously consider this. At minimum, judges should enquire whether SRL's have considered using mediation.

4(d) "Office" services

Office services available for use by SRL's should be consolidated in a central coalition in each courthouse. Such services would have to be operated at cost, but there it is clear that the convenience of such a facility in the courthouse would be significant. This would also relieve pressure on court staff and staff at court-based programs who are currently bearing the brunt of such demands.

4(e) Mentoring and “friends” of SRL’s

There is a clear need for a “buddy” / mentoring system to support SRL’s in their emotional as well as their substantive and procedural journey. Each courthouse should develop a clear and consistent protocol for the role of SRL “friends” (that is, informal supporters rather than “McKenzie friends”: see below) that sets out expectations and responsibilities for appropriate access and behavior. Since physical facilities vary among courthouses it is important that the local protocol is practical and feasible for that building, although general guidelines could be set provincially. Ideally, local protocol could be determined by a committee that includes some SRL representatives. A similar protocol should be established in each courthouse for the use of “McKenzie friends” to avoid confusion and inconsistency.

Each courthouse should also explore the possibility of developing a formal buddy/mentoring scheme utilizing volunteers (perhaps along the lines of Victim Assistance programs) for SRL’s. This should build on the premise that assisting a SRL to feel supported and calm will enhance their experience, as well as the experience of those who deal with them.

4(f) Opening hours

Courts should consider some extension of opening hours in order to accommodate the growing numbers of SRL’s who have to take time away from their employment in order to file documents and appear in court.

SRL’s, judges and lawyers

5. The delivery of legal services to SRL’s

Study findings:

This study shows clearly (and consistent with other recent studies) that the primary reason for self-representation is financial. Many SRL’s find that the legal services that they can realistically afford are simply not available to them. They also often find that their desire to prioritise the specific areas in which they want assistance is not possible. What they are faced with is a decision to engage in a traditional legal services model or to forego legal services. The problem for many SRL’s is that financial retainers and services billed at a rate of \$350-400 an hour are beyond their means, and even those who can afford to pay initially often run out of funds or willingness to continue to pay at a certain point

At the same time, 86% of the SRL sample sought legal counsel, either in the form of private legal services or legally aided/ *pro bono* assistance. SRL’s are not saying that they do not want lawyers to help them – but that the way in which lawyers are currently offering their services does not fit within their budget. Some are also saying that they prefer to have more control over the progression of their case and resist the traditional assumption of professional control by their lawyer.

Other complaints made consistently by some SRL's about their prior legal services in their case include: counsel "doing nothing", no progress; counsel being disinterested in settlement possibilities and processes (including mediation); counsel not listening to them or consulting them in decision-making; and a sense that their lawyer was insufficiently familiar in the relevant area of law to be effective as counsel. A further complaint was that lawyers were not truly accountable to the public, and that efforts to question their competence (including but not limited to costs in relation to the services provided) were often not taken seriously by the courts or the regulators.

While many SRL's appreciated the assistance they received from duty counsel or other *pro bono* legal services, the study also found dissatisfaction with the most common model of delivery ie the summary legal advice model. While this model works well for some SRL's, others find a time limited opportunity to speak with legal counsel leaves them more confused, and even panicked, than before. At the same time, court duty counsel models are in serious overload. For both reasons, there is a need for a reassessment of how to offer the maximum value to the maximum number of SRL's via the summary advice model.

Respondents frequently questioned the limitations placed on the provision of assistance by para-legals, especially in relation to family matters.

Finally, many SRL's sought some type of "unbundled" legal services from legal counsel; for example, assistance with document review, writing a letter, or appearing in court. Relatively few were successful in accessing legal services on this basis despite a sustained effort. This was perplexing to many respondents, who could not afford to pay a traditional retainer and envisaged that they could undertake some parts of the necessary work themselves, with assistance.

These findings (which are supported by other studies) raise the pressing question of how private legal services are structured and delivered in an era in which a majority of litigants in some family and civil courts are without counsel.

Preliminary recommendations:

5(a) The summary advice model

In order to fully evaluate and enhance the summary legal advice model, we need to:

- (i) Re-evaluate the types of advice that must be provided by lawyers, and the potential for other important and needed information and assistance to be offered by para-legals (see also (3)(b) above).
- (ii) Offer SRL's an orientation with a staff person before they meet with counsel (either duty counsel or a limited legal advice session) to enable them to prepare questions and focus their concerns, in order that they may obtain maximum benefit from that limited session

- (iii) Consider the present system of limiting access to a fixed number of legal advice sessions. Where a SRL returns over and over again to try to access a limited legal advice session, a different strategy is needed to help/ support that SRL and relieve the burden on a single source and type of assistance.
- (iv) Consider including a workshop format for answering questions. For example, an open workshop could be offered on questions regarding filing and serving documents, preparing to appear in court, making a proposal for settlement to the other side etc. Such sessions would require experienced counsel and could include a (non-lawyer) moderator.
- (v) Consider extending the role of *pro bono* counsel to court appearances in particular circumstances. Where this is not possible, an alternative course might be for counsel to brief a McKenzie friend along with a SRL prior to a court appearance.

