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Addressing the Needs of Self-Represented Litigants in the Canadian Justice System

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**ADDRESSING THE NEEDS OF
SELF-REPRESENTED LITIGANTS IN THE
CANADIAN JUSTICE SYSTEM**

A WHITE PAPER PREPARED FOR THE
ASSOCIATION OF CANADIAN COURT ADMINISTRATORS

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EXECUTIVE SUMMARY

How can the Canadian justice system better assist self-represented litigants (SRLs) with their legal needs?

There is a service gap that exists in the Canadian justice system between what SRLs need and what is currently being provided. The system needs to better address how SRLs understand, avoid, manage and resolve their legal issues.

While the entire justice system has a role to play in understanding and addressing this question, courts and court administrators in particular have a central role to play. Some important efforts have begun to address the needs of SRLs. However, major challenges persist in providing adequate court services to SRLs.

WHO ARE SRLS?

It is an unfortunate but now uncontroversial fact that many legal needs in society go unaddressed. Of those who do pursue their legal needs through the justice system, a significant and increasing number are SRLs.

People may be self-represented for many reasons, and for the most part do not choose to be self-represented. SRLs are often particularly vulnerable in terms of a relative lack of education, income and assets. They may be grouped into seven overlapping categories:

- People with a lack of social resources (low income, low education, low literacy, etc.).
- Low income SRLs with some social resources (people who cannot afford a lawyer but who have sufficient social resources and education to seek available services).
- SRLs living with social barriers that interfere with accessing justice (i.e. people living with challenges resulting from physical or mental differences, language and cultural barriers, people living in remote locations, etc.).
- SRLs who are unable to find a lawyer (usually people who live in small towns or remote areas).
- SRLs who were previously represented but who are no longer represented (usually in lengthy cases with no permanent resolution).
- SRLs in cases where representation is said not to be necessary (i.e. small claims, traffic court, etc.).
- SRLs who could access representation but prefer to self-represent (usually well-educated people who distrust the legal profession). SRLs in this category have been found to be a significant minority of the overall SRL population.

SRL NEEDS

Needs of SRLs will vary according to which of the above groups they fall under, and may include:

- basic orientation around the legal system (buildings, courts, locations, child care, etc.);
- diagnosis of legal problems;
- logistics (clarify objectives, organize cases, interact with the legal system, etc.);
- strategy (learn tactical solutions, build a coherent and persuasive case, draft legal documents and orders, prepare for negotiation in trial or mediation, etc.);
- legal knowledge (procedural and substantive advice);
- resolution of legal problems (assistance to support fair outcomes); and
- collaboration (partnerships between the judicial system and external organizations).

As part of the drafting of this paper, a national survey of Canadian court workers was conducted. Although respondents from some jurisdictions and some courts report moderate success with adequately servicing the needs of SRLs, most – almost 70% – do not. Put simply, notwithstanding significant efforts that are being made by many dedicated people at all levels of courts and court services across this country, there is a growing gap between what most SRLs need and the services that are available at courts.

RECOMMENDATIONS

- Recommendation 1. The justice system and its stakeholders must recommit to the core dispute resolution purpose for which the system was designed: to provide a meaningful, fair, just and accessible venue for citizens – represented or not – to resolve their disputes.
- Recommendation 2. All justice system stakeholders must realize and commit to the reality that, in order to bridge the complex need-service gap that currently exists for SRLs, what is required is a collaboration of efforts and services involving all justice system stakeholders, including governments, judges, court staff, lawyers, public legal education providers, the academy, other not-for-profit service providers, and SRLs themselves.
- Recommendation 3. The justice system, through those that work in it, must shift its focus fundamentally and see itself through a more user-centered, rather than provider-centered, lens of service.
- Recommendation 4. The legal information/advice distinction upon which court staff have traditionally relied when dealing with SRLs should be rejected in favour of a more

service-oriented approach based on a notion of “meaningful legal assistance”. Principles and guidelines should be developed and provided to court staff in order to empower the provision of legal assistance to SRLs. While this recommendation is designed to empower court staff to provide more meaningful and immediate assistance to SRLs, it does not suggest that court staff should become advocates or provide legal “advice”, which are important services reserved for lawyers (and potentially other legally trained professionals).

- Recommendation 5. The needs of SRLs and the available sources of assistance that the justice system can provide should be understood as a multi-option approach to assistance, and provided on that basis.
- Recommendation 6. A triage role should be identified for frontline staff who help diagnose the specific needs of particular SRLs and then assist those people to obtain the required information or services that are available in a given jurisdiction.
- Recommendation 7. Court staff should be provided with adequate and ongoing training on how to provide meaningful assistance to SRLs based on a “triage” and “multi-option legal assistance” model.
- Recommendation 8. In order to ensure judicial and court administration impartiality, neutrality and fairness, it may be necessary from time to time for judges and court staff to treat SRLs differently (from each other and from other represented litigants) in order to treat them as equals (thereby promoting not only procedural equality but also substantive equality as well).

Many of these recommendations are designed to be achievable with modest financial and human resource implications. They are also designed to make an immediate impact.

Supported by adequate training, a shift in the court’s service focus will set the stage for further reforms. Moving away from a legal information/advice approach and toward an approach based on a multi-option approach to legal assistance will make a significant difference in terms of matching available services with the primary needs of SRLs. Encouraging judges and court staff to pursue neutrality through a lens of substantive, rather than formal equality will go a long way toward mitigating some of the individual and systemic inequalities that are experienced by SRLs today.

Rethinking the role of court workers within a triage model has both short term and long term requirements and implications. To do triage well, there needs to be adequate service capacity, both in terms of the front-line triage workers, as well as in terms of referral services – self-help centres, online public legal education resources, libraries, duty counsel, lawyers (potentially with limited retainer options), paralegals, etc. Without a range of tools and options, the triage worker is left without adequate resources to meaningfully assist SRLs. What is ultimately and ideally needed is a systemic and collaborative approach to meaningful service provision.

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I. INTRODUCTION

Q. How could the services for SRLs in your jurisdiction be improved?

A. I believe it would have to be a change in how we do business within the context of courts....

[Canadian court worker, 2011]¹

1. PROBLEM, RESEARCH QUESTION AND FOCUS

(a) Problem: Service Gap

The research for this White Paper has revealed an important service gap that exists in the Canadian justice system in terms of what self-represented litigants (SRLs)² need and what is currently being provided to assist SRLs to understand, avoid, manage and resolve their legal issues.

(b) Research Question

The basic research question that this White Paper addresses, which focuses on that service gap, is the following: “How can the Canadian justice system better assist SRLs with their legal needs?”

(c) Primary Focus

While the entire justice system has a role to play in understanding and addressing this question,³ the primary focus of this White Paper is on courts and court administrators (and related services) and their specific approach to SRLs and their legal needs.

2. BACKGROUND AND METHODOLOGY

(a) Background

The question of how to better serve SRLs has become a question that is facing essentially all modern justice systems today. According to the 2011 SRL Survey of Canadian court

¹ Question and response from survey by Diana Lowe, Q.C., Bradley Albrecht, Heather Manweiller and Trevor C. W. Farrow, “Available and Required Services for Self-Represented Litigants (SRLs) in Canada” (a Canada-wide survey of court staff, including those working at front counters, information centres and law libraries, 2011), attached *infra* at Appendix II [“SRL Survey”]. For a summary analysis of the SRL Survey, see Appendix III.

² For a discussion of what is meant by “SRL”, see *infra* section II.2.

³ See further recommendation 2.

administrators and related front-line workers that was conducted in support of this White Paper, there is an increasing number of SRLs involved in the Canadian court system every year.⁴

Some important efforts are starting to be made around the world in terms of addressing the needs of SRLs. The annotated bibliography that was prepared in support of this White Paper documents a number of those international efforts.⁵ Here in Canada, several efforts have also been made over the past number of years to start to understand and address the growing needs of SRLs in the Canadian justice system.⁶ For example, the Canadian Forum on Civil Justice (CFCJ) – including through specific research done by Diana Lowe, Margaret Shone, Mary Stratton and others⁷ – has looked at several aspects of the challenges currently facing SRLs. The Canadian Judicial Council (CJC) has undertaken initiatives that look at this issue with a view to better supporting judges and court administrators.⁸ And various court initiatives have also been looking at some of these SRL challenges. However, notwithstanding these various international and domestic efforts, major challenges persist in terms of the adequacy of court services for SRLs. The Honourable Neil C. Wittmann, Chief Justice of the Court of Queen’s Bench of Alberta, recently described the justice system’s current ability to serve SRLs as “alarming”.⁹

⁴ See *infra* at Appendix II.

⁵ Martha E. Simmons, “Annotated Bibliography of Self-Represented Litigants (SRLs) Literature” (2011) [“SRL Bibliography”], attached *infra* at Appendix IV.

⁶ See SRL Bibliography, *infra* at Appendix IV. For a very useful collection of related international and domestic materials, see CFCJ, “Clearinghouse”, online: CFCJ <<http://cfcj-fcjc.org/clearinghouse/>>. The collection of SRL materials was first gathered by the CFCJ for the Canadian Judicial Council SRL Project (see online: CFCJ <<http://cfcj-fcjc.org/research/srl-en.php>>) and has since been added to the “Clearinghouse” as a special research collection, where it is maintained and updated.

⁷ See e.g. Diana Lowe, “Unrepresented Litigants: What are we Doing to Meet the Challenge?” (paper presented to the Canadian Bar Association Continuing Legal Education Session on Winning Advocacy Skills: “Facing an Unrepresented Litigant”, Winnipeg, August 2004) [unpublished]; Diana Lowe, “Procedural Steps for SRLs in Civil, Family and Criminal Cases: A Guide to PLEI Providers” (Paper presented to the Public Legal Education Association of Canada, Halifax, 2007 and 2008) [unpublished]; Margaret Shone, “Into the Future: Civil Justice Reform in Canada 1996-2006 and Beyond” (December 2006), online: CFCJ <<http://cfcj-fcjc.org/docs/2006/shone-final-en.pdf>>; Mary Stratton, *Alberta Self-Represented Litigants Mapping Project Final Report* (Edmonton: CFCJ, 2007), online: CFCJ <<http://cfcj-fcjc.org/docs/2007/mapping-en.pdf>>; CFCJ, “Reaching Out with Research: Engaging Community in Mapping Legal Service Accessibility, Effectiveness and Unmet Needs” (Edmonton: CFCJ, 2008), online: CFCJ <<http://cfcj-fcjc.org/docs/2008/stratton-reachingout-en.pdf>>; Mary Stratton, *Alberta Legal Services Mapping Project Final Report* (Toronto: CFCJ, 2011), online: CFCJ <<http://cfcj-fcjc.org/publications/mapping-en.php>> (all of which are cited in SRL Bibliography, *infra* at Appendix IV).

⁸ See e.g. CJC, *Statement of Principles on Self-represented Litigants and Accused Persons* (Ottawa: CJC, 2006), online: CJC <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf>, discussed further *infra* at section III.4(d)(e).

⁹ Hon. Neil C. Wittmann, “Opening Remarks” (National Judicial Institute, Court of Queen’s Bench of Alberta Education Seminar on “Self-Represented Litigants”, Red Deer, 14 October 2011).

(b) Methodology

With this general background (which is further developed below¹⁰), the Association of Canadian Court Administrators (ACCA) – through the input of its members, and in particular its Research Committee – undertook to prepare a current and comprehensive report and set of recommendations designed to assist courts and court workers when serving SRLs in the public court system.

This White Paper was designed specifically to incorporate and then to move beyond the earlier international and domestic work that has already been done on this issue. The research methodology that went into preparing this White Paper included the following elements:

- consultation with court administrators and related front-line workers (primarily through ACCA);
- consultation with lawyers, judges, researchers and policy makers;
- a comprehensive literature review;¹¹ and
- the 2011 SRL Survey of Canadian court administrators and related front-line workers,¹² which included 296 respondents from almost all provincial and territorial jurisdictions in Canada.

3. PRIMARY AUDIENCE

Because the question of how to deal with SRLs in the justice system is a question that involves numerous stakeholders, the research and recommendations in this report should be of interest to a wide audience, including court administrators, judges, lawyers, government policy makers, frontline service providers in the justice system including librarians, legal aid staff and clinics, public legal education providers, the academy, NGOs and others interested in the justice system and its reform (including SRLs themselves).

4. SUMMARY OF MAIN RECOMMENDATIONS

This White Paper makes 8 main recommendations, which are summarized here.¹³

- Recommendation 1. The justice system and its stakeholders must recommit to the core dispute resolution purpose for which the system was designed: to provide a meaningful, fair, just and accessible venue for citizens – represented or not – to resolve their disputes.

¹⁰ See *infra* sections II-III.

¹¹ See SRL Bibliography, *infra* at Appendix IV.

¹² See *infra* at Appendices II-III.

¹³ See further *infra* sections II-IV.

- Recommendation 2. All justice system stakeholders must realize and commit to the reality that, in order to bridge the complex need-service gap that currently exists for SRLs, what is required is a collaboration of efforts and services involving all justice system stakeholders, including governments, judges, court staff, lawyers, public legal education providers, the academy, other not-for-profit service providers, and SRLs themselves.
- Recommendation 3. The justice system, through those that work in it, must shift its focus fundamentally and see itself through a more user-centered, rather than provider-centered, lens of service.
- Recommendation 4. The legal information/advice distinction upon which court staff have traditionally relied when dealing with SRLs should be rejected in favour of a more service-oriented approach based on a notion of “meaningful legal assistance”. Principles and guidelines should be developed and provided to court staff in order to empower the provision of legal assistance to SRLs. While this recommendation is designed to empower court staff to provide more meaningful and immediate assistance to SRLs, it does not suggest that court staff should become advocates or provide legal “advice”, which are important services reserved for lawyers (and potentially other legally trained professionals).
- Recommendation 5. The needs of SRLs and the available sources of assistance that the justice system can provide should be understood as a multi-option approach to assistance, and provided on that basis.
- Recommendation 6. A triage role should be identified for frontline staff who help diagnose the specific needs of particular SRLs and then assist those people to obtain the required information or services that are available in a given jurisdiction.
- Recommendation 7. Court staff should be provided with adequate and ongoing training on how to provide meaningful assistance to SRLs based on a “triage” and “multi-option legal assistance” model.
- Recommendation 8. In order to ensure judicial and court administration impartiality, neutrality and fairness, it may be necessary from time to time for judges and court staff to treat SRLs differently (from each other and from other represented litigants) in order to treat them as equals (thereby promoting not only procedural equality but also substantive equality as well).

II. SRLS, THEIR NEEDS AND CURRENT AVAILABLE SERVICES

In my experience, people are not generally SRLs because they choose to be... Lawyers think that SRLs are choosing this path – they usually aren't. They also think they are sneaky and litigious. Again, they aren't.

The Courts have seen a greater emphasis on the needs of SRLs, however we do not have the funding available to provide the necessary assistance that would be required to properly assist those in need.

[Canadian court workers, 2011]¹⁴

1. BASIS OF RESEARCH KNOWLEDGE

In order to address the needs of SRLs in Canada, it was important first to ensure an adequate understanding of SRLs and their legal issues. Several sources of research provided a strong basis for this threshold understanding, including:

- the 2011 SRL Survey;¹⁵
- CFCJ, “Self-Represented Litigants projects” (a collection of research projects and reports looking specifically at SRLs);¹⁶
- CFCJ, “The Civil Justice System and the Public”;¹⁷
- CFCJ, “Alberta Legal Services Mapping Project”;¹⁸
- CFCJ, “Clearinghouse” (including a special collection of research materials focussing on SRLs);¹⁹
- Ontario Civil Legal Needs Project Steering Committee, “Listening to Ontarians: Report of the Ontario Civil Legal Needs Project” (Toronto: Ontario Civil Legal Needs Project

¹⁴ See SRL Survey, *infra* at Appendix II.

¹⁵ See *infra* at Appendix II. For a summary analysis of the SRL Survey, see *infra* at Appendix III.

¹⁶ See online: CFCJ <<http://cfcj-fcjc.org/research/srl-en.php>>.

¹⁷ See online: CFCJ <<http://cfcj-fcjc.org/research/cjsp-en.php>>.

¹⁸ See online: CFCJ <<http://cfcj-fcjc.org/research/mapping-en.php>>.

¹⁹ See online: CFCJ <<http://cfcj-fcjc.org/clearinghouse/>>.

Steering Committee, 2010)²⁰ (for the companion report, see Jamie Baxter and Albert Yoon, *The Geography of Civil Legal Services in Ontario*, Report of the mapping phase of the Ontario Civil Legal Needs Project (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2011)²¹);

- the 2011 SRL Bibliography;²² and
- several focussed discussions with front-line court workers, researchers and others who work specifically with SRLs and their increasing challenges.

2. TERMINOLOGY

A variety of terms are used in the literature and in practice to refer to SRLs, including:

- “self-represented” litigants;
- “unrepresented” litigants;
- “under-represented” litigants;
- “litigants in person”;
- “pro se” and “pro per” litigants;
- “plaideurs non représentés”;
- “personnes non représentées par un avocat”; and
- others.²³

Each term conveys a slightly different view of the status of the litigant and the relationship of the litigant to the court and the legal profession.²⁴ The phrase “litigants in person” is often used in the United Kingdom, Australia and New Zealand. It is perhaps the most neutrally descriptive of

²⁰ See online: LSUC <http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf>.

²¹ See online: LSUC <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>>.

²² See *infra* at Appendix IV.

²³ See e.g. Lee Stuesser, “Dealing with the Unrepresented Litigant” (paper presented at the Canadian Association of Provincial Court Judges Annual Conference in Charlottetown, Prince Edward Island, 2002). See further Robert G. Hann *et al.*, “Court Site Study of Adult Unrepresented Accused in the Provincial Criminal Courts”, pt. I (Overview Reports) and pt. II (Site Reports) (Ottawa: Department of Justice Canada, 2002), online: <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la2-rr03_aj2/p0.html>.

²⁴ *Ibid.*

available options, emphasizing only the direct involvement of the individual in the proceedings. The Latin terms *pro se* (“for himself”) and *pro per* (short for *in propria persona*, “in one’s own proper person”) are found in much of the American literature.²⁵ While the literal meaning of these phrases is very close to “litigants in person,” the use of Latin offends against plain language principles and is likely to render the phrases unhelpful to the very individuals they are meant to describe. The phrase “unrepresented litigants” is seen to define SRLs negatively, highlighting their departure from the implicit norm of representation by counsel. This can have a number of connotations, including lamenting a lack of access to legal expertise, or stressing the difficulty that individuals unfamiliar with court procedure may cause. The phrase “self-represented”, by contrast, connotes a sense of choice on the part of litigants, which is a more positive statement of empowerment on the part of SRLs.²⁶ Depending on the ability of the individual to present his or her case, this optimistic view may or may not be accurate.

The terms “unrepresented” and “self-represented” are sometimes contrasted, to distinguish between individuals who are without counsel by choice from those who are not. As discussed below,²⁷ the reasons for appearing without representation are in fact complex and sometimes overlapping. They vary from person to person, and may change for one individual over time. Given the research on the profile of SRLs, it is our view that suggesting that SRLs are proceeding without counsel as a matter of routine choice (for reasons of empowerment or otherwise) is misleading and, in fact, unhelpful. (It may be actively harmful if it leads to a sense that some SRLs are more or less deserving of assistance.) Further, according to one respondent in the SRL Survey:

- *In my experience, people are not generally SRLs because they choose to be... Lawyers think that SRLs are choosing this path – they usually aren’t. They also think they are sneaky and litigious. Again, they aren’t.*²⁸

No one term is going to reflect all SRLs accurately, and it would be unwise to read too much into the meaning of whichever term is used in any given context. However, because “SRL” has become a recognized term of art in Canada that generally covers all aspects of the discussion, it is the term that we employ in this White Paper.

3. BACKGROUND

It is an unfortunate but now uncontroversial fact that many legal needs in society go unaddressed. According to one study, as much as 70-90% of those needs are unmet.²⁹ Those

²⁵ Jona Goldschmidt, “The Pro Se Litigant’s Struggle for Access to Justice: Meeting the Challenge of Bench and Bar Resistance” (January 2002) 40:1 Fam. Ct. Rev. 36, online: <<https://legalmorass.info/AG/Pro-Se-Litigant-Struggle-Secured.pdf>>.

²⁶ For a discussion on this issue, see e.g. Lee Stuesser, “Dealing with the Unrepresented Litigant” (paper presented at the Canadian Association of Provincial Court Judges Annual Conference in Charlottetown, Prince Edward Island, 2002).

²⁷ See *infra* section II.4.

²⁸ See SRL Survey, *infra* at Appendix II.

unmet needs are becoming increasingly problematic in terms of the individual and collective wellbeing of society.³⁰

Of those who do pursue their legal needs through the justice system, a significant and increasing number are SRLs. According to the 2011 SRL Survey, mentioned above³¹ and as confirmed by the literature,³² “more and more SRLs” are coming to court.³³ One SRL Survey respondent reported that:

- *The number of SRLs is continually increasing. On an average week, last year you would have served 2-3 a week, and this year it is more like 2 every day. The counter staff is not set up to handle this lengthy process.*³⁴

²⁹ Russell Engler, “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about when Counsel is Most Needed” (2010) 37 *Fordham Urban L.J.* 37.

³⁰ For various treatments of this issue, see e.g. A. Currie, “A national survey of the civil justice problems of low- and moderate-income Canadians: Incidence and patterns” (2006) 13(3) *Int’l J. Legal Prof.* 217; A. Currie, *The legal problems of everyday life: The nature, extent and consequences of justiciable problems experienced by Canadians* (Ottawa: Department of Justice Canada, 2007); A. Currie, “Civil Justice problems and the disability and health status of Canadians” (2007) 21 *J. L. Social Pol’y* 31; A. Currie, “The legal problems of everyday life” in R. L. Sandefur, ed., *Sociology of Crime, Law and Deviance*, vol. 12 (Bingley, UK: Emerald, 2009) 1; A. Currie, “A lightning rod for discontent: Justiciable problems and attitudes towards the law and the justice system” in A. Buck, P. Pleasence and N. J. Balmer, eds., *Reaching further: Innovation, access and quality in legal services* (UK: Legal Services Research Centre, Stationary Office, 2009); P. Pleasence *et al.*, “Mounting problems: Further evidence of the social, economic and health consequences of civil justice problems” in P. Pleasence, A. Buck and N. J. Balmer, eds., *Transforming lives: Law and social process* (London: Legal Services Commission, 2007) 67; P. Pleasence, N. J. Balmer and A. Buck, “The health cost of civil-law problems: Further evidence of links between civil-law problems and morbidity, and the consequential use of health services” (2008) 5(2) *J. Emp. Legal Stud.* 351.

³¹ See *supra* section I.2(a).

³² See e.g. Ontario Bar Association, *Getting it Right: The Report of the Ontario Bar Association Justice Stakeholder Summit* (Toronto: OBA, 2008) at 8-9, online: OBA <http://www.oba.org/en/pdf/Justice%20Summit_sml.pdf>; Office of Strategic Planning and Performance Management, Evaluation Division, “The Unified Family Court, Summative Evaluation – Final Report” (Ottawa: Department of Justice Canada, March 2009) at 19-20, online: <<http://www.justice.gc.ca/eng/pi/eval/rep-rap/09/ufc-tuf/ufc.pdf>>; Hon. Randall T. Shepard, “The Self-Represented Litigant: Implications for the Bench and Bar” (2010) 48:4 *Fam. Ct. Rev.* 607; Anne-Marie Langan, “Threatening the Balance of the Scales of Justice: Unrepresented Litigants in the Family Courts of Ontario” (2005) 30 *Queen’s L.J.* 825; Robert G. Hann *et al.*, “Court Site Study of Adult Unrepresented Accused in the Provincial Criminal Courts, pt. I (Overview Reports) and pt. II (Site Reports) (Ottawa: Department of Justice Canada, 2002), online: <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la2-rr03_a2/p0.html>; Margaret Shone, “Into the Future: Civil Justice Reform in Canada 1996-2006 and Beyond” (December 2006), online: CFCJ <<http://cfcj-fcjc.org/docs/2006/shone-final-en.pdf>>; Claude Duchesnay, “Se Représenté Seul” (2002) 34(13) *Barreau*, online: <<http://www.barreau.qc.ca/publications/journal/vol34/no13/seul.html>>; A. Currie, *The legal problems of everyday life: The nature, extent and consequences of justiciable problems experienced by Canadians* (Ottawa: Department of Justice Canada, 2007); Mary Stratton, *Alberta Self-Represented Litigants Mapping Project Final Report* (Edmonton: CFCJ, 2007), online: CFCJ <<http://cfcj-fcjc.org/docs/2007/mapping-en.pdf>>; John M. Greacen, “No Legal Advice from Court Personnel: What Does that Mean?” (1995) 34 *Judges’ J.* 10 at 13. Because the number of SRLs in Canadian courts continues to rise, it is not surprising that more recent studies and observations (including the SRL Survey) report higher levels of SRLs as a percentage of overall litigants.

³³ SRL survey, *infra* at Appendix II.

³⁴ *Ibid.*

Depending on the court, issue and jurisdiction, SRLs may amount to more than half of the litigants in today's courtrooms.

4. BASIC CHARACTERISTICS

In addition to their sheer number, SRLs are also particularly vulnerable in terms of their relative lack of education, income and assets.³⁵ According to several significant civil justice studies, SRLs can be categorized into seven basic types, as set out below.³⁶

- The primary group of SRLs includes people with a lack of social resources (low income, low education, low literacy, etc.).
- Low income SRLs with some social resources (people who cannot afford a lawyer but who have sufficient social resources and education to seek available services).
- SRLs living with social barriers that interfere with accessing justice (i.e. people living with challenges resulting from physical or mental differences, language and cultural barriers, people living in remote locations, etc.).
- SRLs who are unable to find a lawyer (usually people who live in small towns or remote areas).
- SRLs who were previously represented but who are no longer represented (usually in lengthy cases with no permanent resolution).
- SRLs in cases where representation is said not to be necessary (i.e. small claims, traffic court, etc.).
- SRLs who could access representation but prefer to self-represent (usually well-educated people who distrust the legal profession).³⁷ SRLs in this latter category have been found to be a “significant minority” of the overall SRL population.³⁸

³⁵ See Lee Stuesser, “Dealing with the Unrepresented Litigant” (paper presented at Canadian Association of Provincial Court Judges Annual Conference in Charlottetown, Prince Edward Island, 2002).

³⁶ See Mary Stratton, *Alberta Self-Represented Litigants Mapping Project Final Report* (Edmonton: CFCJ, 2007) at 12-16, online: CFCJ <<http://cfcj-fcjc.org/docs/2007/mapping-en.pdf>>; Mary Stratton, *Alberta Legal Services Mapping Project Final Report* (Toronto: CFCJ, 2011) at 89-91, online: CFCJ <<http://cfcj-fcjc.org/publications/mapping-en.php>>. See also Claude Duchesnay, “Se Représenté Seul” (2002) 34(13) *Barreau*, online: <<http://www.barreau.qc.ca/publications/journal/vol34/no13/seul.html>>.

³⁷ *Ibid.*

³⁸ Lee Stuesser, “Dealing with the Unrepresented Litigant” (paper presented at Canadian Association of Provincial Court Judges Annual Conference in Charlottetown, Prince Edward Island, 2002). See also Law Commission of Ontario, “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System” (2010), online: <<http://www.lco-cdo.org/en/content/family-law-reform>>.

5. NEEDS OF SRLS

While the characteristics of SRLs are varied, there are some basic unifying needs. For example, as set out in figs. 1-3 below, Canadian court workers identified a number of recurring themes when asked about the needs of SRLs.

FIGURE 1
“WHAT ARE THE GENERAL NEEDS OF SRLS?”









<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Assistance with forms		97%	268
Referrals to related services		33%	90
Plain language information/education		94%	259
Legal advice		83%	230
Legal representation for a case		64%	177
Drafting court documents and orders		76%	211
Court preparation		74%	203
Other		12%	34
	Total Responses		276

FIGURE 2
“WHAT ARE THE MOST DIFFICULT NEEDS OF SRLS TO ADDRESS?”



















<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Assistance with forms		55%	149
Referrals to health or social services		13%	35
General plain language info/education		49%	135
Legal advice about a case /process		76%	208
Legal representation for a case		45%	123
Drafting pleadings, documents, orders		59%	161
Court preparation		45%	122
Other		2%	5
	Total Responses		273

FIGURE 3
“WHAT ARE SPECIFIC CHALLENGES WHEN DEALING WITH SRLS?”³⁹

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
SRLs with language barriers		72%	198
SRLs with learning disabilities/low comprehension		78%	214
SRLs with mental health issues		70%	193
Highly emotional SRLs		88%	241
Highly stressed SRLs		87%	238
Highly litigious/vexatious SRLs		62%	169
Security concerns		50%	136
Insufficient time to assist SRLs		54%	147
Limited info, resources, referrals		56%	153
Other		3%	7
Total Responses			274

It is clear from these results that assistance with basic legal procedures, often including court-based paperwork (filling out forms, court documents, etc.) as well as interpersonal issues (stress, lack of knowledge, etc.) are recurring themes across essentially all jurisdictions and levels of courts. The overall trends in SRL needs identified in the SRL Survey are also largely consistent with those that are identified in the literature. According to various commentators, there are several basic types and categories of SRL needs, including:

- basic orientation around the legal system (buildings, courts, locations, child care, etc.);
- diagnosis of legal problems;
- logistics (clarify objectives, organize cases, interact with the legal system, etc.);
- strategy (learn tactical solutions, build a coherent and persuasive case, draft legal documents and orders, prepare for negotiation in trial or mediation, etc.);
- legal knowledge (procedural and substantive);
- resolution of legal problems (assistance to support fair outcomes); and
- collaboration (partnerships between the judicial system and external organizations).⁴⁰

³⁹ While this figure focuses primarily on the experiences of court administrators, we have included it here to highlight some of the needs that staff find particularly challenging when serving SRLs.

Overall, SRLs have significant procedural and substantive legal needs, which are often aggravated by various interpersonal challenges. The totality of these needs has been nicely summed up in the following words of a Canadian court worker, who indicated that what SRLs need is information on how to “run a trial, collect evidence, run a discovery (questioning), prove [their] ... case, [and] make the other person comply with a court order.” Adequately addressing these needs is clearly no small order.

6. WHAT WE KNOW ABOUT CURRENT SERVICES FOR SRLS

Although comprehensive information on legal services in Canada is very incomplete, we acknowledge that, depending on the jurisdiction, there are some services currently available to assist SRLs with their legal needs, including self-help centres, public legal information, lawyers, duty counsel and paralegals, court staff, court libraries, etc.⁴¹ However, what is clear from the

⁴⁰ See e.g. Ronald Staudt and Paula L. Hannaford, “Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers” (2002) *Syracuse L. Rev.* 1017; Charles L. Owen *et al.*, “Access to Justice: Meeting the Needs of Self-Represented Litigants (SRLs)” (Chicago: Chicago-Kent College of Law, 2001), online: <<http://www.kentlaw.edu/cajt/AccessToJusticeMeetingTheNeeds.pdf>>; Gayla Reid, Donna Senniwi and John Malcolmson, “Developing Models for Coordinated Services for Self-Representing Litigants: Mapping Services, Gaps, Issues and Needs” (Vancouver: BC Law Courts Education Society, 2004), online: <http://justiceeducation.ca/themes/framework/documents/srl_mapping_repo.pdf>; John M. Greacen, “Self-Represented Litigants: Learning from Ten Years of Experience in Family Courts” (2005) 44 *Judges J.* 24; Gayla Reid and John Malcolmson, “Civil Hub Research Project: Needs Mapping” (2007) Legal Services Society, online: <<http://www.ag.gov.bc.ca/justice-reform-initiatives/publications/pdf/CivilJusticeHub.pdf>>; Hon. Coulter A. Osborne, “Civil Justice Reform Project: Unrepresented Litigants” (Ministry of Attorney General of Ontario, 2007), online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/080_unrepresented.asp>; Mary Stratton, *Alberta Self-Represented Litigants Mapping Project: Final Report* (Edmonton: CFCJ, 2007), online: <<http://cfcj-fcjc.org/docs/2007/mapping-en.pdf>>; Anna Patton, Yetta Withrow and Nova Scotia Department of Justice, “Self-Represented Litigants in Nova Scotia: Needs Assessment Survey” (Halifax: Nova Scotia Department of Justice, 2004); Ontario Civil Legal Needs Project Steering Committee, “Listening to Ontarians: Report of the Ontario Civil Legal Needs Project” (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2010), online: LSUC <http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf> (for the companion report, see Jamie Baxter and Albert Yoon, *The Geography of Civil Legal Services in Ontario*, Report of the mapping phase of the Ontario Civil Legal Needs Project (Toronto: The Ontario Civil Legal Needs Project Steering Committee, 2011), online: <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>>); CFCJ, “Reaching Out with Research: Engaging Community in Mapping Legal Service Accessibility, Effectiveness and Unmet Needs” (Edmonton: CFCJ, 2008), online: CFCJ <<http://cfcj-fcjc.org/docs/2008/stratton-reachingout-en.pdf>>; BC Justice Review Task Force, “Effective and Affordable Civil Justice: Report of the Civil Justice Reform Working Group to the Justice Review Task Force” (Vancouver: BC Justice Review Task Force, 2006), online: BC Justice Review Task Force <http://www.bcjusticereview.org/working_groups/civil_justice/cjrwg_report_11_06.pdf>; Mary Stratton, *Alberta Legal Services Mapping Project Final Report* (Toronto: CFCJ, 2011), online: CFCJ <<http://cfcj-fcjc.org/publications/mapping-en.php>>.


⁴¹ Providing a comprehensive review of current Canadian legal services for SRLs is not the purpose of this White Paper. In fact, there has been relatively little comprehensive legal services mapping research done in Canada. For several studies on this issue from different jurisdictions, which provide very useful research, see CFCJ, “Alberta Legal Services Mapping Project”, online: CFCJ <<http://cfcj-fcjc.org/research/mapping-en.php>>; Jamie Baxter and Albert Yoon, *The Geography of Civil Legal Services in Ontario*, Report of the mapping phase of the Ontario Civil Legal Needs Project (Toronto: The Ontario Civil Legal Needs Project Steering Committee, 2011), online: <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>>; Gayla Reid, Donna Senniwi and John Malcolmson, “Developing Models for Coordinated Services for Self-Representing Litigants: Mapping Services, Gaps, Issues and Needs” (Vancouver: BC Law Courts Education Society, 2004), online:

literature, as confirmed by the SRL Survey,⁴² is that these services are highly inadequate (or are often not at all available) for servicing the increasing needs of SRLs across the country.

7. PROBLEM: THE NEED-SERVICE GAP

The problem with the current service situation is relatively clear. According to the SRL Survey (see fig. 4), although respondents from some jurisdictions and some courts are reporting moderate success with adequately servicing the needs of SRLs, most – almost 70% – are not. Put simply, notwithstanding significant efforts that are being made by many dedicated people at all levels of courts and court services across this country, there is a growing gap between what most SRLs need and the court services that are available.

FIGURE 4
“ARE SRL SERVICES ADEQUATE?”

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes		32%	87
No		68%	185
		Total Responses	272

A lack of adequate services for SRLs was consistently reported across the country and in all types of courts. Provincial appellate court staff identified a particular lack of adequacy, with only 10% reporting that services for SRLs are adequate. Respondents from the Federal Court and Supreme Court of Canada reported higher levels of adequacy (approximately 50%). For courts in large urban centres, 38% of respondents found services to be adequate, compared to 29% for small urban centres and 11% for courts in more remote locations (where providing adequate resources is often a challenge). Significantly more court workers in British Columbia (46%) and Nova Scotia (40%) reported services as being adequate compared to the average (32%). These regional numbers are likely the result of positive SRL-related initiatives in those various provinces, including the BC Supreme Court Self-Help Information Centre (part of the

<http://justiceeducation.ca/themes/framework/documents/srl_mapping_repo.pdf>. For further sources of research on this point, see *supra* at pt. II.1, and further the SRL Bibliography, *infra* at Appendix IV. See also generally CFCJ, “Inventory of Reforms”, online: CFCJ <<http://cfcj-fcjc.org/inventory/>>; ACCA, “Resources”, online: <<http://www.acca-ajc.ca/visitors/resources.aspx>>. In order fully to understand the services available for SRLs in the various jurisdictions across the country, further mapping research – beyond the scope of this White Paper – is clearly needed.

⁴² SRL Survey, *infra* at Appendix II.

Nanaimo and Vancouver Justice Access Centres⁴³) and the Legal Information Society of Nova Scotia.⁴⁴

What the responses to the SRL Survey make clear is that, at least in most circumstances, there is a general lack of resources, a lack of training, a lack of understanding of what can be provided and what cannot, and throughout the country (and even within jurisdictions) there is an extreme lack of consistency of services and service delivery. Court staff report that some staff provide significant amounts of assistance while others do not. And even within the group of those that do try to provide as much as they can, there is significant inconsistency. According to one court worker:

- *The most common complaint of SRLs is that every person they talk to gives them a different answer.*⁴⁵

As to what the SRL Survey respondents said in terms of their ability to provide services, responses were varied. Some indicated a general satisfaction with their ability to service SRLs. We were initially surprised by this result. However, after reading the totality of the various responses on this issue, it is our understanding that the relatively high level of satisfaction (still only 32%) is not so much an indication that SRL needs are being met, but is rather a reflection of the fact that most court workers see their service role as quite limited,⁴⁶ and that they are therefore of the view that they are providing all of the services that they see as being potentially on offer. Most SRL Survey respondents, however, did not indicate a general satisfaction with their ability to serve SRLs (again see fig. 4). A representative sampling of the descriptive responses on this issue is set out below.

- *We are not allowed to give legal advice and are not allowed to tell them what to put on their forms, which is mostly what they expect from us.*
- *We are unable to give legal advice but can give legal information and information on process. SRLs don't necessarily understand why we can only assist them so far in filling out their forms or assisting with wording in an order, etc.*
- *Registry staff and court clerks have been told not to give assistance to SRLs but instead send them to the self-help centre, which itself is ill-prepared to assist.*

⁴³ See e.g. Justice Access Centre, Self-Help and Information Services, online: <<http://www.supremecourtselfhelp.bc.ca>>. Other significant SRL resources are provided in British Columbia by the Justice Education Society (see online: <<http://www.justiceeducation.ca/>>).

⁴⁴ Legal Information Society of Nova Scotia, online: <<http://www.legalinfo.org>>. Nova Scotia also undertook a collaborative research initiative that looked at the needs of SRLs, which provided a useful foundation for improving Nova Scotia's services for SRLs.

⁴⁵ SRL Survey, *infra* at Appendix II.

⁴⁶ Discussed further *infra* at section III.4.

- *I try to help them as much as I can but am not able to assist in completing forms and cannot give legal advice.*
- *There is limited guidance and assistance on how to fill out forms, court processes and legal information beyond ephemeral materials. Mainly they are provided with a list of possible forms that could be applicable to their situation and are left to their own devices to figure out what they really need....*
- *It's hard for them to find the help they need. I see a lot of SRLs come to court completely unprepared and unsure of what to do, but unable to find the information they need. It wastes a lot of court time.*
- *A great number of SRLs do not have computers or access to the internet and with most of the resources/documents now being available only online ... the services are not accessible to everyone equally.*
- *As time goes on we are seeing more and more SRLs due to the cost factor of obtaining legal representation therefore the need is great for assistance and unfortunately it comes down to the amount of dollars available/spent on programs to assist this target group. In our jurisdiction I feel there is not enough money spent developing programs to assist the SRL. The Courts have seen a greater emphasis on the needs of SRLs however we do not have the funding available to provide the necessary assistance that would be required to properly assist those in need.*
- *The official line is 'Smile and file'. Meaning we just take in the documents without comment, however many of us comment and try to help/educate as best we can.⁴⁷*

Further, even on the issue of whether services exist and whether such services are adequate, responses varied dramatically:

- *There is a wealth of information on the internet, pamphlets located in the courthouse/[government sites]..., courthouse tenants such as Legal Aid, John Howard Society, mediation services, court provided interpreters, [etc.]....*
- *[Information is] very adequate if a computer can be accessed but some individuals may have ... difficulty understanding process.*
- *There are basically no services.*
- *There seems to be services for the very poor, or lawyers for the very wealthy, but very few for the average middle-class person off the street.*

⁴⁷ See SRL Survey, *infra* at Appendix II.

Overall, what is clear from both the literature and the SRL Survey is that the current needs of SRLs are generally known, they are relatively predictable and they are increasing in scope and volume. What is also clear is that the services that are available vary across the country (and sometimes across jurisdiction), are largely inadequate, and generally miss the central need of SRLs, which is primarily legal assistance with navigating the increasingly complex landscape of the justice system.

The balance of this White Paper is designed to address and make recommendations regarding that service gap.

III. BRIDGING THE GAP: ADDRESSING THE NEEDS OF SRLS

1. RECOMMIT TO THE FUNDAMENTAL PURPOSE OF THE PUBLIC JUSTICE SYSTEM

While there may not currently be a constitutional right to counsel or absolutely unfettered access to courts in this country, the Supreme Court of Canada has recognized that “Access to legal services is fundamentally important in any free and democratic society.”⁴⁸ Citizens need to be able to access the public justice system. And access to the justice system needs to be more than theoretical if it is going to mean anything in the day to day lives of the citizens the system is designed to serve (and which they pay for through their taxes). As the Chief Justice of Canada has commented regarding the increasing gap between what the system costs and what people can afford:

Access to justice is the most significant challenge facing the Canadian justice system. While the problem is a complex one involving the interplay of numerous factors, for too many Canadians cost seems to rise as an insurmountable barrier to access.⁴⁹

The Chief Justice of Canada’s comments are entirely consistent with the responses of court workers in the SRL Survey,⁵⁰ and are supported by the literature,⁵¹ that Canadian courts are increasingly populated by SRLs, the vast majority of whom cannot afford legal counsel and are not choosing to be self-represented. As this White Paper articulates,⁵² the justice system’s current capacity for servicing these SRLs is increasingly not meeting their needs.

To address the need-service gap that currently exists, the first step, as recommended by this White Paper, is to ask all stakeholders in the justice system to recommit to the fundamental purpose of the public justice system. This is a straightforward but foundational recommendation.

⁴⁸ *British Columbia (Attorney General) v. Christie*, [2007] 1 S.C.R. 873 at para. 23.

⁴⁹ Rt. Hon. Beverley McLachlin, PC, quoted in CFCJ, SSHRC CURA award grant announcement, “Forum Research on the cost of justice awarded \$1 million” (2011), online: CFCJ <<http://cfcj-fcjc.org/news/>>.

⁵⁰ See *supra* section I.2(a).

⁵¹ See *supra* section II.3.

⁵² See *supra* section II.7.

The threshold question that needs to be answered in so doing is the following: Is the justice system about resolving the legal problems of those who can afford to be there; or is the justice system meant to serve the legal needs of all members of the system's community constituents?

What is at stake when answering this question? One answer treats meaningful access to the system as a privilege – essentially in-line with modern private arbitration regimes. The other treats meaningful access to the public adjudication system – which is after all, along with legislation, one of the two core regulatory tools in a democracy⁵³ – much more as legitimate societal expectation. At the moment, as the Chief Justice of Canada articulates, access to the system has increasingly become a privilege. Or as the Irish judge Sir James Mathew reportedly stated about the English courts many decades ago: “justice is open to all – like the Ritz Hotel.”⁵⁴

The system needs to be available for citizens to meaningfully resolve their disputes. As the Supreme Court of Canada has further held: “We have no doubt that the right to access to the courts is under the rule of law one of the foundational pillars protecting the rights and freedoms of our citizens.”⁵⁵ Further, according to the Chief Justice of Canada,

The most advanced justice system in the world is a failure if it does not provide justice to the people it is meant to serve. Access to justice is therefore critical. Unfortunately, many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system. Some of them decide to become their own lawyers. Our courtrooms today are filled with litigants who are not represented by counsel, trying to navigate the sometimes complex demands of law and procedure. Others simply give up.⁵⁶

Similarly, according to one respondent in the SRL Survey:

- *At ... present ... it seems as though the justice system ... discourages SRLs.*⁵⁷

⁵³ See e.g. Trevor C. W. Farrow, *Civil Justice, Privatization and Democracy* (manuscript under advance publishing contract with University of Toronto Press, in progress) [on file with authors]; Trevor C. W. Farrow, “Public Justice, Private Dispute Resolution and Democracy” in Ronald Murphy and Patrick A. Molinari, eds., *Doing Justice: Dispute Resolution in the Courts and Beyond* (Canada: Canadian Institute for the Administration of Justice, 2009) 301; Trevor C. W. Farrow, “Privatizing our Public Civil Justice System” (2006) 9 *News & Views on Civil Justice Reform* 16, online: CFCJ <[http://www.cfcj-fcjc.org/issue_9/CFCJ%20\(eng\)%20spring%202006-Privatizing.pdf](http://www.cfcj-fcjc.org/issue_9/CFCJ%20(eng)%20spring%202006-Privatizing.pdf)>.

⁵⁴ Sir James Mathew (1830-1908) cited in Susan Denham, “Launch of the Report on Multi-Party Litigation” (Irish Law Reform Commission (ILRC), 27 September 2005) at 9, online: ILRC <http://www.lawreform.ie/Report%20on%20multi-party%20litigation%20launch%20speech%20Denham%20J%20_Sept%202005_.pdf>.

⁵⁵ *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2. S.C.R. 214 at para. 26.

⁵⁶ Rt. Hon. Beverley McLachlin, PC, “Justice in our courts and the challenges we face” (Address to the Empire Club of Canada, 2007).

⁵⁷ SRL Survey, *infra* at Appendix II.

Clearly there is a problematic disconnect within a system that is increasingly populated by individuals who, at the same time, are largely alienated by it. This is not a sustainable picture.

What therefore needs to happen is for the system and its stakeholders to recommit themselves to the core dispute resolution purpose for which the system was designed: to provide a meaningful, fair and accessible venue for citizens – represented or not – to resolve their disputes.

Recommendation 1

The justice system and its stakeholders must recommit to the core dispute resolution purpose for which the system was designed: to provide a meaningful, fair, just and accessible venue for citizens – represented or not – to resolve their disputes.

2. MULTI-SECTOR APPROACH

Given the challenging and largely unmet legal needs of SRLs, which must be a central focus of any kind of reform-oriented justice initiative, it is clear that there is not one – single – tool needed to address these varied needs. Numerous tools are needed, which could be provided by several different justice system stakeholders. For example, specific areas of focus could include:

- frontline assistance such as improved and expanded legal information materials,⁵⁸ court staff assistance, plain language forms, websites and legal information centres;
- an increased role for paralegals, public legal education services, and potentially other law and related service providers;
- the unbundling of legal services;
- improved legal advice lines with more access to lawyers;
- an increased number and capacity of legal advice centres;
- more duty counsel;
- increased legal aid funding;
- dispute avoidance and expanded consumer protection initiatives;

⁵⁸ For a useful source of public legal information, see e.g. Justice Education Society, online: <<http://www.justiceeducation.ca/>>.

- new models of legal services and legal practice (e.g. online dispute resolution, other technology-based initiatives, etc.); and
- changes to procedural rules or system-wide changes such as simplifying rules of court, special rules for SRLs, case management streams, the use of ADR, and summary trial processes, etc.⁵⁹

None of these services can come from one sector or provider. They require, together, what one commentator has termed a “grand bargain”⁶⁰ among the various justice stakeholders, which the Canadian Judicial Council similarly identifies as a collaboration “among the judiciary, the courts, the Bar, Legal Aid providers, the public, and relevant governmental agencies.”⁶¹

This collaborative approach is also in line with what current court staff are looking for, as documented in the following SRL Survey responses:

- *What is required is information sessions and assistance from the legal community, i.e. lawyers, paralegals, court staff, etc., to assist these individuals with an understanding of their issues and options that may be available to them.*
- *The Attorney-General should take direct responsibility for the support of SRLs as they are the most vulnerable stakeholders in the justice system.*
- *Currently the political will and resources are going in to programs which divert people out of the court system, e.g. mediation, education. While this is very important, it ignores the people who proceed to court. A clear policy needs to be developed to address this large number of people and coordination between government and NGOs needs to close the gap to provide a full and effective service.*⁶²

As these comments from front-line court workers attest, what is needed to address the growing needs of SRLs is a collaboration between many justice system stakeholders, including governments, judges, court staff, lawyers, public legal education providers, the academy, other not-for-profit service providers, and SRLs themselves. Thinking about the issue as a single

⁵⁹ See Diana Lowe, “Unrepresented Litigants: What are we Doing to Meet the Challenge?” (paper presented to the Canadian Bar Association Continuing Legal Education Session on Winning Advocacy Skills: “Facing an Unrepresented Litigant”, Winnipeg, August 2004) [unpublished]. See also Supreme Court of Virginia Pro Se Litigation Planning Committee, “Self-Represented Litigants in the Virginia Court System: Enhancing Access to Justice” (Virginia: Supreme Court of Virginia, 2002).