5(b) Para-legals

Policymakers and professional regulators should commit to a re-evaluation of the historical reasons for the restriction of para-legal services in Canada, in the light of data in this and other studies on SRL needs. This evaluation should consider what rights-protections require the intervention of a qualified lawyer and how to identify and prioritize those cases in a public legal services model. Such an evaluation should consult SRL's as well as lawyers, court staff and other stakeholders.

This evaluation of para-legal services should also consider private para-legal services. Many of the needs described by SRL's in this study could be met by para-legals at a much more affordable rate than lawyers. Such an evaluation should include urgent reconsideration of the types of assistance that can be lawfully offered by (licensed) para-legals, especially in relation to family matters where the need appears to be greatest.

5(c) "Unbundling"

Demand from clients for models of legal service beyond the traditional retainer arrangement is becoming deafening. This is especially clear in relation to requests for "unbundling" from personal clients who cannot otherwise afford to pay for legal services. The historical reluctance of the Bar to consider "unbundling" needs to be transformed into efforts to find answers to legitimate concerns about due diligence and insurance issues. These issues are solvable within (e.g.) a modified professional indemnity model, and appropriate rules of professional conduct. While no lawyer can be required to offer unbundling, CLE programming should be developed to offer skills training, file management and billing procedures that are compatible with offering unbundled legal services.

5(d) Legal costs

There were numerous complaints from SRL's about the failure of lawyers to describe or explain the costs of their services. There is an urgent need to train lawyers to provide more

complete and transparent information about costs to their clients and before they present them with a bill. Sensible cost estimates are possible, and failure to provide them is bringing the profession into disrepute.

5(e) Complaints against lawyers

The present system of accountability – whether the court assessment procedure for legal costs or bringing conduct complaints to the professional bodies for conduct complaints – requires re-examination in the face of widespread public skepticism.

5(f) Code of Conduct

The widespread complaints of both SRL's and lawyers about the uncertainties and tensions where a SRL faces off against legal counsel will not be dealt with simply by developing more "rules" – but that would be a good place to start. It is important to revisit the Professional Code of Conduct for lawyers in each province on the question of the conduct of lawyers facing a SRL. The Code could provide clear guidance to lawyers and should also entrench a commitment to respectful behavior by counsel towards SRL's. This does not negate the responsibility on the part of SRL's to adhere to appropriate and respectful standards of behavior in court and in dealings with counsel (as well as judges and other court staff) but the framework of a Professional Code is an important step in these discussions.

5(g) Legal education

Prospective lawyers need to be exposed to the realities of the SRL phenomenon. The law schools should urgently consider developing courses that as well as providing up-to-date information about the influx of SRL's into family and civil courts, also take on the challenge of teaching law students skills that are important for dealing with a SRL on the other side. Course should also address practical issues such as how to evaluate providing "unbundled" client services. SRL's highlight in particular the need for lawyers to be more engaged in settlement and open to resolving matters with them. There may also be a role for law school to take on some of the orientation for SRL's described above at (4)(b).

6. The judicial role

Study findings:

The influx of SRL's into the family and civil courts has dramatically altered the judicial role. Judges, especially in family court, now find themselves dealing with SRL's as often as with lawyers representing clients. This is a huge sea change that some members of the judiciary are clearly adjusting to better than others. The study data is replete with SRL descriptions of negative experiences with judges, some of which suggest basic incivility and rudeness. There are also some examples of judicial interventions such as providing advice regarding court procedure, coaching on presentation, and progress towards settlement, which attract positive comments from SRL's. Other studies show that judges are concerned about

showing “favour” towards SRL’s and find themselves in a difficult position when one side is represented by counsel, and the other is not.

Most SRL’s saw numerous judges during the progress of their case, and many complained that this created inconsistencies and required them to re-establish their credibility with each appearance. Very few SRL’s experienced a single judge who managed their entire case, but those who did were far more satisfied with their overall experience.

Whatever the merit of their individual complaints, there was a very widespread sentiment among SRL’s that judges were not truly accountable and that the current mechanism (under the auspices of the Canadian Judicial Council) is a protective rather than an investigative system.

Preliminary recommendations:

Judicial education

6(a) Further judicial training to support judges in working with SRL’s on a regular basis is urgently needed. This training should include effective communication skills, facilitation skills and stress reduction strategies.

6(b) Judicial education should be developed with reference to the perspective of SRL’s *as well as* legal actors. Training should be based on dealing with “ordinary/ majority” SRL’s, for example those who contributed to this study. It is important that such training is not framed from a “siege” mentality but rather considers the needs of the ordinary SRL.

6(c) Additional training to enable the identification and management of vexatious and disruptive SRL’s should also be provided.

Judicial appointments

6(d) The demands of dealing with SRL’s, and the relative skills and willingness of the candidate in this respect, should be considered factors in criteria for judicial appointments, and especially to the Family Bench.

Judicial procedures

6(e) A Code of Conduct for judicial management of SRL’s should establish appropriate new norms of judicial practice. Such a Code should be based on common problems and difficulties faced on both sides (judges and SRL’s; it could also consult court clerks). This is a project that could be taken on by judicial educators and developed through judicial training sessions (see above at (b)).