⁶⁰ Jeanne Charn and Richard Zorza, “Civil Legal Assistance for All Americans”, (2005), online: <<http://www.zorza.net/Bellow-Sacks/Text.pdf>>.

⁶¹ Canadian Judicial Council, *Statement of Principles on Self-represented Litigants and Accused Persons* (adopted September 2006) at 11, online: CJC <http://www.cjc-cm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf>.

⁶² SRL Survey, *infra* at Appendix II.

problem in search of a single solution will impoverish the potential thinking, collaboration and initiatives that will clearly be needed to bridge the complex need-service gap that currently exists. Some of these sorts of partnerships and collaborative efforts already exist that involve court administrators. Others could be created. Set out immediately below is a brief sampling of the kinds of potential examples or ideas of what we are contemplating in this section of the White Paper.

- Active communication and potential partnerships between court staff, self-help centres, public legal education providers and resources, etc., should be encouraged to avoid duplication and to ensure that the appropriate and available resources are being offered and deployed in appropriate circumstances. While court staff are not themselves public legal education experts, they certainly could become – with appropriate support – even more familiar than many already are with the various options and tools that are available (not necessarily to provide information and assistance, although that might be part of it,⁶³ but rather better and more efficiently to point people in the appropriate direction when further assistance is needed).
- Further connections between front line court staff and particular community or specialty clinics, legal aid offices, pro bono or volunteer lawyers, etc. (perhaps with the assistance of some kind of “hot line” or efficient referral service) could be encouraged (some of these connections exist, many more of them could be developed).
- Efforts could be made to foster more direct links and partnerships with non-law related providers, such as social workers, landlord and tenant advocates, mental health professionals, crisis centres, etc., which are clearly important when it comes to addressing many of the surrounding issues that create or at least often accompany legal problems (and that are often so central in terms of helping to resolve those problems).⁶⁴
- More collaborative work and communication in courthouses themselves, in terms of court scheduling and file processing, might improve the experience of some litigants (particularly SRLs). For example, it might be possible – at least in some courts and jurisdictions – for schedules to be arranged such that on certain days, increased numbers of volunteer lawyers and paralegals, duty counsel, and potentially volunteer law students are at courthouses in order to assist with an increased number of SRL cases that could be scheduled on those particular days.
- Collaboration could also be looked at in terms of training programs. Bringing various justice sector providers together at the training stage would not only provide for efficiencies in terms of the cost of providing training, it would also likely militate in

⁶³ See *infra* section III.4.

⁶⁴ For a recent discussion of access to justice, of looking at it broadly as opposed to more narrowly, and of some of the surrounding legal and non-legal issues that the justice community should be thinking about in the context of helping citizens with their full range of legal and related issues, see Law Society of Upper Canada, “Accessing the justice system: Exploring perceptions” *Gazette* (Winter 2012) 4.

favour of improved partnerships and the sharing of ideas, again to the benefit of the system as a whole and the individual litigants who use the system.

Recommendation 2

All justice system stakeholders must realize and commit to the reality that, in order to bridge the complex need-service gap that currently exists for SRLs, what is required is a collaboration of efforts and services involving all justice system stakeholders, including governments, judges, court staff, lawyers, public legal education providers, the academy, other not-for-profit service providers, and SRLs themselves.

It is hoped that courts and court administrators could play a leadership role in terms of this collaborative sensibility, particularly given their central (and potential “triage”⁶⁵) roles with respect to many aspects of the system.

3. SENSIBILITY OF SERVICE

The SRL Survey confirmed that the Canadian justice system is made up of highly skilled and dedicated people. There is no doubt about that. However, the SRL Survey unfortunately also confirmed (as supported by the literature) that court staff and related service providers are increasingly unable to adequately service those who consume justice: namely the public. To help bridge this service gap, the third recommendation in this White Paper is that judges, court staff, lawyers and others – the workers in, and providers and trustees of, public justice – must embrace a greater sensibility and mindset of consumer-oriented service in the spirit of assisting the members of the public who come into contact with the justice system. In particular, what is being recommended here is a change in the focus of thinking of the people who serve SRLs away from the Court, the judiciary, the Bar or themselves (the justice providers) and toward those whom they serve (the justice consumers).

This recommendation is premised on several important truisms. Judges are appointed and paid by the state. Court staff are also paid by the state. Justice, and access to it, is an increasingly important part of meaningful membership in civil society. Taxpayers therefore have a legitimate expectation of access to meaningful public legal resources. Law is becoming increasingly complex and inaccessible. And lawyers continue largely to have a monopoly over the provision of legal services that help to navigate that complex and increasingly inaccessible system. In sum, the growing disconnect – discussed above⁶⁶ – between the public’s need and the system’s ability to provide accessible legal services continues to apply to this discussion as well.

⁶⁵ See *infra* section III.6.

⁶⁶ See *supra* section II.7.

An important shift that needs to happen is that those who work in the justice system – judges, lawyers, court administrators, academics, policy makers, etc. – need to fundamentally shift how they see their role. As one court worker in the SRL Survey stated, what is needed is to:

- *[C]hange ... how we do business within the context of courts.*⁶⁷

The focus of thinking needs to move from the providers to the consumers. In the context of SRLs, the discussion needs to move away from complaints about “how we have to deal with difficult SRLs” and toward a constructive conversation about “what they as SRLs need and how we can help.” The point of this reform exercise is not ultimately about helping judges and court staff, but rather helping SRLs. It is about efficiently and effectively thinking about and meeting the public’s needs.

The medical profession has undergone an analogous change of collective mindset: from doctors and hospitals to patients and families. Changes at all levels of the system flow from such a shift: wait times are seen to matter; public information is more available and reliable; areas of research are shifted and expanded; second opinions are not discouraged; hospital architecture has been transformed, etc. In sum, changes at all levels of the medical system have come about at least in large measure as a result of a collective shift in thinking. Similar shifts in the way legal education is thought about are also occurring: from professor-centered to learner-centered educational strategies.⁶⁸

What is needed is an SRL-focussed mindset, which takes seriously the recent invitation from the Governor General of Canada to “engage our most innovative thinking to redefine professionalism and regain our focus on serving the public.”⁶⁹ While that invitation was made primarily to lawyers, the same comment applies generally throughout the justice community. This shift in focus is consistent with the sensibility of earlier comments made by Lord Woolf, who stated that: “Only too often the litigant in person is regarded as a problem for judges and for the court system rather than the person for whom the system of civil justice exists. The true problem is the court system and its procedures which are still too often inaccessible and incomprehensible for ordinary people.”⁷⁰ The justice system must immediately adapt to what the Law Commission of Ontario (LCO) recently referred to as the “reality of self-represented litigants.”⁷¹ In so doing, those who work in the justice system should increasingly look at the

⁶⁷ SRL Survey, *infra* at Appendix II.

⁶⁸ For general discussions, see e.g. Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map* (United States: Clinical Legal Education Association, 2007); William M. Sullivan *et al.*, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

⁶⁹ Rt. Hon. David Johnston, “Canadian Bar Association’s Canadian Legal Conference – The Legal Profession in a Smart and Caring Nation: A Vision for 2017” (14 August 2011), online: Governor General of Canada <<http://www.gg.ca/document.aspx?id=14195>>. For a general discussion of modern approaches to legal professionalism, see Trevor C. W. Farrow, “Sustainable Professionalism” (2008) 46 Osgoode Hall L.J. 51.

⁷⁰ Rt. Hon. Lord Woolf, M.R., *Access to Justice – Interim Report to the Lord Chancellor on the civil justice system in England and Wales* (London: HMSO, 1995) at c. 17 (Litigants in Person), para. 2.

⁷¹ LCO, “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the

world of justice not so much from the privileged vantage point of the provider, but rather with an honest view to, and increasing understanding of, the day to day needs and realities of the consumer. Only then will the justice system consistently and effectively be able to answer the following typical (and representative) questions from an SRL (as reported from a court worker in the SRL Survey):

- “I don't know how to proceed – can you help [me] figure out what I need to do in order to have my issue resolved?”; or more to the point: “Now what do I do?”⁷²

These are the questions that must be answered efficiently and meaningfully by the justice system if it is going to claim to be adequately (and successfully) servicing those for whom it was designed to serve.

Recommendation 3

The justice system, through those that work in it, must shift its focus fundamentally and see itself through a more user-centered, rather than provider-centered, lens of service.

4. SERVICE SHIFT: FROM LEGAL INFORMATION/ADVICE TO MEANINGFUL LEGAL ASSISTANCE

The first three recommendations in this White Paper contemplate large, system-wide opportunities for new thinking and reform. They generally apply across the board to all justice system stakeholders. However, given that this White Paper is ultimately and primarily focussed on courts and court administration, the remaining recommendations focus on the central and ultimately most problematic aspect of how SRLs are currently served by the court system.

(a) Legal Information/Advice

One of the key distinctions that has operated to limit the ability of court staff (and judges for that matter) to provide meaningful service to SRLs is the distinction between legal information and legal advice. In all Canadian jurisdictions, court staff and related service providers are obliged to provide members of the public with legal “information”, but are prohibited from providing them with legal “advice”. For example, staff in Legal Information Centres across Alberta “cannot provide legal advice” but can “provide information to self-represented litigants about available options and resources ... to help them make informed choices to resolve their disputes.”⁷³ The problem with this distinction is that it is at best unclear and is typically unhelpful. What is the

Justice System” (Toronto, September 2009) at 11, online: LCO <<http://www.lco-cdo.org/family-law/Family%20Law%20Process%20Consultation%20Paper%20-%20September%202009.pdf>>.




⁷² SRL Survey, *infra* at Appendix II.

⁷³ Government of Alberta, *2011 Alberta Court Calendar and Court Services Programs*, online: Alberta Queen’s Printer <http://www.qp.alberta.ca/documents/court/2011_Court_Calendar.pdf>.

meaning of the term “legal information”? What is the meaning of the term “legal advice”? What is the difference, both in the eyes of the front-line court service provider, and more importantly, for the justice consumer?

As the SRL Survey confirmed (see fig. 5 below), a majority of court workers are of the view that the current guidelines that determine what they can and cannot provide to SRLs are either inadequate (11%) or non-existent (44%).

FIGURE 5
“ARE CURRENT COURT STAFF GUIDELINES FOR DEALING WITH SRLS ADEQUATE?”

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes		45%	118
No		11%	29
Not applicable; we have no guidelines		44%	115
		Total Responses	262

John Greacen, in his seminal 1995 article entitled “No Legal Advice from Court Personnel – What Does That Mean?”, stated that the term legal advice – notwithstanding it’s prevalence – is ambiguous and that further, it has no inherent core meaning.⁷⁴ He went on to state that despite the fact that the term legal advice has no inherent meaning, it is often distinguished from the term legal information for the following reasons:

- to maintain confidentiality over pending court matters;

⁷⁴ See John M. Greacen, “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_greacen.asp>; John M. Greacen, “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84 Judicature 198, online: American Judicature Society <http://www.ajs.org/prose/pro_greacen.asp>. See further John M. Greacen, “A Fresh Look at Our System for Providing Civil Legal Assistance” (2006) 45 Judges’ J. 31; John M. Greacen, “Self Represented Litigants and Court and Legal Services Responses to their Needs: What We Know” (2002), online: <http://lri.lsc.gov/pdf/02/020045_selfrep_litigants&whatweknow.pdf>; John M. Greacen, “Resources to Assist Self-Represented Litigants: A Fifty State Review of ‘State of the Art’” (2011), online: <<http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>>; John M. Greacen, “Self-Represented Litigants: Learning from Ten Years of Experience in Family Courts” (2005) 44 Judges’ J. 24; John M. Greacen, “An Administrator’s Perspective: The Impact of Self-Represented Litigants on Trial Courts – Testing our Stereotypes Against Real Data” (2002) 41 Judges’ J. 32. For commentaries on Greacen’s work and further discussions on this issue of legal assistance, see e.g. Richard Zorza, “An Overview of the Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue” (2009) 43(3) Family L. Q. 519; Richard Zorza, “The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers” (2002), online: <http://lri.lsc.gov/pdf/03/030111_selfhelppct.pdf>; William Fortherby, “Law That is Pro Se (Not Poetry): Towards a System of Civil Justice that Works for Litigants without Lawyers” (2010) 16(1) Auckland U. L. Rev. 54; Quintin Johnstone, “Law and Policy Issues Concerning Adequate Legal Services for the Poor” (2011) 20 Cornell J. L. & Pub. Pol’y. 571.

- to prevent court staff from providing one party with an unfair advantage by sharing information with one party and not the other; and
- to prevent lawyers from relying on information provided by court staff to get around otherwise proper court procedures.⁷⁵

According to Donna Beaudet, an inability to provide “legal advice” is used merely as an excuse not to give people – and in particular SRLs – the help they are requesting. Instead, staff should be able to determine, based on set criteria and sound training, what types of information they can and cannot give.⁷⁶

According to Greacen, there are a number of negative consequences that arise from maintaining the distinction between the terms legal information and legal advice:

- court staff are unnecessarily restricted from providing litigants with useful information about their case and court processes, leading to inefficiencies in resolving disputes; and
- in the absence of a clear distinction between the terms legal information and legal advice, court staff retain significant discretion to determine whether to provide litigants with useful information about their case and court processes – the potential for inconsistency (identified above⁷⁷), abuse or favouritism exists in the wake of this discretion.⁷⁸

Ultimately, court staff – particularly those who want to do more – are severely restricted in what assistance they are permitted to provide (even if they know exactly what information would be helpful at the time, which – according to the literature – is typically the case⁷⁹).

(b) Principles for Assistance

⁷⁵ See John M. Greacen, “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_greacen.asp>; John M. Greacen, “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84 *Judicature* 198, online: American Judicature Society <http://www.ajs.org/prose/pro_greacen.asp>.

⁷⁶ Donna Beaudet, “How to Provide Access without Giving Legal Advice: Practical Guidelines for Court Staff” (1999) 14(2) *Court Manager* 22. See further Iowa Judicial Branch Customer Service Advisory Committee, “Guidelines and Instructions for Clerks who Assist Pro Se Litigants in Iowa’s Courts” (2000), online: <http://www.ajs.org/prose/pdfs/Iowa_Guidelines.pdf>; Michigan Judicial Institute, “Legal Advice v. Access to the Courts: Do YOU Know the Difference?” (1997), online: <<http://www.cj.msu.edu/~outreach/mvaa/Handbook%20of%20Legal%20Terms/LegalAdviceBook.pdf>>.

⁷⁷ See *supra* section II.7.

⁷⁸ See John M. Greacen, “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_greacen.asp>; John M. Greacen, “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84 *Judicature* 198, online: American Judicature Society <http://www.ajs.org/prose/pro_greacen.asp>.

⁷⁹ John M. Greacen, “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84 *Judicature* 198, online: American Judicature Society <http://www.ajs.org/prose/pro_greacen.asp>.

In an effort to address these negative consequences, Greacen argued that court staff should not be required to concern themselves with the distinction between the terms legal information and legal advice, and instead adopt a number of principles and guidelines that aim to assist litigants by providing them with useful information about their case and court processes.

Greacen's five main suggested principles for assisting SRLs are as follows:

- court staff have an obligation to explain court processes and procedures;
- court staff have an obligation to inform litigants and potential litigants about how to bring their problems before the court for resolution;
- court staff cannot advise litigants whether to bring their problems before the court, or what remedies to seek;
- court staff have an absolute duty of impartiality – they must never give one party an advantage over the other; they must never give advice or information to one party that they would not give to the other; and
- court staff should not let themselves be used to circumvent the principle that neither parties nor their lawyers may communicate with the judge in the absence of the other party – they must never convey information to a judge on behalf of a litigant directly, or through the course of acting on matters delegated to them for decision.⁸⁰

(c) Guidelines for Assistance

To provide guidance for how to achieve these five main principles, Greacen went on to articulate eleven guidelines for court staff, as follows:

- court staff should provide information contained in docket reports and case files;
- court staff should answer questions concerning court rules, procedures and practices;
- court staff should provide examples of forms or pleadings;
- court staff should answer questions about completed forms;
- court staff should explain the meaning of terms and documents;
- court staff should answer questions concerning deadlines or due dates;

⁸⁰ See John M. Greacen, "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_greacen.asp>; John M. Greacen, "Legal Information vs. Legal Advice: Developments During the Last Five Years" (2001) 84 Judicature 198, online: American Judicature Society <http://www.ajs.org/prose/pro_greacen.asp>.

- court staff should transfer questions to supervisors when unsure of the correct answer;
- court staff should not advise litigants whether to take a particular course of action;
- court staff should not take sides in a case or proceeding pending before the court;
- court staff should not provide information to one party that cannot be provided to all other parties; and
- court staff should not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the outcome.⁸¹

(d) Application of Greacen's Principles and Guidelines in the United States and Canada

Greacen's principles and guidelines have been adopted in several jurisdictions in the United States. For example, in Arizona, a code for judicial employees encourages staff to provide legal assistance – as opposed to legal information or legal advice.⁸² The code states that:

Judicial employees may assist citizens in identifying available procedural options and in understanding and complying with court procedures. Judicial employees shall not advise a particular course of action.⁸³

A commentary to the code provides further evidence of the application of Greacen's principles and guidelines:

Employees may assist citizens, consistent with the court's resources, with matters within the scope of their responsibilities and knowledge. This assistance may include providing information contained in court records; furnishing examples of forms or pleadings; explaining court rules, procedures, practices, and due dates; and helping to complete forms with factual information provided by a citizen. Although a person may be informed of the options for addressing a matter, judicial employees should not advise citizens whether to take a particular course of action or attempt to answer questions outside their knowledge and experience. In performing their official duties, employees should not recommend the names of private attorneys to

⁸¹ *Ibid.*

⁸² Institute for Court Management, *Legal Information vs. Legal Advice: A Curriculum for Court Employees* (Phase III Project) (Prescott, Arizona: Institute for Court Management, 2002) at 12, online: National Center for State Courts <http://www.ncsconline.org/D_Icm/programs/cedp/papers/Research_Papers_2002/ICM_Legal_InfoLegal_Advice.pdf>.

⁸³ *Arizona Code of Conduct for Judicial Employees*, Arizona Supreme Court Administrative Order 97-41 (20 August 1997), online: Arizona Judicial Branch <http://www.supreme.state.az.us/ethics/Employee_Code_of_Conduct.pdf>.

the public unless the employee works in a court approved lawyer referral program, but may refer members of the public to bar associations or legal aid organizations.⁸⁴

Greacen's principles and guidelines have also been adopted in Canada. For example, the CJC's *Statement of Principles on Self-represented Litigants and Accused Persons* has clearly incorporated a user-centered focus. According to the CJC's *Principles on SRLs*:

- judges, in appropriate circumstances, “should consider providing self-represented persons with information to assist them in understanding and asserting their rights, or to raise arguments before the court”;
- court administrators “should seek to provide self-represented persons with the assistance necessary to initiate or respond to a case and to navigate the court system” and “should allocate the necessary resources to allow court personnel to provide meaningful assistance”; and
- both judges and court administrators “should meet the needs of self-represented persons for information, referral, simplicity, and assistance.”⁸⁵

(e) Examples of Instructions for Assisting SRLs

Set out below are some examples of specific instructions for court workers that adopt these various principles and guidelines. The first example is provided by the Michigan Judicial Institute, which very usefully clarifies allowable assistance in the following chart.⁸⁶

⁸⁴ *Ibid.* The (Arizona) Institute for Court Management developed a curriculum for court staff based on Greacen's five principles and eleven guidelines. Surprisingly, the curriculum maintains the distinction between legal information and legal advice, which we can only speculate might have been a compromise reached in order to adopt Greacen's principles. The unfortunate effect is to bring the unhelpful distinction into the guidelines, which must seem contradictory to the court staff who are relying on them. See Institute for Court Management, *Legal Information vs. Legal Advice: A Curriculum for Court Employees* (Phase III Project) (Prescott, Arizona: Institute for Court Management, 2002), online: National Center for State Courts <http://www.ncsconline.org/D_Icm/programs/cedp/papers/Research_Papers_2002/ICM_Legal_InfoLegal_Advice.pdf>. The Arizona approach also brings together the following guidelines that Greacen lists separately: “court staff should answer questions concerning court rules, procedures and practices” and “court staff should answer questions concerning deadlines or due dates”. It will be important to recognize that some “due date” questions may involve legal assistance that court staff can provide, while others may involve professional judgments relating to limitation periods that require legal advice from a lawyer (e.g. whether to raise a limitation period defence).

⁸⁵ CJC, *Statement of Principles on Self-represented Litigants and Accused Persons* (Ottawa: CJC, 2006) at 6-8, online: CJC <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf>. With respect to judicial assistance for SRLs, see further Jona Goldschmidt, “Judicial Assistance to Self-Represented Litigants: Lessons from the Canadian Experience” (2008-2009) 17(3) MSU-DCL J. Int'l L. 601.

⁸⁶ Michigan Judicial Institute, “Legal Advice v. Access to the Courts: Do YOU Know the Difference?” (1997), online: <<http://www.cj.msu.edu/~outreach/mvaa/Handbook%20of%20Legal%20Terms/LegalAdviceBook.pdf>>. See further Arizona Judicial Counsel, “Task Force on Legal Information vs. Legal Advice: Final Report and Recommendations” (2007) online: <http://supreme.state.az.us/courtserv/Legal_A-I/FinalReport.pdf>.

MICHIGAN JUDICIAL INSTITUTE
EXAMPLES OF ASSISTANCE THAT TYPICALLY CAN AND CANNOT BE PROVIDED TO SRLS

<u>Can Provide</u>	<u>Cannot Provide</u>
Legal definitions	Legal interpretations
Procedural definitions	Procedural advice
Cites of statutes, court rules and ordinances	Research of statutes, court rules, and ordinances
Public case information	Confidential case information
General information on court operations	Confidential/restricted information on court operations
Options	Opinions
Access	Deny access, discourage access or encourage litigation
General referrals	Subjective or biased referrals
Forms and instructions on how to complete forms	Fill out forms for a party

Another example of clear and specific guidance for court workers comes from the CJC’s *Principles on SRLs*:

CANADIAN JUDICIAL COUNCIL
STATEMENT OF PRINCIPLES ON SELF-REPRESENTED LITIGANTS AND ACCUSED PERSONS

1. Court administrators should seek to provide self-represented persons with the assistance necessary to initiate or respond to a case and to navigate the court system.
2. In particular, court administrators should be given sufficient resources to be able to:
 - (a) provide, on request, all public information contained in dockets or calendars, case files, indexes and existing reports;
 - (b) provide, on request, access to or a recitation of relevant common, routinely employed rules, court procedures, and fees and costs;
 - (c) provide, on request, information about where to find applicable laws and rules;
 - (d) identify and provide, on request, applicable forms and written instructions;
 - (e) answer questions about how to complete forms, but not about how answers should be phrased;
 - (f) define, on request, terms commonly used in court processes;

- (g) provide, on request, phone numbers for Legal Aid, lawyer referral services, local panels, or other assistance services, such as Internet resources, known to court staff; and
 - (h) provide, to the extent possible, and in compliance with applicable law, appropriate aids and services for individuals with disabilities.
3. Court administrators shall not provide legal advice.
 4. Court administrators should educate court personnel regarding the importance of public access to the courts and should provide training to court personnel as to how they should assist self-represented persons.
 5. Court administrators should allocate the necessary resources to allow court personnel to provide meaningful assistance.⁸⁷

Equally important guidance is provided for judges by the CJC's *Principles for SRLs*:

CANADIAN JUDICIAL COUNCIL
STATEMENT OF PRINCIPLES ON SELF-REPRESENTED LITIGANTS AND ACCUSED PERSONS

1. Judges have a responsibility to inquire whether self-represented persons are aware of their procedural options, and to direct them to available information if they are not. Depending on the circumstances and nature of the case, judges may explain the relevant law in the case and its implications, before the self-represented person makes critical choices.
2. In appropriate circumstances, judges should consider providing self-represented persons with information to assist them in understanding and asserting their rights, or to raise arguments before the court.
3. Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.
4. The judiciary should engage in dialogues with legal professional associations, court administrators, government and legal aid organizations in an effort to design and provide for programs to assist self-represented persons.⁸⁸

⁸⁷ CJC, *Statement of Principles on Self-represented Litigants and Accused Persons* (Ottawa: CJC, 2006) at 8, online: CJC <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf>. Note that principle #3 precludes court administrators from providing legal advice, which of course maintains the distinction between legal information and legal advice.