In the absence of a formal Code, the study data suggests the following recommendations where one side is represented by counsel, and the other is not:

- 6(e)(i) A judge might consider opening the hearing with a short speech from the Bench welcoming the parties and setting out his or her expectations for the conduct and procedure of the hearing (including explaining and establishing his or her authority over process in the courtroom) This might include giving an opportunity to the SRL to ask a question / clear up any misapprehensions about procedure at the outset. Such an opening would need to be time limited, but with careful planning could be delivered in 5-8 minutes.
- 6(e)(ii) A judge should give serious consideration to allowing the SRL to bring a friend and/or a McKenzie friend into the courtroom with them (see also above at (4)(e)).
- 6(e)(iii) A judge should ensure that the SRL understands when s/he is to be asked to speak and should take care not to give the impression that the Bench is only interested in what counsel has to say.
- 6(e)(iv) A judge should ensure that any forthcoming consent order drafted by counsel is sent to the SRL for review before being submitted to the court.

6(f) Single judge case management

Progress towards maximizing single judge case management (especially for family matters) should be seriously considered in every courthouse. While this has immediate resource implications, single judge case management may save time and money in the long-term and has been shown to greatly enhance litigant satisfaction.

6(g) SRL courts

There is some limited experience with special SRL courts (eg in Calgary) and this is a development that may have promise. Moreover, it allows judges who are willing to work with this population to begin to develop this as a judicial specialty. A related and promising innovation that deserves a full evaluation is the use of a “First Appearance Clerk” at Jarvis Street OCJ who readies family SRL’s for their first court appearance.

6(h) Complaints against judges

The present system of judicial accountability via the Canadian Judicial Council requires re-examination in the face of widespread public skepticism.

System Implications of the SRL Phenomenon

7. Social impact and consequences

Study findings:

The study data vividly illustrates the range of negative consequences experienced by SRL's as a result of representing themselves. These include depletion of personal funds and savings for other purposes, instability or loss of employment caused by the amount of time required to manage their legal case themselves, social and emotional isolation from friends and family as the case becomes increasingly complex and overwhelming, and a myriad of health issues both physical and emotionally. The scale and frequency of these individually experienced consequences represent a social problem on a scale that requires recognition and attention. The costs are as yet unknown.

Preliminary recommendations:

7(a) Further research should be conducted as a matter of urgency to investigate the relationship between litigation as a SRL and social consequences including financial hardship, difficulty maintaining employment, personal and mental health issues, as well as the broader impact on children affected by the SRL phenomenon. This research agenda should also include an assessment of the fiscal impact of these social consequences in relation to (eg) court time, welfare systems, and public services.

7(b) Community agencies that presently do not focus their work on SRL's but see growing numbers of clients who are involved with self-representation should consider what resources and relative funding they should anticipate going forward in order to provide support services to this population.

7(c) SRL's themselves should consider forming support groups to enable other SRL's to find a community that can offer morale support during and even after their self-representation experience.

8. Culture change

Study findings:

This study shows clearly that among most SRL's, self-representation is not a choice but a last resort or a necessity. A reorientation to a justice system in which individuals frequently represent themselves rather than relying on expert agents has implications for how SRL's are regarded, welcomed and treated in the courts by staff, lawyers and judges. This is creating a crisis of faith in the Canadian justice system.

Preliminary recommendations:

The following are critical elements in this culture shift that the professional bodies – for example the provincial law societies, the National Judicial Institute, the Canadian Judicial Council, and the Canadian Bar Association – as well as the Canadian law schools are encouraged to consider the following:

8(a) That most SRL's are unrepresented by necessity, and not by choice. This recognition alone has many implications for how we think about SRL's and how to best meet their needs.

8(b) The parallel recognition that pressure on public resources and the cost of private legal services makes it likely that a substantial SRL population in the courts is here to stay.

8(c) The importance of creating more choices for clients in accessing private legal services, and in particular in the financial structure of legal services.

8(d) The role of the law schools and other legal educators (including CLE providers and judicial educators) in integrating changes in the traditional "rules of engagement" of professional services (in which the professional, here the lawyer, is "in charge" and "knows best") into their programs. Lawyers need to be better prepared to work in partnership with their clients in making both strategic and financial decisions.

8(e) A open-minded re-examination of the protected parameters of the lawyers' role in Canada and serious consideration of the potential role of other legally trained professionals who are not qualified lawyers.

8(f) A move away from the adversarial model and a reorientation to problem-solving in a multi-professional context. This includes: more widespread, consistent and effectively endorsed provision of mediation services, both inside and outside the courthouse; further judicial education in the conduct of settlement conferences, including conferences in which one or both parties are self-represented; and the development of specialized services for SRL's that offer them assistance with negotiation and participating in mediation.

8(g) The establishment of an ongoing policy dialogue in the form of an national steering group/ advisory body that is inclusive of all stakeholders, that can act as a convenor for further dialogues, initiate and continue research, and make further recommendations and monitor new pilot programs and initiatives.

APPENDICES

Appendix A: Total Completed Interviews by Province

OVERVIEW OF SRL INTERVIEWS

ALBERTA

LOCATION	#1	#2	Total
Calgary	48	1	
Edmonton	44		
Lethbridge	5		
Wetaskiwin	2		
Other	2		
Secondary interviews		3	
ALBERTA SRL TOTAL	101	4	105

TOTAL ALBERTA INTERVIEWS	105
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BRITISH COLUMBIA

LOCATION	#1	#2	Total
Vancouver	43	5	
Surrey	10	1	
Nanaimo	15	1	
Prince George	12	1	
Other	12		
Secondary Interviews			
BC SRL TOTAL	92	8	100

TOTAL BC INTERVIEWS	100
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ONTARIO

LOCATION	#1	#2	Total
Brampton	8		
Sudbury	1		
Windsor	14		
Other	43		

OVERVIEW OF STAFF/AGENCY INTERVIEWS

LOCATION	#1	#2	Total
CALGARY	13		
EDMONTON	9		
LETHBRIDGE	6		
WETASKIWIN	10		
OTHER	0		
ALBERTA STAFF/AGENCY TOTAL	38		38

LOCATION	#1	#2	Total
PRINCE GEORGE	5		
NANAIMO	5		
SURREY	8		
VANCOUVER	8		
SECONDARY		1	
TOTAL PRIMARY	26		
BC STAFF/AGENCY TOTAL			27

LOCATION	#1	#2	Total
BRAMPTON	3		
SUDBURY	8		
WINDSOR	12		
OTHER	19		

Secondary Interviews		12	
TOTAL	66	12	78

TOTAL PRIMARY INTERVIEWS	42		
TOTAL INTERVIEWS	42		42

TOTAL ONTARIO INTERVIEWS	78
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TOTAL PRIMARY INTERVIEWS	259		
TOTAL SECONDARY INTERVIEWS		24	
TOTAL SRL INTERVIEWS			283
TOTAL PROJECT INTERVIEWS	390		

TOTAL PRIMARY INTERVIEWS	106		
TOTAL SECONDARY INTERVIEWS		1	
TOTAL STAFF/AGENCY INTERVIEWS			107

Appendix B: All Field Sites in All Provinces

British Columbia Nanaimo (Provincial and Supreme Court)
 Prince George (Provincial and Supreme Court)
 Vancouver (Provincial and Supreme Court)
 Surrey (Provincial Court only)

A focus group was also conducted in Victoria

Alberta Calgary (Provincial Court and Court of QB)
 Edmonton (Provincial Court and Court of QB)
 Wetaskiwin (Provincial Court and Court of QB)
 Lethbridge (Provincial Court and Court of QB)

Ontario Windsor (OCJ and Superior Court)
 Sudbury (OCJ and Superior Court)
 Brampton (OCJ and Superior Court)
 Jarvis, Toronto (OCJ)
 Sheppard, Toronto (OCJ and Superior Court)

Appendix C: Service Provider Interview Template

1. Have you seen significant changes in the last 3-5 years?
2. What do your users come asking for/ expecting?
3. What are the socio-economic characteristics of the SRL's you see at your agency? Are there are other characteristic patterns (substantive/ issue-based, psychological, ideological) of the SRL's you see at your agency?
4. What do you think are the most common motivations for self representation – money or other reasons?
5. How often do they have friends with them to help/ support?
6. Have they considered / tried alternatives to court?
7. What is their most common frustration?
8. What is your most common frustration?

Appendix D: SRL Focus Group Template Questions

1. Why did they decide to represent themselves? Was this due to financial reasons? Were there other reasons? Does anyone feel that they would have done much better with a lawyer to represent them? What difference would a lawyer make?
2. What is the distance between what they expected at the outset – and what actually happened (court process, interaction with justice system actors, challenges, rewards)?
3. What was the impact of the experience on them? Emotionally – economically – in relationship terms – other?
4. How could the system work better if it was adjusted to meet the needs of SRL's? Could there be more opportunities for early resolution? More information for SRL's? Access to legal advice/ services?

Some focus group participants also provided demographic data as set out at Part A of the SRL Interview Template, Appendix D below.

Appendix E: SRL Interview Template

A. DEMOGRAPHICS

- i. Gender
- ii. Are you the plaintiff (petitioner) / the defendant (respondent)?
- iii. Is your case ongoing/ concluded?
- iv. Age (banded)

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

- v. What is your income level (banded)
Under \$30,000
\$30,000 - 50,000
\$50-75,000
\$75,000 - 100,000
More than \$100,00

- vi. What is your highest level of education (banded)
No high school diploma
High school diploma
College
University/ professional qualification
Other (specify)

- vii. Have you ever retained a lawyer in the past?

If yes, was that experience good – OK – bad?

- viii. Have you retained a lawyer (may include a Legal Aid lawyer on retainer but not an occasional advisor eg duty counsel) to represent you at any stage *in this case*

- ix. Are you receiving free legal advice from a service or agency?
If yes, from what source

- x. In which court is your action filed?
 - a. Family
 - b. Civil (under \$25,000)
 - c. Civil (over \$25,000)

First language?

Do you take a support person with you into the court?

Are you comfortable using the computer for research?

Is the other side represented by a lawyer?

B. TOPIC GUIDE

1. Deciding to use a legal process (as plaintiff/ defendant, applicant/ respondent)

Previous experience with the legal system; expectation at the outset of this case of what you could achieve; how likely? (above); did you consider any alternatives to using the legal system? Why did you decide not to pursue alternatives? (cost, process, outcomes, emotions)

2. Deciding to represent yourself

Previous experience with lawyers; assessment of what you would gain by being represented by counsel; assessment of your own ability to represent yourself; did you bring anyone else along with you to help? How important was the issue of costs in deciding to represent yourself? If you could have representation at just one step in the process when would that be?