⁸⁸ *Ibid.* at 7.

Finally, the Iowa Judicial Branch Customer Service Advisory Committee has provided very useful guidelines and particularly useful examples of materials regarding frequently asked questions (FAQs). The manual includes both a set of Guidelines for court clerks who deal with SRLs as well as suggested responses to FAQs from SRLs. The Guide articulates the primary goal of court staff as the provision of high quality service and the adherence to a duty of impartiality. When discussing the prohibition against giving legal advice, the Guide explains that court staff should not apply the law to the facts of a given case, nor give directions regarding how a litigant should respond or behave in any aspect of the legal process. The Guide offers the following list of examples of what the court or clerks should not do.

IOWA JUDICIAL BRANCH CUSTOMER SERVICE ADVISORY COMMITTEE
“GUIDELINES AND INSTRUCTIONS FOR CLERKS WHO ASSIST PRO SE LITIGANTS IN IOWA’S
COURTS”

Court staff should not:

- recommend whether to file a pleading;
- recommend phrasing or content of pleadings;
- fill in a form (except where the SRL has a disability which renders him/her unable to fill in the form);
- recommend people against whom to file petitions;
- recommend specific types of claims or arguments;
- recommend types or amount of damages;
- recommend specific questions;
- recommend specific techniques for presenting evidence or which objections to raise;
- recommend when a continuance should be requested, whether a dispute should be settled, or whether a litigant should appeal a decision;
- interpret the meaning or implications of statutes;
- perform legal research; or
- predict the outcome of a case.

A further list is then provided of allowable information to give, which includes telling litigants where to find information, or reciting commonly employed rules or procedures.⁸⁹

(f) Model Principles and Guidelines

These various examples of principles and guidelines are the kinds of materials that, together with adequate training,⁹⁰ will provide court workers with the necessary tools and latitude with respect to the provision of legal assistance that has been increasingly missing and for which SRLs and court staff alike have been asking for some time.

Recommendation 4

The legal information/advice distinction upon which court staff have traditionally relied when dealing with SRLs should be rejected in favour of a more service-oriented approach based on a notion of “meaningful legal assistance”. Principles and guidelines should be developed and provided to court staff in order to empower the provision of legal assistance to SRLs. While this recommendation is designed to empower court staff to provide more meaningful and immediate assistance to SRLs, it does not suggest that court staff should become advocates or provide legal “advice”, which are important services reserved for lawyers (and potentially other legally trained professionals).

To summarize, the core idea of this recommendation includes the following elements and considerations:

- Categorizing SRL assistance on the basis of whether it amounts to legal “information” or legal “advice”, in the context of front-line court workers, is unhelpful at best and has resulted in an impoverished ability to adequately service the needs of SRLs.
- Court staff should be empowered to stop focusing on that earlier distinction, and rather to move to a sensibility of service that is based on a notion of “meaningful legal assistance”.
- To do so, courts and court staff should understand the principles on which their service role is premised.
- Specific guidelines should then be developed, animated by the underlying principles, which delineate the kinds of legal assistance that can be provided to SRLs. These guidelines should be provided to all court staff who serve SRLs.

⁸⁹ Iowa Judicial Branch Customer Service Advisory Committee, “Guidelines and Instructions for Clerks who Assist Pro Se Litigants in Iowa’s Courts” (2000), online: <http://www.ajs.org/prose/pdfs/Iowa_Guidelines.pdf>.

⁹⁰ See recommendation 7.

- This recommendation is designed to empower court staff to provide more meaningful and immediate “assistance” to SRLs, which is what many respondents to the SRL Survey (as confirmed by the literature) suggested was largely needed.⁹¹ However, it is important to note that this recommendation specifically does not suggest that court staff should become advocates or provide legal “advice”, which are important services reserved for lawyers and potentially other legally trained professionals (e.g. paralegals in some jurisdictions).

To assist with this reform process, we have developed a set of model guidelines, largely based on a combination of many of these examples, to help court staff understand how best to assist SRLs with their legal needs.⁹² Additionally, we have also developed some sample FAQs (with answers), which are also designed to assist court staff with the provision of legal assistance to SRLs.⁹³ Because the needs of SRLs change depending on the services available and the level and subject matter of a given court, different levels of detail and sources of information may or may not be required. For some courts, a list of basic guidelines will be sufficient. For others, a more detailed and topic-specific set of materials may be useful.⁹⁴ As such, neither model document is designed to be comprehensive or final. Rather, they are designed to be adapted and expanded upon to meet the particular needs of each court and jurisdiction.

5. MULTI-OPTION APPROACH TO ASSISTANCE

With these principles and guidelines in hand, it is envisaged that all court workers could provide a “multi-option approach” of assistance that will best serve the needs of SRLs. As John Greacen states in his 2011 review of all 50 US state SRL initiatives, there is a “current consensus within the judicial branch and the legal community that the courts have an obligation to ensure that self-represented persons have the best possible opportunity to obtain a court decision reflecting the facts and law of their situations.”

What is therefore required is a range of legal assistance that fits the various needs of SRLs.⁹⁵ A very manageable and effective formula for achieving this outcome (based on a move away from the information/advice distinction⁹⁶) is contemplated below in fig. 6. The figure shows, in the left column, a range of information needed by SRLs to ensure a reasonable outcome; and, in the right column, a range of sources from which the information or assistance could be obtained.

⁹¹ See SRL Survey, *infra* at Appendix II.

⁹² See *infra* Appendix I.

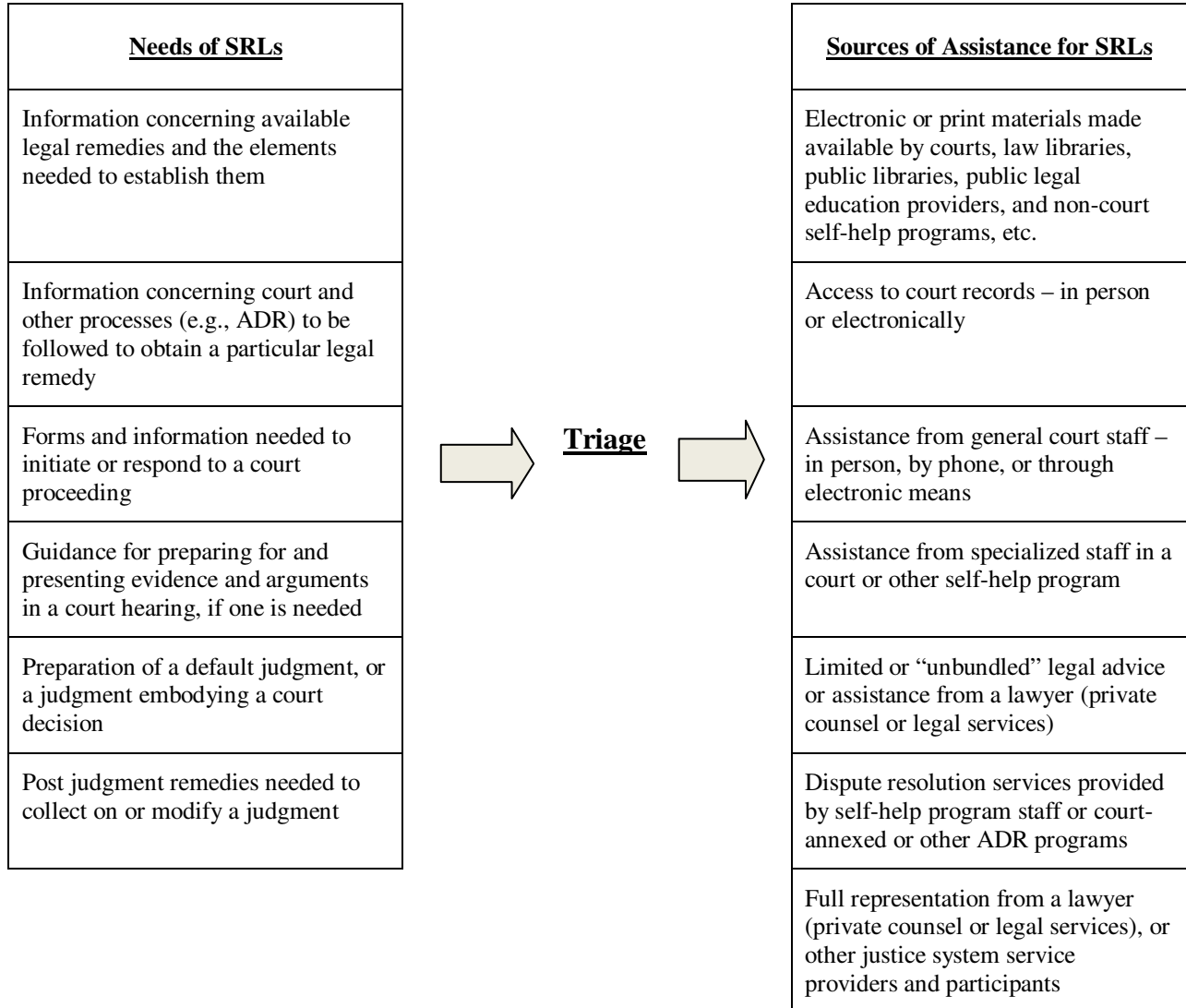
⁹³ See *ibid.*

⁹⁴ For an example of a relatively detailed set of guidelines, see Iowa Judicial Branch Customer Service Advisory Committee, “Guidelines and Instructions for Clerks who Assist Pro Se Litigants in Iowa’s Courts” (2000), online: <http://www.ajs.org/prose/pdfs/Iowa_Guidelines.pdf> (discussed further in section III.4(e)).

⁹⁵ See *supra* section II.5.

⁹⁶ See *supra* section III.4(a).

FIGURE 6
MULTI-OPTION APPROACH TO ASSISTANCE FOR SRLS⁹⁷



The idea behind this multi-option approach is quite straight forward. As discussed above,⁹⁸ the needs of SRLs, although generally known, are not static and not uniform. Put simply, different people and different problems create different types and levels of needs. The column on the left side of the figure includes a representative collection of those various needs. And different needs require different options for assistance. The column on the right side of the figure includes a representative collection of various available assistance options. SRL guidelines should adequately assist court staff in understanding the needs of SRLs and in providing appropriate and meaningful legal assistance to respond to those needs.

⁹⁷ Adapted from John M. Greacen, “Resources to Assist Self-Represented Litigants: A Fifty State Review of ‘State of the Art’” (2011) at 3, online: <<http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>>.

⁹⁸ See *supra* section II.5.

Recommendation 5

The needs of SRLs and the available sources of assistance that the justice system can provide should be understood as a multi-option approach to assistance, and provided on that basis.

6. TRIAGE

To provide a multi-option model of assistance, contemplated in recommendation 5, which is most effective and efficient, it is important to be able to specifically tailor the required assistance to the individual SRL. Providing a particular litigant with information from the most appropriate source – or what Peter Salem describes (in the family law context) as “identifying the most appropriate service on the front end”⁹⁹ – is a tool referred to here as “triage” (shown in the middle of fig. 6). According to Greacen, “not all self-represented persons need all of the information in the left column or all the services in the right column...”¹⁰⁰ A form of triage is therefore needed to ensure effective assistance at the right time, from the right place, and for the right person.

Ideally court workers need to see their role as not simply providing generic information to SRLs, but rather as including a form of focussed triage work. They should diagnose the specific needs of a particular SRL and then assist that person in obtaining the required information or services that are available. Under this model, court workers themselves may provide a significant amount of front-line (“emergency room”) assistance. They may also find themselves referring SRLs to other more appropriate sources of assistance (self-help centres, duty counsel, case management counsel, public legal education services, etc. – all depending on the capacity of, and services available in, a given jurisdiction). Regardless, the point is about meaningful and focussed service that will help SRLs with what they really need.

Recommendation 6

A triage role should be identified for frontline staff who help diagnose the specific needs of particular SRLs and then assist those people to obtain the required information or services that are available in a given jurisdiction.

⁹⁹ Peter Salem, “The Emergence of Triage in Family Court Services: The Beginning of the End for Mandatory Mediation?” (2009) 47:3 Fam. Ct. Rev. 371 at 372.

¹⁰⁰ John M. Greacen, “Resources to Assist Self-Represented Litigants: A Fifty State Review of ‘State of the Art’” (2011) at 2-3, online: <<http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>>.



It is important to acknowledge that, according to the SRL Survey, some of this kind of “emergency room” work is already being done by numbers of court staff.¹⁰¹ However, largely because of the information/advice limitation,¹⁰² a significant amount that could be done in terms of immediate front-line assistance is not occurring. And that is not typically for a lack of knowledge or skill. Experienced court workers know what needs to be done to assist SRLs in most circumstances.¹⁰³ As such, given the current knowledge capacity of many court workers, this recommendation could be implemented essentially immediately at the micro – court administration – level. Each court administration office, small or large, could – right now – see itself as a form of triage room. Doing so would be an example of the kind of shift in service mindset that is called for above by recommendations 1 and 3. It could also, ideally, involve a much larger and broad based range of reforms that include a collaboration of increased service options being provided by the various justice sector stakeholders contemplated above in recommendation 2.

7. TRAINING

Finally, in order to most effectively and efficiently undertake and implement these various reform recommendations, adequate and ongoing training needs to be provided to all court staff who directly and indirectly serve SRLs.

According to the SRL Survey, not all current court workers want more training.¹⁰⁴ However, it is clear that a majority of court workers would welcome more training (see fig. 7).¹⁰⁵

FIGURE 7
“WOULD YOU LIKE TO RECEIVE (ADDITIONAL) TRAINING TO DEAL WITH THE NEEDS OF SRLS?”

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes		59%	156
No		41%	108
	Total Responses		264

¹⁰¹ See SRL Survey, *infra* at Appendix II.

¹⁰² See *supra* section III.4(a).

¹⁰³ *Ibid.* See further SRL Survey, *infra* at Appendix II.

¹⁰⁴ As with our earlier observations (see *supra* section II.7), this may be because these court workers understand their service role to be quite limited, and therefore do not see the need for more training. This view would likely change if a more active and meaningful assistance model were adopted.

¹⁰⁵ See SRL Survey, *ibid.*

When asked what areas they would like to be trained in, a range of answers was given by court staff that, not surprisingly, largely track the main and challenging areas of SRL needs that were identified earlier in figs. 1-3.¹⁰⁶ Additionally, however, there were a number of responses that indicated a significant thirst for general training on how to help SRLs. For example, a number of SRL Survey respondents, when asked what areas of training they would like to receive, responded as follows:

- *any training;*
- *any and all areas;*
- *what information I am allowed or not allowed to provide to SRLs;*
- *I think having ongoing training is really important in all areas related to SRLs and ensuring there's adequate information shared by all the resources providing services to SRLs; and*
- *any training would be helpful – I have never had any training so it is difficult to identify.*¹⁰⁷

Recommendation 7

Court staff should be provided with adequate and ongoing training on how to provide meaningful assistance to SRLs based on a “triage” and “multi-option legal assistance” model.

IV. POTENTIAL CONCERNS

Before concluding, there are three specific concerns that might be potentially raised in response to the recommendations made in this White Paper. We now turn to those potential concerns.

1. PRACTICING LAW

One of the perceived problems that may be associated with enabling court workers to provide increased legal assistance to SRLs is the concern that, in so doing, they will be “practicing law”. In particular, by being freed up to provide more meaningful legal assistance, court workers would potentially offend against provincial prohibitions against anybody but licensed lawyers

¹⁰⁶ See *supra* at section II.5.

¹⁰⁷ See SRL Survey, *infra* at Appendix II.

being able to practice law in the various provincial and territorial jurisdictions.¹⁰⁸ The practice of law is defined by most law societies as providing legal advice, which has resulted in the historic distinction between legal information and legal advice.¹⁰⁹

One way of avoiding this objection is to adopt the perspective that court administrators have delegated authority from the courts to provide legal assistance to litigants.¹¹⁰ While this may be true in the U.S., in Canadian jurisdictions it is ultimately the law societies, and not the courts, which regulate the practice of law in the various provinces and territories. As such, whatever assistance that is provided at the courthouse by court workers needs to be on-side with provincial regulatory definitions of the practice of law.

Another option therefore would be to amend the statutory provisions that define the practice of law to provide more latitude to court workers. While this may be a useful approach for law societies and governments to consider, in-line with recent paralegal discussions in various provinces,¹¹¹ it is fact not a necessary step in order to accomplish what we are recommending here.

In the end, we are not advocating for court clerks to be able to provide “legal advice”.¹¹² Lawyers (and in some jurisdictions paralegals) can continue to have essentially sole jurisdiction over that service (which continues to be much needed).¹¹³ What we are advocating, however, is an expanded notion of legal information that amounts to meaningful legal assistance. Court workers will still be prohibited from exercising the kind of legal judgment that typically amounts to legal advice. However, as all court workers know, there is a significant amount of information that would be extremely useful to SRLs, about which court workers are typically very well versed, but which has often been withheld in order to avoid crossing the information/advice line.¹¹⁴ As one commentator noted about the difference between legal advice and information in

¹⁰⁸ For example, see Ontario’s *Law Society Act*, R.S.O. 1990, c. L.8 at s. 26.1(1), which provides that “...no person, other than a licensee whose licence is not suspended, shall practise law in Ontario or provide legal services in Ontario.”

¹⁰⁹ For a comparison of the definition and regulation of the practice of law across Canada, see e.g. “Cross Country Snapshots – Rules, Practices and Self-Regulation” (2005) *News & Views on Civil Justice Reform* 13, online: CFCJ <<http://cfcj-fcjc.org/docs/2005/newsviews08-en.pdf>>.

¹¹⁰ See e.g. John M. Greacen, “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84 *Judicature* 198, online: American Judicature Society <http://www.ajs.org/prose/pro_greacen.asp>.

¹¹¹ Compare Ontario’s recent paralegal reforms with the Law Society of Alberta’s current initiatives around modifications to the definition of the practice of law to allow non-lawyers (such as paralegals) to provide legal services to litigants. For more information on this initiative, see “Access to Justice – Alternate Delivery of Legal Services”, online: Law Society of Alberta <http://www.lawsociety.ab.ca/about_us/initiatives/initiatives_a2j.aspx>.

¹¹² See further *supra* section III.4(f).

¹¹³ As mentioned immediately above in this section, we do recognize that there are ongoing discussions in various jurisdictions about what counts as the “practice of law” and who can and should deliver legal services. The recent paralegal debates are examples of those discussions. While it may be that more legal services will be opened up to more providers in the future, we are not taking a position on those debates in this White Paper.

¹¹⁴ See further *supra* section III.4(a).

this context: “If you ask a question of two lawyers, and get two different answers, and neither lawyer is committing malpractice, that is legal advice. But if there is only one right answer, that is legal information.”¹¹⁵ While it may not always be so easy to make the distinction, more often than not the point will be very well taken. And for that reason, we are of the view that the “practicing law” objection is in fact no objection at all to the recommendations in this White Paper.

2. IMPARTIALITY, NEUTRALITY AND FAIRNESS

A second potential concern regarding the recommendations that we are making relates to the impartiality of judges and court workers. In a nutshell, this concern states, correctly, that judges and court staff must be neutral and impartial vis-a-vis the rights and interests of litigants. Favour must not be unfairly given to one litigant over another.

Some courts see neutrality as significantly limiting what frontline court workers can do for a given SRL for the main reason that, unless they give exactly the same information to the other party (whether or not it was requested or needed), then somehow they are being unfair to the other party. For example, according to several court workers:

- *As court staff, we cannot give legal advice to clients as we have to remain impartial.*
- *I am unable to assist you with your [fill in the blank] because I must remain neutral to the outcome of the case.*¹¹⁶

Our response to this issue is not to say that neutrality, in itself, is somehow misguided. It is not. Neutrality can be seen as a cornerstone of the rule of law. However, what neutrality is and what it requires is not necessarily always so clear. Further, as we saw from earlier comments from the Chief Justice of Canada,¹¹⁷ the justice system is far from equal. Many litigants – typically including the focus group of this White Paper (specifically SRLs) – experience the system as extremely unequal vis-a-vis more well-resourced litigants. As several court workers commented in the SRL Survey:

- *The civil system [is] ... very much open to abuse by those with more money at their disposal.*
- *The general public has no idea about court procedures, requirements, the language, who or where to go for help.*¹¹⁸

¹¹⁵ Richard Zorza, “The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers” (2002), online: <http://lri.lsc.gov/pdf/03/030111_selfhelpct.pdf>.

¹¹⁶ SRL Survey, *infra* at Appendix II.

¹¹⁷ See *supra* section III.1.

¹¹⁸ SRL Survey, *infra* at Appendix II.

We believe it is uncontroversial to say that, by and large, SRLs are in an unequal position as compared to other litigants. So, if fairness and equality are goals, or if we are seeking to achieve what one court worker hopes for, which is that:

- *In court cases everyone should have the same advantages,*¹¹⁹

then impartiality is a more nuanced idea than it is often thought to be.

The CJC has addressed this issue in its *Principles on SRLs*,¹²⁰ where one of the key principles deals with equality. According to the CJC: “Judges, the courts and other participants in the justice system have a responsibility to promote access to the justice system for all persons on an equal basis, regardless of representation.” However, the CJC goes on to recognize that: “it is clear that treating all persons alike does not necessarily result in equal justice.”¹²¹

What neutrality requires is often a commitment not to treating people equally, but rather treating them as equals, or in this context, to providing them with meaningful legal assistance so they can function essentially as equals. Given that SRLs are typically disadvantaged in the system, providing them with adequate assistance to prosecute and defend their claims does not provide them with an unfair advantage. What it really does is start to even the playing field that is currently significantly tipped against them. If the assistance that judges and court clerks give to SRLs were available to anyone who asked for it, just because another party did not seek it out (perhaps because they have a lawyer) does not mean that the other party has been unfairly treated by the system. They *could* have sought it out (or they may not need it). As long as the assistance provided would have been equally available to the other party (if requested) it is appropriate. And with adequate public legal information and education, similarly situated litigants may ask for further help in the future. Therefore, a neutrality objection that is based on the system’s misguided perception of equality is no objection, in the end, to assisting the most vulnerable users of the system. By providing meaningful assistance, judges and court workers will in fact be working to eliminate some of the inequities that have created many of the current access to justice problems in the first place.

As such, to the extent that commentators like Greacen and court policies/guidelines call for court workers to maintain an “absolute duty of impartiality,”¹²² that duty needs to be understood to accommodate not only formal, procedural neutrality and equality, but also substantive neutrality

¹¹⁹ *Ibid.*

¹²⁰ See e.g. *supra* section III.4(e).

¹²¹ CJC, *Statement of Principles on Self-represented Litigants and Accused Persons* (Ottawa: CJC, 2006) at 4-5, online: CJC <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf>. For further commentary, see Richard Zorza, “The Disconnect Between the Requirements of Judicial Neutrality and those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications” (2004) 17 *Georgetown J. of Legal Ethics* 423.

¹²² See *supra* section III.4(b).

and equality as well (which, as mentioned, may require court staff to treat SRLs differently – as differently situated individuals – in order to treat them as equals). This response to the potential neutrality concern amounts to recommendation 8 in this White Paper.

Recommendation 8

In order to ensure judicial and court administration impartiality, neutrality and fairness, it may be necessary from time to time for judges and court staff to treat SRLs differently (from each other and from other represented litigants) in order to treat them as equals (thereby promoting not only procedural equality but also substantive equality as well).