3. Resources

What resources have you used? What difference did these resources make to you? Who was the most helpful person you have met so far? What was the most helpful resource(s)?

4. Your experience and appraisal

How close was what has happened in the legal process to what you expected? What are the major differences? What was your biggest surprise? Your biggest disappointment? The best moment? What else would you like to happen procedurally that has not? Did you use / are you planning to use mediation? Why/ why not? What would you tell another SRL are your lessons from this experience? Would you choose to represent yourself again? What would you do differently another time? ? If you could have a (free, competent) lawyer now, what would you ask them to do for you? What would you say to the Chief Justice's Task Force on Access to Justice which is currently working on these issues?

Appendix F: SRL Interview Codes

Nodes used in NVivo to code the SRL interview data (in alphabetical order)

(Please note that words in parentheses are sub-sets of that node)

Advice for other SRL's
Confusion about the law/ lack of legal knowledge
Considered alternatives to court
Contact with duty counsel (positive, negative)
Cultural discrimination issues
Different judges heard their case (and impact)
Disappointed with case outcome
Disconnect between expectations and experience
Disconnect between information provided and actual process (lawyers, court personnel)
Domestic violence case
Emotional impact of process (intimidation, humiliation, frustration, bullying)
Employment issues (because of court dates etc)
Expectations of process and outcome
Expectations played out
Experience with court personnel (positive, negative)
Experiences with judges (positive, negative)
Experiences with lawyers (positive, negative)
Gender bias
How to be an effective SRL
Judicial bias towards SRL's
Lawyer not acting in best interests of client
Lawyer unfamiliar with case/ law
Lawyer unwilling to take case
Legal advice or information provided by an agency (and types of other assistance)
Medical Issues and Self -Representation
Memorable quotes
Opposing counsel: tactics and problems
Other resources used
Other side not co-operating
Problems filing paperwork
Problems with lawyers complaints systems
Reasons for representing yourself (financial, mistrust of lawyers, personal interest and confidence, other)
Reasons for retaining a lawyer
Rewards of SRL experience
Support person
Surprises
System improvements

SRL variables noted and analysed

Civil / family

Court

Retained a lawyer in the past and found this experience good, mediocre/ mixed, bad

Used a Legal Aid Lawyer

Have been represented by a lawyer at some point during this case

Received free legal advice at some point in this case

Customarily bring a support person to court with them

Comfortable using the Internet for research

Education (in bands) (no high school diploma, high school diploma, college, university/
professional qualification, other

Age (in bands) (under 20, 20-25, 25-30, 30-40, 40-50, 50 plus)

Income (in bands) (under \$30,000, \$30,000 - 50,000, \$50-75,000, \$75,000 - 100,000, more
than \$100,00)

Case is concluded / ongoing

Is the Other Side represented?

Appendix G: Service Provider Interview Codes

Agency/staff most common frustration

Alternatives to court

Disconnect between information and process

Expectations of staff by SRL's

Programs that help SRL's

Reasons SRL's represent themselves

Significant changes in the past five years

Socio-economic characteristics of SRL's

SRL's most common frustration

Support persons

Ways to improve the system

Appendix H: Report of the Divorce Applications Project (by Kyla Fair)

GETTING DIVORCED IN ONTARIO	
ACTION	OBSERVATIONS
Googled “how to get divorced in Ontario	
Clicked on a government link, clicked “Guide to Procedures in Family Court”	<ul style="list-style-type: none"> -the guide is extremely extensive, multiple pages of PDF documents -intimidating to begin reading through all of this material -first two pages of the guide suggest seeking a lawyer -took ten minutes to read through intro, many terms I only know because of my training in civil procedure - intro tells me to visit ontariocourtforms.on.ca for forms
Clicked section 2 of “Guide”	<ul style="list-style-type: none"> -discusses the 3 types of applications, I determine I need a general application -lists the forms I will need to fill out, there are 7 in the list with no detail of how to fill them out -I am surprised at the number of forms necessary, beginning to feel overwhelmed -I had to copy the list into a word doc so I can continue to refer back to it
Skimmed through other sections of the “Guide”	-continually suggests seeking legal advice- this would feel frustrating to me if I could not afford a lawyer- may feel helpless trying to get through this on my own
Navigated to Ontariocourtforms.on.ca	-found form 8 (General Application) fairly easily, though the list of forms was very long
Filled out form 8 (General Application For Divorce)	<ul style="list-style-type: none"> -it took me 20 minutes to fill out my basic information -there was a “forms assistant” option, which really made no difference in making the form any easier to fill out -each section requests “supporting documentation” and “supporting facts” but does not explain what this supporting documentation should be comprised of -these forms do not feel “user friendly”, they appear to be made for lawyers- very frustrating to have no guidance - at the end of the general application, there is a list of other forms i must fill out if I plan to claim child or spousal support (in addition to the 7 previous forms) -I am starting to lose track of which forms I need to complete
Filled out form 13.1 (Spousal Support)	<ul style="list-style-type: none"> -after attempting to fill out this form for 30 minutes, I am completely overwhelmed; the amount of detail required about the value of everything you own/ all of your monthly/yearly expenses is extreme -about halfway through the form I am ready to give up- required to give valuation of every item you own on date of marriage, valuation date, and today

	<ul style="list-style-type: none"> -in reality, this form would take days to complete -at the end, you are required to provide a complete calculation of net family property derived from all of the valuations previously entered -the math alone is complicated, and I feel as though many errors would be made without some legal assistance
Final thoughts	<ul style="list-style-type: none"> -i am not sure what court I am supposed to bring these forms to, or what the process is after I have filed the forms and served them ie. Does the court contact me? How long will it be until trial? What will the process be at trial? What documentation will I need to bring to trial? After trial, am I legally divorced? What happens if my husband contests the information I provided? Do I get copies of his statements before trial? -This process proved to be much more difficult than I anticipated, and I only filled out parts of the general forms- I have no idea how someone could do this on their own, especially in a time of emotional turmoil

GETTING DIVORCED IN ALBERTA	
ACTION	OBSERVATIONS
Googled "how to get divorced in Alberta"	<ul style="list-style-type: none"> -came to a government website, followed links on how to apply for divorce -information was not specific to AB, just said to fill out appropriate forms in your province
Googled "divorce forms Alberta"	
Navigated to www.albertacourts.ab.ca	<ul style="list-style-type: none"> -directions on this website were listed as "steps to follow"- a brief description of the forms needed and where to bring them -the forms needed were then listed at the bottom -some of the terms really difficult to ascertain ie. "Praecepta to note in default" -Also, there does not seem to be a description of what to do if you have oral evidence you want to provide
Clicked on form entitled "Statement of Claim for divorce"	<ul style="list-style-type: none"> -no explanations or definition given- many people wouldn't even understand what "serve" means, or how to reach a "commissioner of oaths" -this form slightly more confusing than ON, although much shorter ex. Uses words like collusion, connived, etc -asks Plaintiff to propose custody and financial arrangements for children, but they may not know what the options are, or what would be appropriate to ask for given the circumstances -when looking at the affidavit of the applicant form, i am confused because under "grounds" for divorce, one of the options is that my spouse committed adultery as evidenced by <i>my spouses affidavit</i> herein... does that mean my evidence

	doesn't count to prove my spouse committed adultery?
Final Thoughts	<ul style="list-style-type: none"> -it appears that there would be a substantially greater number of forms to fill out if there are children involved -there are other forms listed that I would need to bring to the court that I do not understand how to obtain (ex. Praecipe to note in default, divorce judgement, etc.) -still left with the same questions I was after applying for divorce in Ontario

GETTING DIVORCED IN BRITISH COLUMBIA	
ACTION	OBSERVATIONS
Googled "Getting divorced in BC"	
Navigated to a service BC website	http://www.servicebc.gov.bc.ca/life_events/divorce/index.html -there is a list of options to select from that look useful ie. Legal terms defined, basic family law, legal advice options, mediation, and the divorce act
Clicked on "Do-It-Yourself Divorce"	-page not found?
Went back to options, selected "Information about Separation and Divorce"	-after reading through, there are no options on how to begin the process
Clicked a link that led me to a "divorce self help kit"	http://www.familylaw.lss.bc.ca/guides/divorce/ -gives a very detailed list of step-by-step instructions- very long, intimidating -going through each step is fairly easy, there is information on how to fill out each form as well as a link to the form -there are also help videos and a list of agencies that you could call for help -the financial statement, like the other provinces, was long, detailed, and frustrating -After reading through steps 1-5 for over 30 minutes, I have learned that this information package is only for an uncontested divorce ie. When you do not need to appear in front of a judge -this is frustrating because I wasted time reading a lot of information that does not apply to me- already filled out forms that do not apply to me
Googled "contested divorce steps BC"	-Was directed back to the website above -found a section on contested divorces- basically says to resolve it outside of court or get legal advice, "The process for getting a contested divorce is complicated and can take many paths, so we don't offer a guide for it on this website. You don't have to have a lawyer to get a divorce, whether defended or undefended, but it's

	strongly recommended that you get some form of legal advice , especially if you need to settle issues about property, custody, access, guardianship, or support.”
Googled “contested divorce BC steps to follow”	<p>-4th or 5th option down in Google was this link: (http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/pub/divorce/pdf/divorce.pdf)</p> <p>-this is a guide to getting divorced</p> <p>- after 20 mins, I have determined that this guide is useful only in giving the “broad brushstrokes”</p> <p>- explains what divorce and separation are, what the general process is, what happens after divorce etc., but gives no indication of how to start the process</p>
Googled “how to start a contested divorce BC”	-links no help
Googled “applying for divorce BC”	<p>- i keep getting led back to the http://www.familylaw.lss.bc.ca/guides/divorce/ link, so I clicked a link called “legislation/court rules” under this website and came to a very long PDF doc of the <i>Court Rules Act</i></p> <p>- this is exactly like what I would see in a Civ Pro law class- how could an average person even begin to decipher this?</p> <p>-also, I am not sure if I need provincial court rules or superior court rules, and cant find any information on this</p> <p>- after reading through the rules for a few minutes, I have determined I need to look at the Superior court rules</p> <p>-when I go to the superior court rules, I am shocked at how long they are.. the table of contents is 20 pages</p>
Navigated to Part 3 of the <i>Court Rules Act</i> : “How to start/defend a family law case”	<p>- completely confusing- detailed rules and sub-rules about how to fill out each form- I know I have to fill out form F3 and then serve it (rule 6 discusses requirements I must meet while serving), and there are separate forms for child support and spousal support that all have their own rule requirements that must be met.</p> <p>-after looking through these rules, I am wondering whether I found the correct forms for the Ontario and Alberta divorces, because BC has been much more difficult</p>
Clicked “Court Forms” link, navigated to form F3 (General Application)	<p>- very easy to miss a step because there are drop down boxes on the left that require information but can be easily missed</p> <p>-as I am going through this form it is becoming apparent that I have to keep referring back to the rules, because the question will state for example “I have not condoned any act relied on under section 8 (2) (b) of the Divorce Act (Canada) as a ground for divorce.”</p> <p>-like the other provinces, this form asks that if you are claiming division of property or spousal support etc, you propose the grounds. This would be difficult for someone who has no idea</p>