3. RESOURCES

A final potential concern is one that relates to resources. Clearly resources are needed to address the multifaceted needs of SRLs that were identified above.¹²³ And those resources cannot simply come from courts. As mentioned above,¹²⁴ all justice sector stakeholders – governments, the Bar, the Bench, librarians, legal aid staff, public legal education providers, the academy, NGOs and the public – have a role to play.¹²⁵ And unless those various players take a keen interest in and make a significant commitment to this issue, serious challenges will continue.

The first three recommendations in this White Paper speak primarily and inclusively to this broad justice stakeholder community. And these recommendations clearly have some significant resource implications. However, notwithstanding the resource concerns raised in this section, the balance of the recommendations that we are making in this White Paper are largely independent of those other resource allocation concerns and future initiatives. With relatively modest investments to support these recommendations,¹²⁶ the shifts in attitude and focus set out in this White Paper, we think, will make significant, manageable and immediate improvements to the ability of court workers to serve the public and will make equally important improvements to the experience that members of the public have when interfacing with the justice system. To the extent that other justice sector providers engage in this process, further major gains will be

¹²³ See *supra* section II.5.

¹²⁴ See recommendation 2.

¹²⁵ For a further discussion of this issue, see John M. Greacen, “Self-Represented Litigants: Learning from Ten Years of Experience in Family Courts” (2005) 44 *Judges’ J.* 24.

¹²⁶ It should be noted that our opinion that these particular recommendations will require “modest” investment support is not based on specific costing research, which was not done for the purpose of this White Paper (but which we think should be done as a follow up initiative). However, as a relative matter, these recommendations are specifically designed to be cost-effective and manageable without the injection of major capital or human resource funding. Having said that, the fact that we are recommending a number of reforms that are relatively cost-effective should in no way take away from our view that, alongside these more modest investments, major collaborative investments and reforms should also be made (see e.g. recommendation 2).

made. But until that happens, the recommendations in this White Paper can and should proceed regardless. Further, to the extent that some jurisdictions have more capacity and resources than others to make these changes, there is nothing in this White Paper to say that all recommendations need to happen at the same time and in the same way in each jurisdiction across the country. Changes can be made at different times and perhaps using different approaches, taking into account local resources, conditions and needs. Having said that, we certainly are of the view that, as far and as soon as possible, all jurisdictions should be encouraged to adopt the recommendations made in this White Paper.

V. CONCLUSION

Strengthening the public sector is the only way to ensure full participation of all citizens.

We should reach out and provide ample services to SRLs. Everyone should have access to the legal system.

[Canadian court workers, 2011]¹²⁷

This White Paper sets out 8 recommendations designed to improve how courts serve the growing number and growing needs of SRLs. One part of this White Paper – recommendation 2 – calls for a large and collaborative re-tooling of the administration of courts and related services, which is in-line with current calls for significant changes to the way society thinks about and delivers law and legal services generally.¹²⁸ This is an important recommendation; however, it is also largely beyond the immediate control of judges and court administrators. The other recommendations in this White Paper, however, are generally designed to be achievable with modest financial and human resource implications and without the need to involve all aspects of the justice community. Put simply, the bulk of the recommendations in this White Paper are designed to be implemented by judges and court administrators right now. And they are designed to make an immediate impact.

Changing the court’s service focus and collective mindset is important for re-tilling the landscape on which reform will happen. Doing so can happen right now, particularly as

¹²⁷ SRL Survey, *infra* at Appendix II.

¹²⁸ See e.g. Trevor C. W. Farrow, “Sustainable Professionalism” (2008) 46 Osgoode Hall L.J. 51; Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (Vancouver: UBC Press, 2008); Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008). See also Rt. Hon. Lord Woolf, M.R., *Access to Justice: Final Report to the Lord Chancellor on the civil justice system in England and Wales* (London: HMSO, 1996). The CFCJ’s “The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems” research project, which was recently funded by the Canadian Government through the SSHRC CURA program, is a further example of the kind of research that will likely lead to new and innovative justice delivery models. See “Forum Research on the cost of justice awarded \$1 million” (2011), online: CFCJ <<http://cfcj-fcjc.org/news/>>.

supported by adequate training.¹²⁹ Moving away from a legal information/advice approach and toward an approach based on a multi-option approach to legal assistance, which is essentially doable without any structural change, will make a significant difference in terms of matching available services with the primary needs of SRLs (thereby bridging the current service gap that exists). Encouraging judges and court staff to pursue impartiality and fairness through a lens of substantive, rather than formal equality (by not obsessing about equal treatment, but rather by embracing a notion of service that treats SRLs as equals) will go a long way toward mitigating some of the individual and systemic inequalities that are experienced by SRLs today. Further, rethinking the role of court workers in terms of a triage model has both short term and long term requirements and implications. Pursuing this approach is something that can happen immediately within the current model of court administration. It may stretch the resources of some courts in some jurisdictions. But the idea is simply to make sure that, to the extent possible, problems and solutions are being matched up as efficiently and effectively as possible. There are longer term implications to this recommendation as well. For example, to do triage well, there needs to be adequate service capacity, both in terms of the front-line triage workers (who might do some of the work themselves if appropriate), as well as in terms of referral services – self-help centres, online public legal education resources,¹³⁰ libraries, duty counsel, lawyers (potentially with limited retainer options), paralegals, etc. Without a range of tools and options, the triage worker is left without adequate resources to meaningfully assist or refer SRLs to. What is ultimately needed here is a systemic and collaborative approach to service provision (see recommendation 2). And adequate training is also necessary.

As such, while most recommendations in this White Paper can stand essentially on their own (to varying degrees), the potential power of this White Paper as a robust road map for reform will ultimately come from the implementation of the totality of the reform options that this White Paper recommends, as supported not only by judges and court administrators, but by all members of the justice community.

Pursuing these recommendations will be in line with a number of broader objectives of the justice system, including increasing access to justice for everyday litigants, as well as increasing effectiveness, efficiency and proportionality within the justice system. Courts and court administrators should be empowered to take a leadership role through the promotion and adoption of the recommendations set out in this White Paper. Pursuing these recommendations will also, ultimately, militate in favour of a more effective system of court administration as well as a more empowered citizenry.

¹²⁹ An ACCA education program could be a very useful companion initiative to this White Paper.

¹³⁰ See Diana Lowe, “Procedural Steps for SRLs in Civil, Family and Criminal Cases: A Guide to PLEI Providers” (Paper presented to the Public Legal Education Association of Canada, Halifax, 2007 and 2008) [unpublished]. For a useful example, see Justice Education Society, online: <<http://www.justiceeducation.ca/>>.

APPENDIX I

SAMPLE SUGGESTED MODEL GUIDELINES AND FAQs WITH SUGGESTED ANSWERS

1. SAMPLE SUGGESTED MODEL GUIDELINES¹

The following guidelines are a collection of suggested guidelines that have been borrowed and adapted from courts and related service providers in various Canadian and U.S. jurisdictions. They encompass some suggestions on assistance that court administrators can and cannot provide to SRLs.

Court Administrators Can:

- Encourage self-represented litigants to obtain legal advice
- Provide information on *pro bono* legal services, low cost legal services, public legal education providers, and legal aid
- Provide legal and procedural definitions of terms and documents used in court processes
- Explain court Rules, procedures and practices
- Provide citations of statutes, Rules and cases as well as public information contained in docket reports, case files, indexes and other reports without advising whether any of these are applicable to the SRL's situation
- Provide general information on court operations (questions leading to this information often contain the words "Can I?" or "How do I?")
- Provide a list of options
- Provide information about and phone numbers of lawyer referral services

¹ These guidelines have been adapted from a number of sources including principles and guidelines articulated by John M. Greacen, as applied in Canadian and American jurisdictions. Some guidelines are also based on unpublished materials and correspondence with various court administrators. Those guidelines from public sources include: Michigan Judicial Institute, "Legal Advice v. Access to the Courts. Do YOU Know the Difference?" (1997), online:

<<http://www.cj.msu.edu/~outreach/mvaa/Handbook%20of%20Legal%20Terms/LegalAdviceBook.pdf>>; Iowa Judicial Branch Customer Service Advisory Committee, "Guidelines & Instructions for Clerks who Assist Pro Se Litigants in Iowa's Courts" (July 2000), online: <http://www.ajs.org/prose/pdfs/Iowa_Guidelines.pdf>; New Jersey Judiciary, "Things to Think About Before you Try to Represent Yourself", online: <http://www.judiciary.state.nj.us/prose/11218_things_to_think_about_eng.pdf>; Delaware State Court Guidelines, online: <<http://courts.delaware.gov/Help/courtcando.stm>>. See also CJC, *Statement of Principles on Self-represented Litigants and Accused Persons* (Ottawa: CJC, 2006), online: CJC <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf>.

- Provide forms and instructions on how to complete forms
- Answer questions about deadlines and due dates²

Court Administrators Cannot:

- Provide legal interpretations and procedural advice
- Predict the outcome of a particular case or course of action
- Apply the law to the facts of a given case
- Recommend a certain course of action
- Recommend phrasing or specific content of pleadings
- Recommend specific people against whom to file pleadings
- Recommend the types or amount of damages to seek
- Provide research of statutes and cases or confidential case information
- Provide confidential or restricted information on court operations
- Provide opinions on whether to follow a particular course of action (questions leading to this information often contain the words “Should I?”)
- Improperly deny or discourage access to services
- Encourage litigation
- Recommend when or whether a litigant should settle a specific dispute
- Provide subjective or biased referrals
- Fill out forms for a party
- Provide information to one party that would not or could not be provided to all other parties if requested

² Depending on the jurisdiction and area of law, there may be specific local practice and timing issues, as well as limitation deadlines, which are relevant to a given file (in addition to more general Rules-based requirements, which are also included above). For this reason, they are listed as separate considerations in this Appendix. However, to the extent that – for example – legal advice is needed in terms of limitation requirements and defences, beyond information with respect to basic timing provisions, etc., court staff would not be at liberty to provide such legal advice.

- Disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record
- Represent litigants in court
- Lead litigants to believe that court workers are representing them in any capacity or induce the public to rely on court workers for legal advice
- Talk to a judge about a case
- Change an order issued by a judge

2. SAMPLE FAQs WITH SUGGESTED ANSWERS³

The following sample FAQs and suggested answers are designed to assist court workers with the kinds of typical questions that come up when servicing SRLs. We recognize that there are many other questions that could come up when serving SRLs. As such, this list is not meant to be exhaustive. Rather, it is designed to be representative of the kinds of questions that court staff will face and to provide a sampling of some suggested answers (based on a legal assistance model rather than a traditional model of service based on the distinction between legal information and legal advice). Questions, and answers to questions, will also vary according to differences in courts and jurisdictions. Court administrators are encouraged to adopt and expand on these FAQs and answers for their own court and jurisdiction-specific needs.

<u>Question</u>	<u>Suggested Answer</u>
Do I need a lawyer?	You are not required to have a lawyer to file court documents or to participate in a case in court. You have the right to represent yourself. Whether to hire a lawyer must be your personal decision. You may want to consider how important the outcome of this case is to you in making that decision.
Should I hire a lawyer?	Same as above.
Can you give me the name of a good lawyer?	The court cannot recommend a particular lawyer. I have information on a lawyer referral service if you want help in finding a lawyer who specializes in your kind of case.
Should I plead guilty?	This is a decision you must make for yourself.
What sentence will I get if I	The judge will decide what sentence to impose based on

³ These questions and answers have been adapted from working guidelines developed by Alberta Court Services staff (2007) [on file with authors], which were in turn initially adapted from John M. Greacen, “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84 *Judicature* 198 at “Suggested answers to recurring questions”, online: American Judicature Society <http://www.ajs.org/prose/pro_greacen.asp>.

ADDRESSING THE NEEDS OF SRLS IN THE CANADIAN JUSTICE SYSTEM

plead guilty (or do not plead guilty)?	the facts and the law that apply to your case. I cannot predict what the judge will do.
What will happen in court?	In a civil case, the judge will typically call on you to introduce your case (and likely the other side to introduce its case as well). You will then be called on to present your evidence. The judge will then call on the other side to present its evidence. The judge will ask questions if he or she needs clarification. When the judge has heard all the evidence (and closing arguments), he or she will announce a decision.
What should I say in court?	You must tell the truth.
What should I put in this section of the form?	You should write down what happened in your own words.
What should I put down here where it says “remedy sought”?	You should write in your own words what you want the court to do.
Would you look over this form and tell me if I did it right?	You have provided all of the required information. I cannot tell you whether the information you have provided is correct or complete; only you know whether it is correct and complete.
I want to see the judge. Where is his or her office?	The judge talks with both parties to a case at the same time. You would not want the judge to be talking to __ [the crown, the landlord, etc.] about this case if you were not present. Your case is scheduled for hearing on __ [date, time and location]. That is when you should speak with the judge.
The judge heard my case today but did not make a decision. When will he or she decide the case?	There is no way for me to know when the judge will issue a decision in your case. In general, in this court, judges try to reach a decision within __ days of taking a case under advisement. But there is no guarantee that the judge will decide your case within that time.

APPENDIX II

**AVAILABLE AND REQUIRED SERVICES FOR
SELF-REPRESENTED LITIGANTS (SRLS) IN CANADA
(A CANADA-WIDE SURVEY OF COURT STAFF, INCLUDING THOSE WORKING AT FRONT
COUNTERS, INFORMATION CENTRES AND LAW LIBRARIES)**

DIANA LOWE, Q.C., BRADLEY ALBRECHT,
HEATHER MANWEILLER AND TREVOR C. W. FARROW*

2011

BACKGROUND AND METHODOLOGY

The questions for this survey were developed by the authors based on issues identified in the preliminary research conducted for this White Paper. Ethics approval was received from York University. The survey was translated from English into French and made available on-line in both languages.

The survey was piloted with staff from the Alberta Courts on 24 June 2011. As no changes were required to the survey, the results from this pilot were included as part of the final results. The survey was then circulated with the assistance of ACCA to front-line court and related staff in each province on 30 June 2011, with responses requested by 15 July 2011. After reviewing the response rate and representation from each province, the authors decided to extend the survey deadline and send out a reminder notice to increase participation. Responses received up to and including 12 August 2011 were included in the final results.

A total of 296 respondents completed the survey, with representation from almost every province and territory in Canada. Of the 296 respondents, 20 (7%) indicated that they did not have contact with SRLs in their work, and were asked no further questions. The remaining 276 (93%) continued on to the rest of the survey.

* The authors are grateful for assistance from the ACCA research committee, as well as for technical assistance from Farlon Rogers, and for translation services from Maxine LaCarte.

BASIC SURVEY RESULTS

1. Which province/territory do you work in?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Alberta		15%	44
British Columbia		13%	39
Manitoba		4%	13
New Brunswick		0%	0
Newfoundland and Labrador		5%	16
Northwest Territories		5%	14
Nova Scotia		17%	50
Nunavut		0%	1
Ontario		36%	108
Prince Edward Island		0%	1
Quebec		1%	3
Saskatchewan		1%	4
Yukon		1%	3
		Total Responses	296

2. Do you work in a ...?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Large urban setting (500,000 people or more)		49%	145
Small urban setting (less than 500,000 people)		43%	128
Remote setting (i.e. travel difficult)		8%	23
		Total Responses	296

3. Which court do you work in?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Provincial Court		57%	169
Superior Court (Trial)		52%	155
Superior Court (Appeal)		11%	34
Supreme Court of Canada		5%	16
Federal, Tax and Military Courts		5%	16
	Total Responses		296






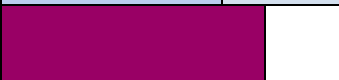



4. What kinds of matters do you deal with in your Court?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Civil (non-family, including Small Claims)		70%	207
Family		66%	194
Criminal		62%	184
	Total Responses		296





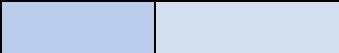



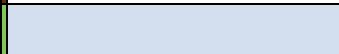
5. Do you have contact with SRLs in your work?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes		93%	276
No		7%	20
	Total Responses		296



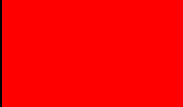







6. In your experience, what are the needs of SRLs in your court?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Assistance obtaining / completing forms		97%	268
Referrals to related health or social services		33%	90
General plain language legal information/education about a case / court process		94%	259
Legal advice about a specific case / court processes		83%	230
Legal representation for a case		64%	177
Drafting pleadings, court documents, orders		76%	211
Court preparation		74%	203
Other (please specify)		12%	34
None of the above		0%	0
		Total Responses	276








7. Which are the most difficult needs of SRLs to address?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Assistance obtaining / completing forms		55%	149
Referrals to related health or social services		13%	35
General plain language legal information/education about a case / court process		49%	135
Legal advice about a specific case / court processes		76%	208
Legal representation for a case		45%	123
Drafting pleadings, court documents, orders		59%	161
Court preparation		45%	122
Other (please specify)		2%	5
None of the above		1%	3
		Total Responses	273

8. What targeted services are provided for SRLs in your jurisdiction?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Assistance obtaining / completing forms		70%	191
Referrals to related health or social services		27%	74
General plain language legal information/education about a case / court process		55%	148
Legal advice about a specific case / court processes		41%	110
Legal representation for a case		28%	75
Drafting pleadings, court documents, orders		32%	87
Court preparation		25%	69
Other (please specify)		8%	23
There are no targeted services for SRLs in my jurisdiction		9%	24
None of the above		2%	5
Total Responses			271

9. Who provides targeted services for SRLs in your jurisdiction?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Court		56%	152
Government		51%	140
Community-based providers		38%	105
Private-sector providers		19%	51
Other (please list)		11%	31
There are no targeted services for SRLs in my jurisdiction		10%	26
None of the above		2%	6
Total Responses			273



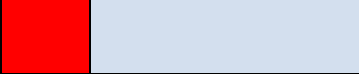

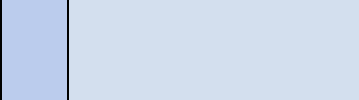

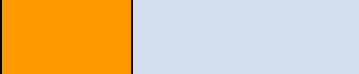

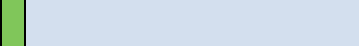
10. How do SRLs in your jurisdiction become aware of available targeted services?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Online		64%	175
By telephone		68%	186
In person		83%	227
Through advertising/pamphlets		40%	109
Through referrals from legal service providers (including the Courts)		67%	183
Through referrals from related health and social service providers		21%	56
Other (please explain)		3%	9
There are no targeted services for SRLs in my jurisdiction		8%	21
None of the above		1%	2
Total Responses			273



11. How are targeted services for SRLs in your jurisdiction delivered?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Online		55%	149
By telephone		57%	154
As pamphlets		53%	142
In person through kiosks/self help centres		52%	141
Other (please explain)		17%	47
There are no targeted services for SRLs in my jurisdiction		8%	21
None of the above		3%	9
Total Responses			270

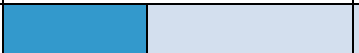

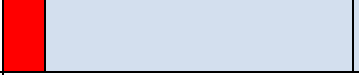
12. In your jurisdiction, how are targeted services for SRLs coordinated among service providers?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Service providers have developed a network to keep each other informed		13%	34
Service providers aware of each other		33%	87
Service providers are knowledgeable about the services they each provide		26%	69
Service providers provide referrals to each other		31%	83
Service providers are located in a hub (self-help centre, information kiosk, telephone helpline or online portal)		20%	53
Other (please explain)		2%	5
I am not aware of any coordination among service providers		38%	102
There are no targeted services for SRLs in my jurisdiction		7%	19
None of the above		2%	6
		Total Responses	266



13. Do you have a hub of services that you can refer SRLs to (i.e. a self-help centre, information kiosk, telephone helpline, or online portal?)

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes		56%	151
No		44%	121
		Total Responses	272

14. Do you have access to a list or database of local services that you can use to refer SRLs?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes, we have a list of services		41%	111
No, we do not have a list of services		47%	127
We refer SRLs to a service hub, so we do not need a list ourselves		12%	32
		Total Responses	270

15. Overall, are the services for SRLs in your jurisdiction adequate?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes		32%	87
No		68%	185
Total Responses			272



16. Please explain why the services for SRLs in your jurisdiction are/are not adequate.

- [Descriptive responses omitted] [on file with authors]

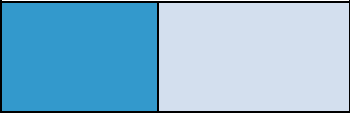


17. How could the services for SRLs in your jurisdiction be improved?

- [Descriptive responses omitted] [on file with authors]












18. Has your Court or jurisdiction developed guidelines, directions, protocols, service standards, model questions and answers or other written materials to guide you in responding to requests from SRLs?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes, we have guidelines, etc.		53%	140
No, we do not have guidelines, etc.		47%	126
Total Responses			266

19. Are you confident that these guidelines, etc. enable you to understand what assistance you can provide SRLs?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes, the guidelines, etc. enable me to understand what assistance I can provide to SRLs.		45%	118
No, the guidelines, etc. do not enable me to understand what assistance I can provide to SRLs.		11%	29
Not applicable; we do not have guidelines, etc.		44%	115
Total Responses			262






20. What specific challenges do you face when dealing with SRLs?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
SRLs with language barriers		72%	198
SRLs with learning disabilities/ low comprehension		78%	214
SRLs with mental health issues		70%	193
Highly emotional SRLs		88%	241
Highly stressed SRLs		87%	238
Highly litigious/vexatious SRLs		62%	169
Security concerns		50%	136
Insufficient time to assist SRLs		54%	147
Limited information, resources, referrals for SRLs		56%	153
Other (please explain)		3%	7
None of the above		1%	4
		Total Responses	274



21. What are the most difficult questions posed by SRLs?

- [Descriptive responses omitted] [on file with authors]

22. Which of the following statements describe training you have received on working with SRLs?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
I have received on-the-job training on SRLs		55%	150
I have attended educational conferences/courses on SRLs		18%	48
The training/education I have received is adequate to enable me to deal with the needs of SRLs		21%	57
Other (please explain)		4%	11
I have not received training on SRLs		36%	100
		Total Responses	274



23. Would you like to receive (additional) training to deal with the needs of SRLs?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes (please list specific areas in which you would like to receive training)		59%	156
No		41%	108
Total Responses			264

24. Is there any other information you wish to share?

- [Descriptive responses omitted] [on file with authors]

25. May we contact you to ask additional questions about SRLs in your jurisdiction?

<u>Response</u>	<u>Chart</u>	<u>Percentage</u>	<u>Count</u>
Yes		47%	123
No		53%	141
Total Responses			264

APPENDIX III

SUMMARY ANALYSIS OF SRL SURVEY

BRADLEY ALBRECHT

2011

1. SURVEY RESPONDENTS

The survey was distributed through the Association of Canadian Court Administrators to court staff, including those working at front counters, information centres, and law libraries.

A total of 296 respondents completed the survey, with representation from almost every province and territory in Canada.

49% identified themselves as working in a large urban setting (over 500 000 people), 43% in a small urban setting, and 8% in a remote setting.

57% worked in provincial courts, 52% in superior trial courts, 11% in appellate courts, and 10% in federal courts, including the Supreme Court of Canada.

Province	Respondents
Alberta	44
British Columbia	39
Manitoba	13
New Brunswick	0
Newfoundland and Labrador	16
Northwest Territories	14
Nova Scotia	50
Nunavut	1
Ontario	108
Prince Edward Island	1
Quebec	3
Saskatchewan	4

Of the 296 respondents, 20 (7%) indicated that they did not have contact with SRLs in their work, and were asked no further questions. The remaining 276 (93%) completed the rest of the survey.

2. NEEDS OF SRLS

There was strong agreement that SRLs require help with certain tasks, particularly: completing forms (97%), plain language legal information (94%), legal advice (83%), drafting pleadings and other documents (76%), court preparation (74%), and legal representation (64%). 33% of respondents identified referrals to related health or social services as a need of SRLs.

Additional needs identified by respondents include help with specific court procedures, translation or interpretation, literacy issues, alternative dispute resolution, and specific health or social services such as daycare and mental health services.

Several respondents clarified their assessment of SRL needs with a caveat that they do not provide legal advice:

Most SRLs want free legal advice. I can't emphasize that enough -- most people coming to our library want legal advice, and assume everyone working in the library is a lawyer who can offer free legal advice.

I have worked in a court program specifically designed to assist SRLs for the past 14 years. The people I deal with are, for the most part, of below average ability when it comes to reading and writing, so need help with forms. They do not understand the process (which we explain) and often need short-term legal advice (which we cannot give). I find the family clients, in particular, are not willing to spend ANY money on their case (to the point where they will put themselves in danger to serve a Restraining Order rather than hire a process server), so they will not pay for legal advice. However, the lack of legal advice leads them to make foolish or repetitive applications, clogging up the courts.

When asked to rate the most difficult needs of SRLs to address, respondents identified legal advice (76%), drafting pleadings (59%), and obtaining and completing forms (55%) as the top three. Legal advice and completing forms were frequently mentioned in comments throughout the survey.

We are not lawyers, so it is difficult to answer questions without giving legal advice.

We are not allowed to give legal advice and are not allowed to tell them what to put on their forms, which is mostly what they expect from us.

If they are in attendance at the Courthouse, some feel so intimidated and frustrated because nobody is there for them to provide assistance. It requires time and lots of understanding and patience to deal with SRLs.

3. SERVICES FOR SRLS

When asked about services provided for SRLs, 70% said that their jurisdiction provides assistance obtaining / completing forms, 55% said they offer general plain language legal information, 41% offer legal advice for SRLs, 32% help drafting pleadings, 28% offer legal representation, 27% offer referrals to related health or social services, and 25% assist with court preparation. 9% of respondents said their jurisdictions offer no services targeted at SRLs. Comments highlighted the services provided by duty counsel, alternative dispute resolution, and legal information centres.

56% of respondents identified the Courts as providers of targeted services for SRLs, 51% government, 38% community-based providers, and 19% private-sector providers. Several comments mentioned legal aid.

83% of respondents said SRLs become aware of targeted services in person, 68% said by telephone, 67% said through referrals from other legal service providers including the Courts,

64% said online, 40% said through advertising or pamphlets, and 21% said through referrals from health or social service providers. Several comments mentioned word-of-mouth.

As Registry officers we cannot "refer" any of our clients. If we are aware of any external services available to them we can only "inform" them of this.

No one method of delivering services to SRLs dominated the responses. 57% of respondents said that services were available by telephone, 55% said online, 53% said as pamphlets, and 52% said in person. Comments mentioned duty counsel and counter services.

4. SERVICE COORDINATION

Responses indicated a low rate of perceived service coordination between providers. 38% of respondents said they were unaware of any coordination. Only 33% said service providers were aware of each other, and only 26% said service providers were knowledgeable about each other.

Most service providers are overworked and overwhelmed. We do our best to network and be aware of each other's programs. This is often difficult due to cut-backs (and resulting changing programs) and high staff turnover.

I work in the Library and we try to keep informed of what services are available and changes to them but it is on us to do this for the most part and we don't really see a coordination among most service providers and even different areas of the court house.

I would say that there is a great deal of opportunity for improvement in coordination of services provided for SRLs. Efforts have been made and are ongoing to meet regularly about programs and changes and services provided so we are not duplicating service.

When asked whether there is a hub of services to refer SRLs to (such as a self-help centre, information kiosk, helpline, or online portal), 56% of respondents said yes, and 44% said no. Examples provided include information centres, Justice/Attorney General websites, and lawyer referral services.

Quand des gens désirent se trouver un avocat ou obtenir un conseil juridique, nous les dirigeant vers le service de référence du Barreau ou vers des cliniques juridiques offertes par des universités ou organismes. Si un renseignement ou une information juridique est demandée, un avocat de la Cour peut y répondre par téléphone ou en personne. Ces parties peuvent également consulter notre site web.

41% of respondents indicated they had a list or database of services for SRLs, 47% said they did not, and 12% indicated they referred SRLs to a central service hub, so a list was unnecessary. Several comments discussed internally maintained 'ad hoc' lists.

5. ADEQUACY OF SERVICES FOR SRLS

Over two thirds (68%) of respondents did not feel that services for SRLs in their jurisdictions were adequate, with 32% feeling they were.

The services we have are certainly far better than they were ten years ago but for people with limited income and limited mental capacity the funding is not available to assist these people.

There are too many SRLs in our jurisdiction and the services provided are quickly exhausted. I believe that the service providers are over extending themselves, which then leads to mistakes in the assistance given to SRLs. In addition, the services are not provided in ways that make it easy for SRLs to obtain the help they need. Though my jurisdiction is under 500,000, access to the court office and the "hub" of services provided here are not easily accessible. Public transit is very limited so people cannot easily come to our office. Online services and telephone services are limited or non-existent.

There is a gap between those who qualify for legal aid and those that can afford legal counsel.

There is limited guidance and assistance on how to fill out forms, court processes and legal information beyond ephemeral materials. Mainly they are provided with a list of possible forms that could be applicable to their situation and are left to their own devices to figure out what they really need.

There are none!

When asked for suggestions as to how services for SRLs could be improved, many indicated the need for more readily available legal advice:

Increase the amount of funding through legal aid to provide counsel on civil matters. Set up a program or programs in which it is mandatory for counsel to provide a number of hours pro bono work each year.

Provide more Duty Counsel and be more readily available for the public. Also Duty Counsel must be knowledgeable in their field.

Others focused on the need for more legal information and help with forms, including resource shortages for existing services:

There must be room for quasi-legal services to be provided. Allow non-lawyers to assist in filling out forms without the fear of practicing law without a law degree.

The Attorney General should take direct responsibility for the support of SRLs as they are the most vulnerable stakeholders in the justice system.

To even have one service provider for information and assistance with paperwork for self represented individuals would create a major improvement.

An in-person general information provider so that front counter staff can concentrate their time on processing documents. SRLs always prefer someone to tell them something rather than to look something up.

Hiring of more staff which will then allow for further staff development educationally and procedurally.

One respondent suggested changes to the court process itself:

[Family Court] needs to be revised in the ability to streamline forms and have stricter access to the bench. Far too many messy motions and incomplete documents clog the system.

6. GUIDELINES

53% of respondents indicated that they had guidelines for dealing with SRLs, while 47% did not. Comments indicate this question was largely understood to mean guidelines provided to SRLs, rather than guidelines for court staff about dealing with SRLs. Of those discussing guidelines for staff, several indicated that their guidelines were verbal and centered on, or consisted entirely of, the directive to not provide advice. A few indicated the presence of staff manuals and directives.

7. CHALLENGES

88% of respondents identified dealing with highly emotional SRLs as a challenge, with 87% identifying highly stressed SRLs as a challenge, 78% - learning disabilities/low comprehension, 72% - language barriers, 70% - mental health issues, and 62% - vexatious SRLs.

Some SRLs say things like "I'll just wait and go in and tell the Judge what I want". It is difficult to explain that unless they file documentation and provide it to the other party, the Judge may not consider what they have to say.

Although we do try to ensure translators are available for courts, we do not have this available for intake sessions nor are we trained to assist individuals with hearing loss as well as other physical challenges.

Many respondents mentioned legal advice, questions about process, and needs for filling out forms as the most difficult challenge when dealing with SRLs.

We try to explain the basic information without getting legal, which sometimes can be very difficult. Most SRLs are not trying to be difficult but they need help and we can't give it to them. This is a catch 22 situation.

How do I do this? (We are told by managers that we are not to provide any information to SRLs. They must seek a lawyer.)

Different views about the appropriate level of assistance with forms were expressed:

We are the filing office and also in a conflict position. We cannot commission and file your documents and also complete them.

Usually that we cannot provide legal advice but that we can attempt to help them in regards to court processes and some paper work if time allows.

We refer to the applicable Acts, Rules, Forms and practices of the Courts. We present copies of completed documents, when in person.

Questions easily slip from 'how to fill out a form' to 'what should I put on the form?' and there is no one to refer them to at that point (without passing the 'buck' as it were). They attempt to get as much information out of the counter clerks as possible which results in the counter clerks having to provide assistance in areas they normally would not have to.

8. TRAINING

55% of respondents indicated they had received on-the-job training for dealing with SRLs and 18% had attended conferences or courses. 36% had not received any training. Only 21% indicated that their training for dealing with SRLs was adequate.

I think adequate is the best anyone can say about their ability to deal with SRLs as I personally learn something new or think of a slightly better way of dealing with an SRL virtually every day.

Training to deal with SRLs is required. Court staff are left to their own devices to assist them without the proper training to deal with SRLs with mental, emotional, or comprehensive issues.

If you have proper training and know what information you can give SRLs there shouldn't be any problem. Front counter staff if unsure of the proper response to a question they know where to go for the answers.

59% would like to receive additional training, while 41% would not. Areas suggested by several respondents for training included dealing with mental health issues and conflict resolution skills.

The current process for dealing with SRLs seems to be on a case by case basis. I am not always sure what information to provide when as it is not helpful to bombard SRLs with all of the information at once.

Our staff handle SRLs well. The SRLs frequently want legal advice, which we are unable to provide. They also want us to complete the forms for them as well, which we are unable to do as well.

I don't feel I require training. What would be of assistance would be to have an extensive list of service providers and what assistance they can expect to get from each that can be provided to SRLs.

The only reason is that I don't have issues dealing with SRLs, it the limit or the scope of information we can provide. We can't fill out forms for people, we can't tell them what to put in. They come here saying they don't know how, it is blank, just basically want our assistance in filling out the forms and providing legal advice.

There has to be a determination what is the role of registry staff and court clerks in assisting SRLs. The expectation is that we work at a courthouse therefore we have to provide legal advice.

APPENDIX IV

ANNOTATED BIBLIOGRAPHY OF SELF-REPRESENTED LITIGANTS (SRLS) LITERATURE

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This annotated bibliography identifies many of the leading materials on SRLs and court administration. The research builds on the Canadian Forum on Civil Justice Clearinghouse, which is available online at: <<http://cfcj-fcjc.org/clearinghouse>>. Additional materials that are not included in the Clearinghouse are included here. This annotated bibliography is divided into the following six main sections:

- Who are SRLs?
- Needs of SRLs
- Responding to the needs of SRLs
- Service Gaps
- Challenges for Court Administrators in Meeting the Needs of SRLs
- Model Guidelines

Where appropriate (and for ease of reference), materials have been included in more than one section.

1. WHO ARE SRLS?

Greacen, John M. “An Administrator’s Perspective: The Impact of Self-Represented Litigants on Trial Courts – Testing our Stereotypes Against Real Data” (2002) 41 Judges J. 32.

This article reviews the available empirical data on the issue of the extent of burden that SRLs place on the legal system. Greacen notes that large numbers of self-represented litigants appear in family and domestic relations matters; however it is not clear whether the percentage of cases in which they appear continues to increase. Greacen notes that the empirical evidence suggests that hearings and trials in family cases take significantly *less* court time when SRLs are involved and that cases with SRLs are far less likely to require hearings or trial. In addition, studies in several states have found that cases involving SRLs proceed through court much faster than cases involving two lawyers. However, Greacen notes that research to date is not sufficient to state these conclusions with confidence.

The following charts, from the article, are helpful in visualizing trends:

* The author gratefully acknowledges the help and support of Diana Lowe, Trevor Farrow and Bradley Albrecht in the preparation of this annotated bibliography.

Case type	Filing trend from 1995-2001
Dissolution without children	1.3% annual increase (from 55.8%-62.3%)
Dissolution with children	0.8% annual increase (from 42.7%-46.7%)
Paternity	Flat, around 80%
Domestic Violence	Flat, around 95%
Torts and Commercial	Flat, around 2-3%
Property rights	Flat, around 19-20%

Hann, Robert G., Colin Meredith, Joan Nuffield and Mira Svoboda. “Court Site Study of Adult Unrepresented Accused in the Provincial Criminal Courts”, Part I (Overview Reports) and II (Site Reports) (Ottawa: Department of Justice Canada, 2002), online: <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la2-rr03_aj2/p0.html>.

This study examined representation among criminal accused in nine provincial courts across Canada. The study gathered data by extracting empirical data from court records, direct court observations and structured interviews.

The study notes that many criminal defendants are poor, have limited education, lead relatively disordered lives and have limited reading levels. The study found that many were from racial or cultural minorities; some were immigrants facing language and cultural barriers. Some sites also had many mentally disordered accused.

This study is useful in outlining the percentage of SRLs in different stages of the criminal process. Levels documented are as follows:

- At first appearance – 5-61% (above 36% in 4 courts)
- At second appearance – 2-38% (above 30% in 4 courts)
- At third appearance – 1-32% (above 19% in 4 courts)
- At bail – 3-72% (above 12% in 4 courts)
- At plea – 6-41% (above 18% in 4 courts)
- At final appearance – 6-46% (above 23% in 4 courts)

The article differentiated between SRLs and *under-represented accused* which the study defined as those cases in which there are limitations on the quality and quantum of legal assistance available.

Duchesnay, Claude. “Se Représenter Seul” (2002) 34(13) Barreau, online: <<http://www.barreau.qc.ca/publications/journal/vol34/no13/seul.html>>.

This article, written in French, outlines the issue of SRLs in Quebec. It outlines levels of self-representation in Quebec to be in flux. The author discusses these issues with a panel, led by Mr. Jean Saint-Onge and made up of the Chief Justice of the Superior Court, Lyse Lemieux, Ms Yves-Marie Morissette, Ms Marie Gaudreau et Ms H elene Morin and Dr Gilbert Pinard. The article concludes by suggesting that judges have to assist SRLs in their understanding of procedures, a task that is not always easy.

Reasons cited, in the article, for self-representation include the cost of the justice system, a loss of confidence in lawyers, a will to access justice and a lack of legal aid.

In family courts, the percentage of SRLs rose between 1994-1999 from 30.3-43%. In civil court, however, during the same period, the percentage fell from 16.2-14.2%.

Dans cet article, le sujet de se représenter seul est examiné. L'auteur discute ce problème avec un panel animé par Me Jean Saint-Onge et composé de la juge en chef de la Cour supérieure, Lyse Lemieux, de Me Yves-Marie Morissette, Me Marie Gaudreau et Me Hélène Morin et du Dr Gilbert Pinard. Le panel conclut que le juge doit assister dans la compréhension de la procédure quand les justiciables se représentent seul.

Les causes invoquées pour se représenter seul sont principalement le coût de la justice, la baisse de confiance envers les membres du Barreau, la volonté d'accès à la justice et le faible plafond d'admissibilité à l'aide juridique.

Devant la Chambre de la famille de la Cour supérieure, le pourcentage des affaires où une partie n'est pas représentée est passé, entre 1994 et 1999, de 30,3% à 43%. Devant la Chambre civile, le pourcentage a légèrement diminué durant la même période, passant de 16,2% à 14,2%.

Stuesser, Lee. "Dealing with the Unrepresented Litigant" (paper presented at the Canadian Association of Provincial Court Judges Annual Conference in Charlottetown, Prince Edward Island, 2002).

In this address, Professor Struesser summarizes one Australian and two US studies on the characteristics of unrepresented litigants.

The Australian study found that SRLs were more likely than the population as a whole to have limited formal education, limited income and assets and to have no paid employment. Struesser notes that US studies do not show any definitive profile of SRLs.

In terms of reasons for self-representation, Struesser notes that the primary reason is money – the cost of litigation and the corresponding cutback in legal assistance were noted in both Australian and US studies. For others, a "significant minority", money was not the driving factor but rather a sense that they could do it on their own (an approach referred to as the "Home Depot approach"). These litigants reflected a strong anti-lawyer sentiment.

Struesser deliberately uses the term "unrepresented litigant" rather than SRL to stress the fact that these litigants lack representation. He notes that others prefer SRL to connote a choice on the part of litigants and which is a more positive statement of empowerment on the part of SRLs. He notes that, whether or not by choice, representing one-self is a disadvantage. In citing the Australian cases, the term "litigants in person" is used.

Woodward, Jim. “Coming to Grips with Self-Represented Litigants” (2003) 18(1) Court Manager 14.

Woodward sites several previous studies that substantiate the trend towards increased numbers of SRLs.

The author notes that reasons for self-representation include: lack of financial resources, the availability of do-it-yourself kits, the perceived simplicity of proceedings, a popular trend towards “disintermediation”, mistrust of lawyers, and the inability to choose lawyers by any but random means.

The article notes barriers for SRLs, including: limited assistance from judges and court clerks (because of a duty of impartiality and an inability to give legal advice), institutions designed for insiders, unrealistic expectations about likely outcomes and amounts of time necessary to reach them, and inadequate information about what courts require of SRLs.

Woodward notes innovations to redress these problems, recommended by the American Judicature Society. Such innovations include: assistance strategies and programs, collaborations between courts and bar groups, modification of unauthorized practice of law statutes, enhanced training for intake staff, support of unbundled legal services, and increased use of alternative dispute resolution.

Shone, Margaret. “Into the Future: Civil Justice Reform in Canada 1996-2006 and beyond” (December 2006), online: CFCJ <<http://cfcj-fcjc.org/docs/2006/shone-final-en.pdf>>.

This report confirms the increase in SRLs between 1996 and 2006, when the CBA Task Force of the Systems of Civil Justice Report was published (CBA report available at http://www.cba.org/CBA/pubs/pdf/systemscivil_tfreport.pdf). The report also notes that the data from the CBA report had many gaps, and thus is not reliable as an indication that levels of SRLs had not increased in that province.

In this report, statements were proposed and Respondents indicated their level of agreement. The statement: “The number of self-represented litigants in the civil justice system has grown significantly since 1996” received strong agreement. Of 44 total responses, 52% strongly agreed and 23% somewhat agreed (at p.156).

SRLs were viewed as a diverse group with varying levels of ability and reasons for self-representing. Reasons given for self-representation paralleled those found in the Alberta SRL Mapping Project. Namely, the study notes the following reasons: rising cost of cases, high cost of legal assistance, static legal aid eligibility guidelines, lack of available services, negative experience with the legal profession, simplistic cases, or beliefs that the litigants can do just as well on their own.

The study did not provide significant data in this regard, but noted that the increases in levels of self-representation were not as apparent in provincial small claims courts, since most of those

cases had always been tried without lawyers. An interesting addition was that in some jurisdictions, specifically British Columbia, Newfoundland and Labrador, the small claims court numbers have remained stable despite monetary increases in jurisdiction.

Currie, Ab. “The legal problems of everyday life: The nature, extent, and consequences of justifiable problems experienced by Canadians” (Ottawa: Justice Canada, 2007), online: <http://www.justice.gc.ca/eng/pi/rs/rep-rap/2007/rr07_la1-rr07_a1/rr07_la1.pdf>.

This research is a comprehensive examination of legal need throughout Canada. It is helpful as it outlines the areas of law in which Canadians have difficulty. While it does not seek to touch upon the problem of SRLs directly, the information gleaned from the research is applicable and useful to the study of SRLs.

Random population telephone surveying was used in this study to determine the national prevalence of a range of legal problems.

Currie found that 44% of people experiencing a legal problem acted to resolve it without any kind of assistance. 22 % sought non-legal help and 12% had legal assistance.

The following chart outlines the prevalence of legal problems as documented in the study. Participants tended to report more than one legal problem, with the average being three.

Type of legal problem	Canadian Respondents with Problem (% , n=8873)
Consumer	22
Debt	20.4
Employment	17.8
Wills and power of attorney	5.2
Family: Relationship breakdown	3.6
Personal injury	2.9
Police Action	2
Discrimination	1.9
Housing	1.7
Hospital treatment or release	1.6
Other family	1.4
Threat of legal action	1.2
Social Assistance	1.2
Disability Benefits	1.0
Immigration	0.6

Stratton, Mary. “Alberta Self-Represented Litigants Mapping Project: Final Report” (Canadian Forum on Civil Justice, 2007), online: CFCJ <<http://cfcj-fcjc.org/docs/2007/mapping-en.pdf>> [Alberta SRL Mapping Project] (this report is also further discussed below – see section 2 of this Annotated Bibliography).

The Alberta SRL Mapping Project is a helpful resource, which outlines results of a study of SRLs and services available to them in Alberta. The aim of the Alberta SRL Mapping Project was to document the range of government and non-government services available to SRLs in three regions of Alberta, namely, Edmonton, Grande Prairie Region, and Red Deer Region.

The Alberta SRL Mapping Project utilized several methods to gather information on the nature of SRLs and their needs. Interviews with SRLs, members of the judiciary and representatives of organizations that provide services to SRLs, coupled with researcher observations and identification of current services to SRLs were utilized.

Seven broad groups of SRLs, with differing needs, were identified: (1) SRLs with an overall lack of social resources (low income, low education, low literacy); (2) Low income SRLs with some social resources (cannot afford a lawyers but sufficient social resources and education to seek available service); (3) SRLs living with social barriers that interfere with accessing justice (i.e. physical or mental disability, language and cultural barriers, living in remote locations); (4) SRLs unable to find an available lawyer (usually live in small towns or remote areas); (5) SRLs who were previously represented (usually in lengthy cases with no permanent resolution); (6) SRLs in cases where representations is supposed to be unnecessary (i.e. small claims, traffic court); (7) SRLs who could access representation but prefer to self-represent (usually well-educated and distrust the legal profession).

The Alberta SRL Mapping Project additionally outlined the results of questionnaires related to prevalence of SRLs in different courts and matters. For ease of reference, some of the results have been summarized in the following table, according to two of the three regions explored in the Mapping Project.

Services	Edmonton SRLs (Est %)	Red Deer (Est %)
Queen’s Bench Civil	50%	10%
Queen’s Bench Family	50%	30-40%
Queen’s Bench Criminal	unknown	5%
Provincial Civil	70-80%	75%
Provincial Family	70%	97%
Provincial Criminal	unknown	5%
Legal Aid	90-100%	99-100%

Grande Prairie described more limited services but found high percentages of SRLs according to Legal Aid Regional Offices (98%) and Duty Counsel (98%) as well as according to Native Counselling court workers (85-95%).

This paper defined “SRL” as any individuals who are proceeding with legal matters without legal representation. The Alberta SRL Mapping Project looked at individuals going to court without a lawyer in civil, family and criminal matters. The report also notes that distinctions are sometimes made between those unrepresented in a civil case because they cannot retain a lawyer (URL), people who choose to represent themselves (SRL) and an accused not represented in a criminal trial (URA) but these distinctions were not used in the Alberta SRL Mapping Project.

Reed, Gayle & John Malcolmson. “Voices from the Field: Needs Mapping Self-Help Service in Rural and Remote Communities, Final Report” (2008), online:
<[http://www.justiceeducation.ca/themes/framework/documents/Voices from the Field Final August 2008.pdf](http://www.justiceeducation.ca/themes/framework/documents/Voices%20from%20the%20Field%20Final%20August%202008.pdf)>.

This study, conducted in British Columbia, sought to examine civil and family justice needs in rural and remote areas of BC and to provide possible options for providing greater access to self-help services.

Similar to the SRL Alberta Mapping Project, this research utilized mapping to conduct its needs assessment. Interviews were conducted with various service providers in different areas of BC. A focus on the needs of Aboriginal people was detailed.

Geography was noted as a significant challenge for the delivery of legal services in BC. Both distance and climate pose significant barriers to access to justice. This challenge was also outlined in the SRL Mapping Project. Additionally, an insufficient number of lawyers in northern and rural BC makes finding representation difficult.

Specific challenges were noted for Aboriginal people, which are of note since other sources do not cover this in great depth. Among these challenges are: an absence of affordable and quality services that reflect the cultural needs of Aboriginal people; an absence of specific funding; an awareness of the lack of legal services for Aboriginal people; an inability for many Aboriginal people to access computer resources; cost to travel to services; and a preference to receive legal service from other Aboriginal people.

While this research does not detail quantitative measures of levels of self-representation, it does outline areas of specific need which arose from the interviews. Many participants noted the difficulty of finding legal services in rural and remote locations. A pervasive sense of alienation and frustration was detailed. All geographic areas examined showed similar barriers to access. The study found Family Law to be the area of greatest need, while poverty law and civil law also figure high in terms of needs.

Sherman, Ann. “A Study of Self-Represented Litigants in the Supreme Court of Prince Edward Island” (2008), online:
<[http://www.cliapei.ca/sitefiles/File/Project %20Files/SRL %20Report.pdf](http://www.cliapei.ca/sitefiles/File/Project%20Files/SRL%20Report.pdf)>.

This project was designed to determine what services could realistically be developed in Prince Edward Island to help SRLs.

Surveys were completed by Judiciary (n=5), Staff (n=9), Lawyers (n=13) and SRLs (n=10) in the Supreme Court of Prince Edward Island. Interviews were also conducted with six participants.