	what is reasonable to ask for/suggest
Final Thoughts	<ul style="list-style-type: none"> - I have no idea what the next steps are in processing this claim for divorce, or what other forms I need -Having to go through the <i>Court Rules Act</i> was extremely challenging even with mny training in the law - BC was the hardest province to find information on how to begin a claim for a contested divorce

Appendix I: Report of the Court Guides Assessment Project (by Cynthia Eagan)

I volunteered to assist Dr. Macfarlane's work after reading about her in the July 8, 2012 edition of *The Windsor Star*. I am a public librarian and on occasion, I am asked to help locate and evaluate legal information. I took an elective in university, years ago, on legal research. This is my background. It may be more than many SRL's who come to this task with no background at all. However I am certainly no expert in this field.

This was not an extensive review. It was a volunteer, time-limited effort. I don't want my report to be considered fault-finding. Legal information is complex, time-sensitive, and often structured in ways not intuitive to the public. It just is. For my small part, I felt overwhelmed by the amount of material online. I could have spent hours scaling the terrain. And when I printed it out--thinking that doing so would simplify it, make it tangible-- I just made mountains. We still need legal professionals.

I volunteered to review a document to evaluate:

- the document's reading level
- whether the experience of navigating URL's was easy
- whether the material used accessible and easily understood language
- whether the material avoided jargon
- whether language and terms were consistent throughout
- whether there seemed to be important unanswered questions
- whether there was a reference point for further questions

In consultation with Julie Macfarlane, I chose the following documents to review:

From British Columbia:

"Applications to Court" available at:

<http://www.supremecourtbc.ca/sites/default/files/web/Applications-in-Supreme-Court.pdf>

From Alberta:

"Alberta's Family Law Act: an Overview" available at:

<http://www.albertacourts.ab.ca/cs/familyjustice/FLAOverview.pdf>

From Ontario:

"Guide to Serving Documents" available at:

http://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/Guide_to_Serving_Documents_EN.pdf

1. Reading Level

I used Microsoft Word's readability tool and sampled what I thought were representative pages. The Flesch-Kincaid Reading Grade Level results were: Ontario (p.11) 8.9; British Columbia (p.5) 5.1; and Alberta (p.7) 13.6.

Using a word processing program in this way is mentioned in an excellent document that Sue Rice discovered. I encourage any one, any profession, to read it:

"Writing for Self-Represented Litigants: A guide for Maryland's courts and civil legal services providers" available at :

<http://www.mdcourts.gov/mdatjc/pdfs/writingforsrls.pdf>

2. The URL experience

Occasionally I'd come across a broken link within a recommended website. Not at the top-level domain.

This is not surprising! We see on-screen resources, but not how many (or few) human resources are dedicated to website maintenance.

An example: Student Legal Services of Edmonton. It's listed as an additional resource.

From <http://www.slsedmonton.com/where-to-start/>

The hyperlink "Will my criminal record stop me from entering other countries?" no longer works.

A different URL situation: Ontario's print document gives me

www.ontario.ca/attorneygeneral/ as a URL for further information. It is actually now:

<http://www.attorneygeneral.jus.gov.on.ca/english/default.asp>.

This domain resolves itself—the hyperlink still works. I mention this because some people are lost if a URL does not "switch over" automatically. They don't know the difference between the location bar and the search bar in browsing software. They unwittingly start "searching" Yahoo or Google to find their document, and soon end up way off course from officially-sanctioned information. I've seen this, many times, at the public library.

I have a few other comments on on-line searching, again coming from the place of a public librarian.

a. Alberta: knowing where to access an official copy is very important. I try to find reputable and free resources. I don't encourage using public library computers to purchase items. So I was confused by the Alberta's Queen's Printer website.

Laws Online appeared to be only where you could purchase a copy of the laws.

b. Ontario: when I go onto E-Laws and find the Rules of the Small Claims Court, it is under "Courts of Justice"- not under "Rules" or "Small Claims". This is confusing. People who are not legally trained – myself included - always have the nagging feeling that they are **not** where they need to be-- unless they are explicitly shown/ directed.

c. British Columbia: at the Supreme Court of B.C. website's I felt unsure about the relationship between the Justice Education Society and the related organizations listed in the pull-down menu. How are these organizations working together? Who is in charge of the material? I think it's wonderful material - but I want to be secure in knowing that what I reach for a source it has been sanctioned by the courts/ relevant authorities. Remember a SRL is quickly accessing the website with no background into the hierarchy.