The SRLs who participated in this study were reasonably well educated. Two had some post-secondary education, four were community college graduates and four were university graduates. One SRL respondent earned less than \$15,000; three earned between \$15,000 and \$29,000; four earned between \$30,000 -- \$49,000; and two people earned between \$50,000 and \$79,000.

The study found that SRLs were self-representing because Legal Aid was denied (four instances), they could not afford a lawyer (seven instances) or they felt that they did not need a lawyer (four instances).

Stratton, Mary. “Reaching out with Research: Engaging Community in Mapping Legal Service Accessibility, Effectiveness and Unmet Needs, Canadian Forum on Civil Justice” (2008), online: <<http://cfci-fcjc.org/publications/mapping-en.php>>.

This research paper, while not contributing additional research to the issue of SRLs, affirms the relevance and importance of the Alberta SRL Mapping Project, as well as the BC study, both detailed above. The paper, originally presented at the Seventh LSRC International Conference, *Reaching Further: New Approaches to the Delivery of Legal Services*, describes and analyses the nature and uses of mapping research.

Engler, Russell. “Connecting Self-Representation to Civil Gideon: What Existing Data Reveal about when Counsel is Most Needed” (2010) 37 Fordham Urban L. J. 37.

This research study assesses previous reports to determine what we know about SRLs. The first part of the study looks at the background for the previous reports, including unmet legal needs, unrepresented litigants and civil *Gideon*. The next part explores what previous reports say about the correlation between representation and success in court. It then goes on to suggest key variables other than representation that impact case outcome. It is an important article because it is both recent and because and comprehensive of the literature in the area. The study comments on and affirms the work of Greacen, Zorza and Hough.

This article used previous reports as the basis for study of SRLs and sites authorities that examined housing, family law and small claims cases as most prevalent in terms of SRLs.

The study sites several authorities which found levels of legal needs of the poor that go unaddressed were between 70-90%. Many more statistics were given in the research, some already reported in this bibliography and others too outdated to include.

2. NEEDS OF SRLS

Owen, Charles L. *et al.* “Access to Justice: Meeting the Needs of Self-Represented Litigants (SRLs)” (Chicago: Chicago-Kent College of Law, 2001), online: <<http://www.kentlaw.edu/cajt/AccessToJusticeMeetingTheNeeds.pdf>>.

This study of SRLs sought to identify the major barriers to access to justice by litigants without lawyers and to employ the latest in system design to re-design the system to meet their needs. The results of the study led to the creation of an online self-help tool, *A2J Author*®, that delivers better access to justice for self-represented litigants. The program enables non-technical authors from the courts, clerk’s offices, and legal services programs, as well as website editors to rapidly build and implement customer friendly web-based interfaces for document assembly. See: <http://www.kentlaw.edu/cajt/A2JAuthor.html>.

The study notes that SRLs need help navigating the unfamiliar and procedurally complex court system, with its difficult and arcane terminology and highly technical procedures.

The computer program designed and described in this report addresses the needs of SRLs along five solution areas: (a) diagnosis (to help SRLs define their legal problems), (b) logistics (to clarify objectives, organize cases and begin to interact with the legal system), (c) strategy (to help SRLs learn tactical solutions, build a coherent and persuasive case and prepare for negotiation in trial or mediation), (d) resolution (provide SRLs with assistance to support fair outcomes), and (e) collaboration (the creation of partnerships between the judicial system and external organizations to aid SRLs).

Carruthers, Norman, J. “Public Satisfaction Analysis, PEI Supreme Court – Final Report” (Canadian Forum of Civil Justice, 2002).

This study looks at the situation of SRLs, in terms of needs and issues for litigants. The study outlines the following problems with self representation that relate to the needs of SRLs: (1) High costs; (2) Disparity of resources among litigants and inadequate legal aid; (3) procedural complexity; (4) complex and technical language of the law; (5) lack of popular understanding about the legal system, its role and function; and (6) apprehension about and fear of the court process.

Staudt, Ronald and Paula L. Hannaford. “Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers” (2002) Syracuse L. Rev. 1017.

This study outlines and describes two tasks set by the National Center for State Courts in partnership with Illinois Institute of Technology’s Institute of Design and the Chicago-Kent College of Law. Namely, the tasks were: (1) to identify major barriers to access to justice that SRLs encounter due to court procedures and administrative requirements, and (2) to employ systems design methodology to redesign court processes to remove those barriers. The study proposes computerized systems to attempt to deal with the enumerated needs of SRLs.

The study noted the following needs: (a) customer service (buildings had poor lighting, inadequate signage, confusing building layouts, and inefficient, repetitive administrative processes and traffic patterns); help with diagnosis and evaluation of problems; lack of access to a source of accurate information to form expectations about the amount of time, money, and resources necessary to pursue a case; help drafting and filing the right legal documents (SRLs underestimated the importance correct language and accurate details served); help building their story; help accessing alternative dispute resolution mechanisms; explanation about judgment enforcement.

Thomson, Rollie D.A. and Lynn Reierson. “A Practicing Lawyer’s Field Guide to the Self-Represented” (2002) 19(3) C.F.L.Q. 529.

This consultation memorandum raises questions about how the Rules of Court apply in the case of SRLs. The authors suggest that the CBA’s Code of Professional Conduct provides minimal guidance for situations involving SRLs outside the courthouse. The article goes on to give the following advice to lawyers facing SRLs: ignore them, demand that they comply with the Rules, prepare for control and gender struggles, and be ready to alert the court to security issues. The focus of the article is on lawyers and does not cover, in any depth, the issue of court staff.

Reid, Gayla, Donna Senniw and John Malcolmson. “Developing Models for Coordinated Services for Self-Representing Litigants: Mapping Services, Gaps, Issues and Needs” (Vancouver: BC Law Courts Education Society, 2004), online: <http://justiceeducation.ca/themes/framework/documents/srl_mapping_repo.pdf>.

This report provides an “access to justice” map of the network of services available in two court locations in British Columbia. The map identifies SRL services and gaps in relation to SRL issues, challenges and needs: (a) continuity of service and increased collaboration amongst providers (knowing where to go) – the study found that different parts of the system work in isolation and lack coordination; (b) direct and personal contact – SRLs need someone to help them fill out forms, to ask questions, to call when they need help and to speak to in a confidential environment; (c) procedural assistance – forms and rules are difficult for SRLs to understand; (d) strategically-placed legal advice and assistance – take into account multiple points of entry; and (e) basic information about court processes and conduct – to address mystification and formality of court process.

Greacen, John M. “Self-Represented Litigants: Learning from Ten Years of Experience in Family Courts” (2005) 44 Judges J. 24.

In this article, Greacen looks back at the progress since 1995, when the focus was on creating special programs, offices or court units within the courthouse to provide assistance to SRLs. He notes that by 2005, there was a realization that such programs were necessary but not sufficient to provide real access to justice to SRLs.

Of interest is the breakdown of needs of SRLs depending on the types of cases at hand. Here, Greacen is only focused on family cases but compares simple uncontested cases (which can usually be handled easily by SRLs once given basic forms, instructions, and information) to

moderately complex matters (which can be handled by sophisticated SRLs but not unsophisticated litigants who need the involvement of counsel). Greacen also notes that mentally incompetent litigants or cases involving family violence generally require the assistance of counsel.

Reid, Gayla and John Malcolmson. “Civil Hub Research Project: Needs Mapping” (2007) Legal Services Society, online: <<http://www.ag.gov.bc.ca/justice-reform-initiatives/publications/pdf/CivilJusticeHub.pdf>>.

This needs assessment initiative involved consultation with over 60 key informants in Kelowna, Nanaimo, Vancouver and Victoria.

The mapping study indicated the following needs: (a) many people with civil problems may not even know that their problems have a legal dimension, may not know where to seek help, and may not have the skills or means to pursue help even when they know it exists; (b) common civil problems include consumer, money/debt, employment, and housing; (c) problems with wills, probate and personal injury also figure prominently; (d) low income SRLs have specific and acute needs, typically related to income and housing security; (e) legal problems can multiply when left unresolved, and when combined with life events such as family breakup and the onset of physical or mental illness, can result in a “downward spiral” of financial and other legal and life problems; (f) in-person help is important for people who are dealing with a legal problem; and (g) the challenge is to provide appropriate services and to find effective ways to overcome barriers that impede access.

Osborne, Coulter A. “Civil Justice Reform Project: Unrepresented Litigants” (Ministry of the Attorney General of Ontario, 2007), online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/080_unrepresented.asp>.

This project, also known as the Coulter Osborne Report, includes a chapter on “Unrepresented Litigants” in which the needs of SRLs are outlined.

The report states that a comprehensive needs assessment ought to be done in Ontario. It also states that some litigants need early advice on the substantive merits of a claim or defence in order to inform a decision to pursue or defend an action. Other litigants, the report says, need minimal guidance and direction to the appropriate resources. Some litigants may aptly represent themselves in Small Claims Court and others may require the help of a lawyer.

The report then describes the limited amount of help that is available to those with civil legal problems who cannot afford a lawyer. It notes a few services that are now available but are not doing all they can to help SRLs: limited Legal Aid availability, contingency fee arrangements, and the Law Society’s Lawyer Referral service, which will supply an applicant with the name of a lawyer who will provide a half hour free consultation in a specified area of law.

The report then outlines the following recommendations: to undertake an independent needs assessment study; to coordinate the delivery of improved legal information and resources; to consider the most effective and accessible media for communicating this information to the

public; to continue to offer pro bono services to the public; to encourage lawyers to consider new and innovative billing methods that promote access to justice; to revisit the 1997 McCamus recommendations with respect to civil legal aid; to continue to support, and gain additional support for PBLO's effort to develop the civil law self-help pilot project in Toronto.

Stratton, Mary. "Alberta Self-Represented Litigants Mapping Project: Final Report" (Canadian Forum on Civil Justice, 2007), online: <<http://cfcj-fcjc.org/docs/2007/mapping-en.pdf>> [Alberta SRL Mapping Project] (this report is also further discussed above – see section 1 of this Annotated Bibliography).

Various needs of SRLs are discussed in this project (see pp. 40-52).

First, a need for increased knowledge about available services to SRLs is discussed. In this discussion, it states the importance of services providers themselves being knowledgeable in order to maximize the help they can provide to SRLs.

Also noted are the following needs: affordable legal service and representation, friendly in-person help to understand and navigate legal processes, assistance with completing legal forms, more options for achieving quick and effective resolutions to legal problems, increased access to legal and court services for residents of rural communities, increased awareness to facilitate access to legal services for people with special needs (language, physical disability, cognitive and psychiatric challenges, low literacy), access to representation for disadvantaged accused in summary criminal cases, an increase in services to SRLs in civil matters, increased assistance, legal advice and representation for tenants facing actions in the Court of Queen's Bench, and increased access to legal advice and representation in family law matters, especially those involving the welfare of children.

Stratton, Mary. "Public Legal Education and Information: The Challenging Mission to Create what the Public Needs" (Canadian Forum on Civil Justice, 2010).

This PowerPoint presentation stresses the importance of easy access to well-designed and effective information and education about legal rights and processes to ensuring access to justice. Specifically, it looks at: (a) public legal education and information that is clear, accurate, easy to follow and readily accessible; (b) public legal education that is attainable quickly, repeatedly and in a variety of ways; (c) basics and details about rights and processes; (d) access to legal advice; (e) preferences to have a lawyer rather than to self-represent; and (f) understanding legal advice. It also summarizes the key findings from the Civil Justice System and the Public project, which utilized public participants' descriptions of their needs and experiences as well as reflections of front-line legal service providers.

Canadian Forum on Civil Justice. "Alberta Legal Services Mapping Project" (for various reports and articles, see online: CFCJ <<http://cfcj-fcjc.org/publications/mapping-en.php#alsmp>>).

This groundbreaking multi-year research project provides a wide-ranging look at the legal needs and services in Alberta, including those for SRLs. Although focussing on legal needs generally,

it also supports many of the findings set out in the Alberta SRL Mapping Project (discussed further above – see sections 1 and 2 of this Annotated Bibliography).

Patton, Anna, Yetta Withrow and Nova Scotia Department of Justice. “Self-Represented Litigants in Nova Scotia: Needs Assessment Survey” (Halifax: Nova Scotia Department of Justice, 2004).

This project used interviews, questionnaires and focus groups to determine the needs of SRLs in Nova Scotia. The SRLs involved in the study indicated the following reasons for self-representing: 40% did not need or want a lawyer, 34% could not afford a lawyer, and 26% were denied legal aid.

The following needs were determined from the study: SRLs need the most assistance at the pre-filing stage; SRLs usually do not distinguish between “legal information” that can be provided by staff and “legal advice” that can be provided by a lawyer; the other party in a dispute with a SRL may be disadvantaged by the fact that the other side is not Represented; SRLs would benefit from additional resources, e.g. brochures and do-it-yourself kits.

Law Commission of Ontario. “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System” (2010), online: <<http://www.lco-cdo.org/en/content/family-law-reform>>.

This study involved consultations with 49 individuals and groups from across Ontario whose needs and experiences are often overlooked. The study sought to outline the needs of users of the family law system, whether represented or unrepresented.

The study found that most SRLs did not choose to self-represent but did so out of necessity, usually because of a lack of funds to hire a lawyer. Participants also noted a need for networking and collaborative work between different types of professionals, requiring workers to develop trusting relationships, share knowledge, and refer clients to one another when problems that arise are outside of their area of expertise.

Ontario Civil Legal Needs Project Steering Committee. “Listening to Ontarians: Report of the Ontario Civil Legal Needs Project” (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2010), online: LSUC <http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf> (for the companion report, see Baxter, Jamie and Albert Yoon. *The Geography of Civil Legal Services in Ontario*, Report of the mapping phase of the Ontario Civil Legal Needs Project (Toronto: Ontario Civil Legal Needs Project Steering Committee, 2011), online: LSUC <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486236>>).

The “Listening to Ontarians” study underlies the need for a demystification of the legal system. The study notes that people sometimes do not seek legal services because they do not know how to find them or they assume they will not be able to afford them. The study reveals, however, that half of low and middle income Ontarians could seek free help or solve their legal problem for less than \$1,000 in legal fees.

Low and middle-income earners expressed different needs, which are outlined in the study. First, the specific legal issues are often different for the two groups. Also, more Ontarians in the lowest income group rely on non-legal sources of assistance for their problems, in particular friends and relatives. Family law issues were seen by Ontarians across all income ranges as important to resolve. Other civil legal needs, however, can be disruptive and long-standing as well, including employment and personal injury issues. The results of the study suggest that there need to be multiple, diverse, and integrated access points and service responses.

3. RESPONDING TO THE NEEDS OF SRLS (RESPONSIBILITIES, CURRENT SERVICES, EVALUATION OF SERVICES)

Lowe, Diana. “Unrepresented Litigants: What are we Doing to Meet the Challenge?” (2004) (available from the Canadian Forum on Civil Justice).

This article, prepared for the CBA Winning Advocacy Skills CLE in Winnipeg, August 2004, discusses SRLs, the impact they have on the court system, their needs, and the many responses being considered in Canada.

The article states the need of the public for information that will tell them about the process of litigation, how they should conduct themselves in court, and caselaw. Lowe discusses various responses that have been suggested and put in place to deal with SRLs. Specific responses outlined are: (a) frontline assistance such as legal information materials, court frontline staff assistance, plain language forms, websites and legal information centres; (b) increased role of paralegals; (c) unbundling of legal services; (d) legal advice lines with access to lawyers; (e) legal advice centres; (f) duty counsel; (g) “McKenzie friend” orders and Summary Trial processes; (h) increased legal aid funding; (i) changes to procedural rules or system-wide changes such as simplifying rules of court, special rules for SRLs, case management streams, the use of ADR or moving to an inquisitorial system. Many of these responses are detailed in the sections of this bibliography that follow.

(a) Statement of Principles on SRLs

Canadian Judicial Council. “Statement of Principles on Self-Represented Litigants and Accused Persons” (2006), online: <http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf>.

This statement of principles, adopted by the Canadian Judicial Council in September 2006 outlines relevant principles to be followed by the various actors involved in ensuring access to justice for SRLs. It stresses the importance of meeting the needs of SRLs and developing forms and procedures which are understandable and accessible to SRLs. It also specifically states that judges and court administrators have no obligation to assist an SRL who is disrespectful, frivolous, unreasonable, vexatious, abusive, or making no reasonable effort to prepare their own case. All principles are outlined with the presumption that individual courts will adopt these principles, having regard to statistical information relevant to their particular jurisdiction.

Specific principles for court administrators are enumerated as follows (from p.8 of the report):

1. Court administrators should seek to provide self-represented persons with the assistance necessary to initiate or respond to a case and to navigate the court system.
2. In particular, court administrators should be given sufficient resources to be able to:
 - (a) provide, on request, all public information contained in dockets or calendars, case files, indexes and existing reports;
 - (b) provide, on request, access to or a recitation of relevant common, routinely employed rules, court procedures, and fees and costs;
 - (c) provide, on request, information about where to find applicable laws and rules
 - (d) identify and provide, on request, applicable forms and written instructions;
 - (e) answer questions about how to complete forms, but not about how answers should be phrased;
 - (f) define, on request, terms commonly used in court processes;
 - (g) provide, on request, phone numbers for Legal Aid, lawyer referral services, local panels, or other assistance services, such as Internet resources, known to court staff;
 - and
 - (h) provide, to the extent possible, and in compliance with applicable law, appropriate aids and services for individuals with disabilities.
3. Court administrators shall not provide legal advice.
4. Court administrators should educate court personnel regarding the importance of public access to the courts and should provide training to court personnel as to how they should assist self-represented persons.
5. Court administrators should allocate the necessary resources to allow court personnel to provide meaningful assistance.

In the commentary, the statement of principles goes on to elaborate on the importance that court personnel understand the distinction between legal information and advice. It gives specific examples of what constitutes legal advice, including, “advising someone on whether or how to best pursue a case, and explaining the law (as opposed to the process, or distributing information on how to access the law)” (p.11). The report states that training court personnel through multi-step “protocols and utilizing scripts for answering frequently asked questions will allow them to give meaningful assistance to SRLs without giving legal advice.

(b) Self-Help Resources

Greacen, John M. “Self Represented Litigants and Court and Legal Services Responses to their Needs: What we Know” (2002), online:

<http://ri.lsc.gov/pdf/02/020045_selfrep_litigants&whatweknow.pdf>.

In this article, Greacen summarizes characteristics of SRLs as found in Arizona, Florida, Idaho, Maryland, Alaska, Washington, and California (these studies are largely detailed in the section above). Greacen then goes on to discuss the impact on the court process in cases involving SRLs.

He notes that in some types of cases, namely family cases, SRLs actually speed up the process. However, there are numerous instances in which SRLs misdiagnose their case and these circumstances take time and resources from judges and the courts. These cases lead to the stereotypical picture of the disruptive SRL.

Greacen details a logical model for the effectiveness of self-help programs for SRLs. He proposes categories along with a logical flow of questions to determine effectiveness of court and legal services designed to help SRLs. The categories he outlines are as follows (1) access; (2) use of the service; (3) client satisfaction; (4) client education; (5) client expectation; (6) court or agency satisfaction; (7) client actions; (8) client outcomes; (9) other outcomes. Greacen then goes on to report on evidence that bears on each of these categories. The paper concludes by stating that common measures and techniques of determining client satisfaction must be developed.

Supreme Court of Virginia Pro Se Litigation Planning Committee, “Self-Represented Litigants in the Virginia Court System: Enhancing Access to Justice” (Virginia: Supreme Court of Virginia, 2002).

This report out of Virginia established some recommendations in relation to SRLs. It is a helpful document as it outlines many of the options which have been examined from different states and provinces but does so in one comprehensive evaluation. The recommendations are as follows: (a) adopt a Rule of Court that specifically enables clerks of court and staff to fulfill their duties as public servants, assist those using the court system without improperly engaging in the unauthorized practice of law; (2) develop principles, guidelines, protocols, and training curricula for all clerks’ office personnel and magistrates to clarify the information and assistance that may be provided to SRLs; (3) institutionalize an educational curriculum for judges; (4) adopt appropriate protocol and specific scripts for inclusion in benchbooks for judges to use with SRLs; (5) support efforts to acquire funding for the expansion of dispute resolution coordinators to screen appropriate cases for mediation and to provide management of such cases; (6) advocate for enhanced funding of legal aid; (7) expand collaborative programs; (8) establish a Limited Representation Committee which would address “unbundling” or discrete task representation, along with other recommendations.

Staudt, Ronald W. and Paula L. Hannaford. “Access To Justice For The Self-Represented Litigant: An Interdisciplinary Investigation By Designers and Lawyers” (2002) 52 Syracuse L. Rev. 1017.

This study, outlined above in the section “Needs of SRLs” chose five courts as sites at which to test whether the computer program developed by Owen et al., described above, was helping SRLs. The final assessment by the researchers was that, while the program was certainly beneficial to SRLs, traditional court processes still had value and thus should not be abandoned in favour of the computerized programs. Ultimately, however, the study states that the customer will determine whether computer programs have value in the system for SRLs.

“Preliminary Reports: Best Practices in the Use of Technology to Facilitate Access to Justice Initiatives” (Boston: Berkman Center for Internet and Society at Harvard University, 2010), online:

<http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/A2J_Report_Final_073010.pdf>.

This project was undertaken by Harvard University on behalf of the Trial Courts in Massachusetts. The students at the Berkman Center reviewed existing literature, including reports, guides, articles, etc., relating to access to justice improvements and the role of technology, from sources such as the National Center for State Courts, the State Justice Institute, ProBonoNet, the Self-Represented Litigation Network, SelfHelpSupport.org and others. Researchers also experimented with some of the most commonly used access to justice (A2J) technologies such as A2J Author. They interviewed national experts in the use of A2J technologies as well as staff in the New York state court system engaged in planning and implementing NY’s extensive use of A2J technology. Lastly, they spoke with representatives of several Harvard Law School clinics who handle cases and clients in areas such as housing and family law where self-represented litigants (SRLs) are most concentrated, to help develop an understanding of the most critical unmet legal needs for this client group.

Among the needed resources identified by a court survey and confirmed by an Interim Report to the Commission on Access to Justice, were “instructional materials in other languages, and court forms in other languages; technology, including wireless (internet) access in courthouses, MassCourts public access, and court forms that can be completed online.” Among the findings was that technology investments can save money through greater efficiencies and reduced judge and staff time required to serve self-represented litigants.

Pearson, Jessica and Lanae Davis. “The Hotline Outcomes Assessment Study: Final Report, Phase III: Full Scale Telephone Survey” (Denver, Colorado: Center for Policy Research, 2002), online:

<<http://www.policyarchive.org/handle/10207/bitstreams/13887.pdf>>.

This project, jointly conducted by CLASP, the National Legal Aid and Defender Association and the Center for Policy Research, is an independent assessment of the effectiveness of using telephone hotlines to provide brief legal advice and referrals to low income individuals.

Phase III of the study researched whether clients understand the advice they are given by hotlines, whether they follow up on it, and whether they realize a satisfactory resolution to their problems. Relevant results of the study are summarized as follows:

(a) Satisfaction – the number of cases in which clients received the information they needed or the result they wanted (48%) almost matched that of unsuccessful outcomes (52%).

(b) Understanding – when respondents understood the advice given, they tended to prevail. Only 6% received unfavorable results because they did not prevail after following the advice received via the hotline. However, 14% were deemed to have received unfavorable results because they did not understand the advice given, and 9% failed because they did not have the time, initiative

or courage to try what was recommended.

(c) Type of case – Success was largely based on the type of matter being discussed. Brief services yielded the highest success rate, followed by coaching on how to deal with a landlord, creditor or other private party, which was then followed by providing written legal information and coaching on how to proceed self-represented in court. Favorable assessments were even lower when the subject matter was how to deal with a government agency or when clients were referred to another legal service program or social agency.

(d) Demographics – clients with the most favorable outcomes were significantly more likely to be white, English-speaking, educated to at least eighth-grade and to have a marital status other than being separated from a spouse. Clients who received the least favorable outcomes were Spanish-speaking, Hispanic, individuals with the lowest education level, those who reported no income from any source, and those who were separated and lived apart from a spouse. A failure to understand the advice given was a large factor here.

BC Justice Review Task Force. “Effective and Affordable Civil Justice: A Report of the Civil Justice Reform Working Group to the Justice Review Task Force” (November, 2006), online: <http://www.bcjusticereview.org/working_groups/civil_justice/civil_justice.asp>.