3. Does the material use accessible and easily understood language? Does it avoid jargon or technical terms?

ALBERTA—

Page 1: "on October 1, 2005 Alberta's new Family Law Act will come into effect". So it's dated.

Page 2: —a significant ambiguity—"Lawyers are required to discuss the different ways of resolving family matters." This could mean:

- 1.) You must use a lawyer in order to proceed, or
- 2.) If you hire a lawyer, they must discuss with you the ways of resolving family matters.

Page 4: "adult interdependent partner" this term is used in a few other places, what does it mean, perhaps common-law marriage? Possibly needs defining.

Page 4: "Parents...may apply to either the Provincial Court or the Court of Queens' Bench.... What is it difference, why are there two locations. Possibly needs explaining.

Page 5: (referring to division of property)

Terms: "trust law" "unjust enrichment" "adult interdependent partners"

A sentence that probably could be worded easier: "Support orders and agreements will bind the estate of the paying person."

A possibly ominous paragraph about DNA testing refusal: "...the court can draw any inference considered appropriate to establish the parentage of a child." "Drawing an inference" is a mental activity but as a verb "draw" can mean extract, as in: "draw blood".

Page 6: Who is a guardian -- an example of something perhaps better illustrated by a chart versus a paragraph.

ONTARIO:

Page 4: Unclear term "endorsement record"

It's helpful that portions of the Rules are reproduced and aligned with the topic and that there is a chart for serving documents.

Page 5: Annoying that you will have to refer to another document for fees. At least I think it'd be good to get some idea of what copy fees (or any other legal fee) might be, for example, "as of March 22, 2013 copy costs are 10 cents per page". Okay the price may have gone up but you would have an idea of what to expect.

Page 7: Along those same lines, this section talks about affidavits being "sworn" before a variety of eligible individuals. But it doesn't tell you what these individuals actually "do" (do they have a unique stamp?) so that you would know that they are legitimate. This section also doesn't mention everything that you might need to do to obtain the sworn document—it does state that you show them your **unsigned document**, but do you have to have government or other I.D. to prove who you are? I have had many questions about notary services at the library.

Page 18:

There is probably a clearer way to say the following:

"The affidavit must be signed in the presence of the person before whom it is sworn" and "NOTE: It is a criminal offense to knowingly swear a false affidavit."

BRITISH COLUMBIA

Page 1: Unlike Ontario's material, BC doesn't show portions of its rules, it just names them "Part 8 of the rules" is that the same thing as Rule 8?

Page 2: Term—"Master in Court" what is this, how does it differ from a judge. Why are there two names for judges?

Page 2: "The registry staff may be able to help you determine whether a judge or master should hear your application". Would they then be giving legal advice? Or is this considered legal information?

Page 2: "Remember that preparing for and attending at a chambers application will cost you time and money." Very vague—is there a ballpark figure (minimum?) for how much money, how much time?

Page 3: Term "draft order". This idea shows up written in various ways, all of which probably allude to the same thing: eg "draft of the proposed order", "attach a draft of the order", and "use this to draft your order" - using it as the same part of speech each time would be better.

Page 5: "Your application record must contain an index". An example would be helpful.

Page 5: Serving your documents. Table format would probably be clearer.

Page 7: “You should request costs in the event that your application succeeds.” How? Give better details for anything concerning money or time.

Page 7: “Try not to switch back and forth between facts and law”. How? Give examples.

3. Terminology, jargon, and consistency within the documents

A glossary for each province is available online at its own website. However for me, it was unnerving to have one computer window open to a glossary and another at the website I needed it for. Or go to the online glossary and search on paper for the term I remembered just seeing and didn’t understand.

It might be helpful to just include the definitions at a document’s outset. This is how literacy materials (early readers) are often structured for children.

“Adult interdependent partners” a term used in the Alberta document shows up on pages 2, 4 and 5 but is finally explained on page 8.

Early on, I was clued into the need for clearly arranged documents in print. It’s a certain kind of crazy when legal papers get out of order. All three guides use page numbering. British Columbia’s footer is exemplary.

4. Unanswered Questions and Reference Points for Further Questions:

Both the Ontario and British Columbia document had a section on affidavits.

I didn’t read in either that a person needs I.D. As a librarian in a community with a large immigrant population, I have noticed that many people do not understand the requirements for obtaining a sworn document. Critical procedures need to be made really clear for laypeople. What you need /who you need/ when are they available?

The British Columbia document covers part of the affidavit process on page 4 and referred me to a subsequent document for more information on page 5. Whenever possible I’d suggest building redundancy within documents to help with possible unanswered questions. People will not necessarily read things in order, and certainly not each time they consult them. Nor might they have them all present each time. Redundancy is not boring, it’s reassuring.

The British Columbia document page 2, mentions that a court application will “cost time and money”. It is meant generally to imply what’s ahead, no doubt. Page 3 suggests people to visit a chamber hearing and/or to contact the registry for details.

Page 7 instructs people to request costs in their application record. However no details are given on how to do this here.

I would have liked to have seen money and time issues more concretely addressed in all these documents. From how much legal professional might charge for doing something, to the copy costs at the courthouse, to when would be a good time to observe court sessions. Practical information given alongside legal information, in the same place, makes it easier to prepare mentally and physically (and fiscally).