This review emphasizes, as one of its key recommendations, the need for an “Information/Assistance Hub” which would provide people with information, advice, guidance and other services that they would need to solve their own legal problems. Such hubs would support dispute prevention and planning through plain language, legal education, preventive law and systems design; would facilitate access to mediation or other dispute resolution processes; and would create a central hub initiated by government and guided by an advisory board of key stakeholders to coordinate and promote existing legal-related services, provide legal information and appropriate referrals to other services, establish a multidisciplinary assessment/triage service to diagnose the problem and provide referrals to appropriate services and provide access to legal advice and representation (if needed) through a clinic model.

This recommendation followed the model established by the BC Supreme Court Self Help Information Centre in Vancouver, and led to the Justice Access Centre in Nanaimo, which both provide self-help and information services, dispute resolution and mediation options, legal advice services and links to community resources and services. Other jurisdictions have followed this model, including the Law Information Centre (LInCs) in Alberta, Law Help Ontario, and Self-Help Centres in PEI. The mapping research conducted both in Alberta and BC (described above) was the first step in the creation of these centres.

Domingo, Elizabeth. “An Assessment of Union’s Volunteer Self-Help Centre” (Institute for Court Management, Union County, 2010) online: <<http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=192>>.

This study examined the Self-Help Center located in the Union County Superior Court in Elizabeth, New Jersey. The Center, staffed by an Ombudsman, volunteers and interns, provides one-on-one service that was previously sought at intake counters. From the one-on-one service,

to the distribution of self-help packets, to having computers available to the public, Union County's Self-Help Center was devised to take the pressure and volume of litigants away from the intake windows' staff who were dealing with specific staffing shortages and unable to keep up with the volume of litigants asking for help.

The Center's effectiveness was measured using survey questionnaires, which turned out favorable responses to the Center. Surveys indicate that self-represented litigants who used the center were satisfied with their experience. The evaluations also showed that the center's location is appropriate to serve its users. The following recommendations were made at the conclusion of the study:

- (a) Self-Help Center's location should meet two critical objectives – 1. Ease of use for the public, and 2. Efficient use of staff;
- (b) Services must be continually reviewed to ensure that the needs of the public are being met – a yearly customer service survey is recommended;
- (c) SRLs should be surveyed after court appearances to determine whether they achieve their desired outcomes
- (d) Judges and staff should be surveyed with respect to their perceptions of the Self-Help Center
- (e) Self-Help Centers should seek input from non-users to capture if anyone is not being serviced.

St. John, Muriel. “Academic Law Libraries and Self-Represented Litigations” (2010) 35(2) Canadian Law Library Rev. 58.

This article considers academic law libraries generally, and focuses on the University of Manitoba Law Library, as an aid to SRLs. St. John explains that the role of a librarian is to provide access to legal information as well as to teaching people how to use that information effectively. In many ways, the librarian acts as an intermediary between the legal information and the SRL.

(c) Judicial Education Resources

Goldschmidt, Jona. “Judicial Assistance to Self-Represented Litigants: Lessons from the Canadian Experience” (2008-2009) 17(3) MSU-DCL J. Int'l L. 601.

This paper raises issues regarding judicial assistance of SRLs in Canada and suggests three categories of judicial assistance: (a) required, (b) permissible, and (c) impermissible.

National Association for Court Management (Minnesota). “Models in SRL Innovation: Tested Ideas” (2010), online:

<http://www.nacmnet.org/conferences/PastConferences/2010Annual/Models%20in%20Self-Represented%20Litigants%20Innovation.pdf>.

This PowerPoint presentation describes the need for judicial education about SRLs in Minnesota. It states the need for resources including a benchguide with information on ethics, communications, courtroom management, unintended bias, and cases where one side is

represented and the other is not. Additionally, the number of in-person and on-line classes on techniques and substantive law should be included. The presentation also describes the need for a comprehensive training and new judge orientation which explains SRL resources. Materials from Harvard SRLN Judicial Training have been used in Minnesota courts.

(d) PLEI Resources

Lowe, Diana. “Procedural Steps for Self-Represented Litigants (SRLs) in Civil, Family and Criminal Cases: A Guide for PLEI Providers” (2007), online:
<http://www.cliapei.ca/sitefiles/File/Project%20Files/SRL%20Report.pdf>.

This guide provides direction to PLEI providers, court administrators and others working on the frontline, in terms of general advice to give to SRLs. The suggestions provided are as follows:

- (a) Legal Advice – SRLs should be encouraged to seek legal advice and advised that they may not receive the same advantage as if they had representation. They should be provided with referral information about legal aid and pro bono services. They should also be advised that, if they were denied legal aid, they have the right to appeal the decision and should be given information on how to appeal. In addition, the SRL should be advised that it is their responsibility to become familiar with the court and the trial system.
- (b) ADR Options – SRLs should be made aware of ADR options
- (c) Cost Consequences – SRLs should be made aware of cost consequences should they be unsuccessful in pursuing or defending a claim.
- (d) Decorum – SRLs should be given information about basic decorum and conduct in the courtroom, such as participants in the process, courtroom layout, hours of sitting, conduct in the courtroom
- (e) Witnesses – SRLs should be given information about how and when to call witnesses and expert witnesses
- (f) Difference between Evidence and Argument
- (g) Communication – SRLs should be told that they must clearly state what they are asking the court to do. If they need an interpreter, they should know that one will be provided. SRLs must know that they may not communicate with the judge outside the court.

(e) Increased Role of Paralegals

Pacer Enterprises Ltd. V. Cummings and the Law Society of Alberta [2004] ABCA 28.

In this case, the court considered whether a superior court judge had the authority to allow a non-lawyer to represent an otherwise SRL. The litigant in this case had a grade three education and could not afford to retain a lawyer. The Trial Judge, making an order in chambers, allowed such representation on the basis of “inherent jurisdiction to afford...representation”. On appeal, the Court limited such representation to oral submissions. Thus, the litigant would have to prepare pleadings or other documents on his own.

Law Society Act, RSO 1990, c. L.8

This statute gives the Law Society the authority to license and regulate lawyers and paralegals in the public interest. In Ontario, Paralegals can now represent clients on any matter (a) in small claims court; (b) in the Ontario Court of Justice under the Provincial Offences Act; (c) on summary conviction offences where the maximum penalty does not exceed 6 months imprisonment; or (d) before administrative tribunals.

(f) Unbundling of Legal Services

Hannaford-Agor, Paula L. “Helping the Pro Se Litigant: A Changing Landscape” (2003) Court Rev., online: <http://aja.ncsc.dni.us/courtrv/cr39_4/CR39-4Hannaford.pdf>.

This article describes how the increase in SRLs has forced many within the court and legal communities to reconsider some of the fundamental premises on which the civil justice system is based and to respond in new ways. It discusses the need and utility of “unbundled” legal services to address a scarcity of affordable legal service.

Hannaford-Agor suggests different areas for unbundled legal services based on stages of the legal process: (1) diagnosis; (2) strategies; and (3) resolution and enforcement. She states that much of the decision-making during diagnosis relies on legal information and so could ethically be done by the court or legal community. Sometimes collaboration with the legal community to provide consultation at a nominal fee could help at the decision-making phase. Where the service of a lawyer is required, such measures are essential to ensure costs remain low.

American Judicature Society. “Ensuring Access to Justice for Self-Represented Litigants” (March-April 2011) 94(5) Judicature 204.

This recent article begins by restating the problem of delivering access to justice for SRLs. It then goes on to stress the solution of unbundling legal services as an attempt to resolve the problem to some degree. Rather than attending a brief advice clinic or hotline, a litigant could hire a lawyer to help with specific elements of a file. It cites a recent ABA public opinion survey which found people did not know unbundling was an option but would be interested if it were available. Unbundling, the article goes on to say, is not only attractive for low and moderate income litigants but also for new lawyers who are having a hard time setting up viable law practices. The article concludes with the caveat that limiting the scope of work of lawyers would not negate any ethical obligations to the client and would still hold the same liability for malpractice as does the current system.

Greacen, John M. “Resources to Assist Self-Represented Litigants: A Fifty State Review of ‘State of the Art’” (2011), online: <<http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>>.

In this report, Greacen notes that roughly forty states have adopted amendments to their Rules of Professional Conduct implementing in one form or another ABA Model Rule 1.2(c) which

authorizes attorneys to limit the scope their representation if the limitation is reasonable and the client gives informed consent.

He notes that the ABA Standing Committee on the Delivery of Legal Services maintains an updated listing of the status of unbundling rules in every state. The link to the listing is: http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/court_rules.html.

Law Society of Upper Canada. “Law Society provides guidance on ‘unbundling’ of legal services” (22 September 2011), online:
<<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147485669>>.

This news release, just released by the Law Society of Upper Canada announces the updates to its Rules of Conduct to provide guidance for lawyers and paralegals providing legal services under limited scope retainers, sometimes referred to as “unbundled” legal services.

The Law Society recognizes that some lawyers and paralegals are already providing legal services on a limited scope basis. The amended rules emphasize the need to provide competent services and communicate effectively with clients when providing limited scope legal services. The amendments require that the lawyer or paralegal confirm in writing the legal services provided under a limited scope retainer. This is to assist the client to understand the scope of the retainer. Certain types of summary advice services are excluded from this requirement.

As a next step, the Law Society will begin a dialogue with legal organizations and legal institutions, including the courts, to identify the key procedural issues associated with limited scope retainers in a litigation setting and changes to court rules that may be appropriate to better facilitate them.

(g) Duty Counsel

Christopher, Michelle. “Unrepresented Litigants in Family Courts” (December 2003/January 2004) *LawNow* 45.

In this article, the author outlines a Duty Counsel program developed by Calgary Legal Guidance along with members of the Court of Queen’s Bench in Calgary’s Family Law Chambers. Each court day, one or more counsel from Calgary Legal Guidance attends at Queen’s Bench Family Law Chambers in Calgary to offer assistance, as Duty Counsel, to SRLs. Duty Counsel is available first in a screening capacity, to provide procedural advice on preliminary matters, but then may also act in a representative capacity when a litigant needs Duty Counsel to attend in court.

(h) Increasing Legal Aid Funding

Osborne, Coulter A. “Civil Justice Reform Project: Unrepresented Litigants” (Ministry of the Attorney General of Ontario, 2007), online:

<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/080_unrepresented.asp>.

The Honourable Coulter Osborne (QC) recommends in this report (discussed above in section 2 – Needs of SRLs) that Legal Aid funding should be increased. Further, the report recommends revisiting the 1997 McCamus recommendations with respect to civil legal aid.

(i) Changes to Procedural Rules / system changes (i.e. plain language, special rules for SRLs)

“Alberta Rules of Court Project: Self-Represented Litigants” (2005), online:

<<http://www.law.ualberta.ca/alri/docs/cm01218.pdf>>.

This Consultation Memorandum seeks to examine the way in which changes to the Rules of Court could impact and aid SRLs. Some of the Rules which are proposed to be changed are as follows:

Rule 5.3: Exceptions to Self-Representation

The report states that the new rules should make the position under the case law clear. That is to say, generally corporations and persons acting on behalf of a person under legal disability or serving in a representative capacity cannot self-represent but the court has the discretion to allow them to do so in appropriate circumstances.

Rule 5.4: Representation by a Non-Lawyer – no change to the rule is proposed

The committee does state that the Rules should be altered to require the permission of the court for representation by a non-lawyer agent or the assistance of a McKenzie friend. Their purpose in taking this position is to avoid confusion in distinguishing between the two roles. They felt that the nuances of defining a line between representation by a non-lawyer agent and lay assistance that falls short of representation would create more problems than an additional provision would solve.

On the question of whether the Rules should be relaxed for SRLs, the committee stated that, as a matter of general principle, the Rules should apply equally to all parties. Self-represented litigants must understand that they bear the same responsibilities as professionally-trained lawyers and that they must conduct their case accordingly. It would be helpful to state this principle expressly in the Rules.

Self-Represented Litigation Network. “Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources” (2008), online:

<http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atiresourcecenter/downloads/best_practices_7_08.authcheckdam.pdf>.

This document describes the practices that have been identified by the Self-Represented Litigation Network (SRLN) as likely to be effective and generally worthy of broad replication. The report includes the following services (as well as others that are not as applicable to the research at hand):

- (1) Self-Help Centres and Services
- (2) Forms, Document Assembly and E-Filing
- (3) Practices in the courtroom
- (4) Limited scope representation, *pro bono* and volunteer programs
- (5) Court management and evaluation practices

Under each category, lists of addresses and contact information for various service providers are offered.

(j) Adversarial vs. Inquisitorial Systems

Minogue v. Human Rights and Equal Opportunity Commission [1999] FCA 85.

This Australian appeal looks at the duty of a judge to help SRLs. The appellant in this case is appealing a decision based on the argument that the judge did not do enough to help him, as a SRL, in the court of first instance.

The Court states that the duty of a judge to assist an unrepresented accused in a criminal proceeding is more extensive than that imposed in a civil proceeding. The Court cites authorities that state, in civil cases, judges must provide some advice and assistance but should not intervene to such an extent that he/she cannot maintain a position of neutrality. The Court held that the judge could not have done more than he had without crossing this line.

Jennifer E. McIntosh. “Excerpts from the Final Report to the Family Court of Australia on the Children’s Cases Pilot Project” in *News & Views on Civil Justice Reform*, Issue 11 (Fall 2007), online: CFCJ <<http://cfcj-fcjc.org/docs/2007/newsviews10-en.pdf#page=5>>.

This article discusses a move from the adversarial system in this Australian court.

4. SERVICE GAPS

Dannenberg, Thomas. “Fighting Fair: How to deal with self-represented litigants” (2003) online: <www.cba.org>.

In this article, the author discusses how lawyers should handle SRLs coming up against them. Judge David Cole of the Ontario Court of Justice in Toronto observed that SRLs often don't understand the main issue or want to focus on a less serious issue. Also, SRLs can be rude or insulting. The article offers several suggestions to Counsel such as having a third party present and taking the high road when dealing with SRLs. While the article is not directly relevant to the issue of court personnel and SRLs, it is helpful to note that one of the main problems with SRLs seems to be in focusing the issue at stake for the SRL, a task that court personnel or Duty Counsel may be able to assist with.

Greacen, John M. “Self-Represented Litigants: Learning from Ten Years of Experience in Family Courts” (2005) 44 Judges J. 24.

This article, which is also summarized under the heading “Needs of SRLs” (in section 2 above), talks about the distinction between legal information and legal advice. It posits that many SRLs only need legal information, while other litigants need more than that. Greacen states that it is never appropriate for court staff to provide legal advice as they must remain neutral and impartial.

Zorza, Richard. “An overview of the Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue” (2009) 43(3) Family Law Q. 519.

This article documents the court-based service innovations that have been developed to aid SRLs in the area of family law. In discussing court staff training and guidelines, Zorza explains that the impact of Greacen's pioneering work has been to institute and emphasize concrete, practical and easy-to-follow guidelines that outline what court staff can and cannot do. The example given, of Utah's Guidelines state: “[w]e can explain and answer questions about how the court works,” but “[w]e cannot tell you what words to use in your court papers. However, we will check your papers for completeness”. Zorza also explains that is completely appropriate for court staff to suggest that SRLs seek the help of a lawyer.

Blackwell, Libby. “Guiding Self-Represented Litigants through the Litigation Process” (Institute for Court Management: Georgia, 2010), online: <<http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=191>>.

The purpose of this study, conducted in the DeKalb County Superior Court of Georgia, was to guide SRLs with minor children through the divorce litigation process. Through interviews and public surveys, the study found that three-fourths of the respondents felt court services were timely, effective and satisfactory. However, there was an inverse correlation between the judicial staff's perception of efficiency when compared to SRLs' perception of efficiency. This led the

researchers to create a work flow process chart to provide agency information and give a step-by-step analysis of the litigation process.

Greacen, John M. “Resources to Assist Self-Represented Litigants: A Fifty State Review of ‘State of the Art’” (2011), online:
<<http://www.msbf.org/selfhelp/GreacenReportNationalEdition.pdf>>.

This report, commissioned by the Michigan State Bar Foundation looks at a continuum of information needs of SRLs and available services to note the essential service gap of a triage system which would enable SRLs to access the system in a more useful and timely way. Greacen says this is the least developed within current state self-help programs. Triage would involve making merits-based assessment of a litigant’s case, a job only lawyers can now do.

Law Commission of Ontario, “Best Practices at Family Justice System Entry Points: Needs of Users and Responses of Workers in the Justice System” (2009), online: <<http://www.lco-cdo.org/family-law/Family%20Law%20Process%20Consultation%20Paper%20-%20September%202009.pdf>>.

This is a report, prepared by the Law Commission of Ontario, which focuses on the needs of users and workers in the family justice system. The report provides various recommendations on how to better service those involved in the family justice arena. The following are some recommendations: first, is a priority in ensuring that the Family Law Information Centre remains the main entry point in the family court system. In addition, the report focuses on making mediation a priority by realizing its full potential; adapting to the reality of self-represented litigants; handling domestic violence and high conflict cases differently from other cases; sharing promising practices across the province and conducting a systematic and comprehensive review of the Ontario family justice delivery system. This comprehensive review is underway and should be completed by April 2012.

5. CHALLENGES FOR COURT ADMINISTRATORS IN MEETING THE NEEDS OF SRLS

Michigan Judicial Institute. “Legal Advice v. Access to the Courts: Do YOU Know the Difference?” (1997), online:
<<http://www.cj.msu.edu/~outreach/mvaa/Handbook%20of%20Legal%20Terms/LegalAdviceBook.pdf>>.

In this training manual for court personnel, the Michigan Judicial Institute attempts to outline the balance between giving legal advice and allowing SRLs to have access to the courts. The training was specifically designed for court support staff who provide telephone and counter assistance as a major part of their jobs. The manual first explains the reasons that court administrators cannot give legal advice (neutrality, impartiality, unauthorized practice of law). The manual then goes on to explain the importance of understanding what is and is not legal advice (providing access, providing service, and increase in “pro per” litigation.

A chart, duplicated below, outlines what can and cannot be provided in terms of information and advice:

Can Provide	Cannot Provide
Legal definitions	Legal interpretations
Procedural definitions	Procedural advice
Cites of statutes, court rules and ordinances	Research of statutes, court rules, and ordinances
Public case information	Confidential case information
General information on court operations	Confidential or restricted information on court operations
Options	Opinions
Access	Deny access, discourage access of encourage litigation
General referrals	Subjective or biased referrals
Forms and instructions on how to complete forms	Fill out forms for a party

The manual then goes on to explain each of these individually with corresponding examples, making the chart more useful and helpful for staff.

Greacen, John M. “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84(4) *Judicature* 198.

This article outlines the issue faced by court staff of the apprehension that they are practicing law without a license. Greacen notes his opinion that rules prohibiting the unauthorized practice of law do not apply to court staff performing tasks at the direction of the court. He fears that a focus on the unauthorized practice of law by court staff is a focus on the wrong issues and provides too much or too little guidance to courts as to what information can and should be provided. Greacen uses, as an illustration of the authority of court staff, the Supreme Court of Florida’s family court rule, Rule 12.750, which reads: “The services listed in subdivision (c), when performed by nonlawyer personnel in a self-help program, shall not be the unauthorized practice of law”. Similar rules have been applied in Washington and Vermont.

Greacen explains that courts must provide SRLs with the information they need to bring their cases before the court. In providing such information, however, courts must be cognizant of their duty of impartiality. Greacen states that court staff are fully competent to direct litigants to the correct forms, an essential part of what an SRL needs to bring his or her case to court.

Roland, Anne. “Challenges of Self-Represented Litigants in the Court System: Panel Discussion” (presentation at ACCA conference, Winnipeg, Manitoba, 19 April 2001) (available from the Canadian Forum on Civil Justice).

In this presentation, Anne Roland, Registrar of the Supreme Court of Canada, discusses three main issues at stake in the area of SRLs. First, she discusses the issue of providing information to SRLs or answering their questions. She restates the problem faced by Registrar Officers, who

must help SRLs without giving them legal advice. She states that, in providing information, Registry Officers must remember that the advice they give should be limited to ensuring that litigants understand Court procedures and must not tell litigants what to say, what documents to include or what remedies to seek.

Another issue discussed by Roland is the balance between quality of case versus right to due process. She states that the material filed by SRLs is often unclear, not properly bound and requires a great deal of time to review for compliance with the *Rules*. This is very time consuming for the Court and very upsetting for SRLs. When required documentation is missing, the Registry Officer will spend a lot of time trying to help SRLs to complete their files.

Zorza, Richard. “The Self-Help Friendly Court: Designed from the Ground Up to Work for People Without Lawyers” (2002), online:
<http://ri.lsc.gov/pdf/03/030111_selfhelpct.pdf>.

This comprehensive text looks at various issues regarding SRLs. In a chapter entitled “An Integrated View of Self-Help Court Management”, Zorza explains the importance of all staff and organizations viewing themselves as a team. In addition, courts must have broad systems of feedback, comment and review, and all feedback should be viewed as an opportunity to learn and improve the system.

Within the monograph, Zorza has a great quote regarding the difference between legal advice and information in this article: “If you ask a question of two lawyers, and get two different answers, and neither lawyer is committing malpractice, that is legal advice. But if there is only one right answer, that is legal information”.

Zorza, Richard. “The Disconnect Between the Requirements of Judicial Neutrality and those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications” (2004) 17 Geo. J. Legal Ethics 423.

This article analyses and suggests an approach as to how judges can deal appropriately and neutrally with SRLs. Zorza explains that judges should not confuse judicial neutrality with judicial passivity as the appearance of neutrality and actual neutrality are very different. True neutrality involves engagement and transparency, both very important factors. This article does not discuss court administrators, but rather focuses on the judiciary. However, the concepts of neutrality discussed are applicable.

Arizona Judicial Counsel. “Task Force on Legal Information vs. Legal Advice: Final Report and Recommendations” (2007), online:
<http://supreme.state.az.us/courtserv/Legal_A-I/FinalReport.pdf>.

In creating this report, the Task Force reviewed the work of authorities, the legal information-legal advice guidelines from every state that had such guidelines as well as training material and manuals from those states. From such research, the Task Force developed guidelines and materials to assist court staff. The conclusions of the committee were to create signage and materials to have at the courts. In addition, the Task Force stated that new employee orientation

must include Legal Advice vs. Legal Information training and that current employees be required to participate in a review program.

Fortherby, William. “Law That is Pro Se (Not Poetry): Towards a System of Civil Justice that Works for Litigants without Lawyers” (2010) 16(1) Auckland University L. Rev. 54.

This article out of New Zealand discusses the dilemma of trying to give justice to SRLs while, at the same time, avoiding giving legal advice.

The article notes that if a lawyer in New Zealand learns that a person is providing unauthorized legal advice, that lawyer must immediately report the matter to the Law Society and the provider of such unauthorized legal services can be fined up to \$50,000. Fortherby states that, in order to give justice to SRLs (he uses the term Litigants in Person and Pro Se Litigant), these rules must be relaxed. He says that allowing a special class of lay people (court staff, lay specialists, law clerks, legal executives and law students) to provide limited legal advice would provide a cost effective supply of personal assistance.

The article goes even further to discuss the use of a “McKenzie friend” – a person who, with leave of the court, may accompany a litigant and offer them support by taking notes, quietly making suggestions, and giving advice. The author notes that this procedure is rarely use by litigants but it could be expanded to give litigants in person lay support in the courtroom.

Johnstone, Quintin. “Law and Policy Issues Concerning Adequate Legal Services for the Poor” (2011) 20 Cornell J.L. & Pub. Pol’y 571.

In this recent article, Johnstone provides a summary and evaluation of services offered to the poor. Johnstone reiterated the prohibition from giving legal advice, citing Greacen’s 1995 work. He also cites the importance of employees and clerks remaining impartial and explains the difficulty in the distinction between legal advice and information. The result of such confusion is, unfortunately, the hesitance for court clerks to provide legal information.

Johnstone proposes that, in each U.S. jurisdiction, the appropriate court should adopt a court rule to assist court personnel in their decisions on how to assist SRLs (*pro se* litigants, as referred to in the article). He states that the rule should authorize assistance by court personnel to persons regardless of the party’s income or wealth. The article stresses the importance that such court rules must be sufficiently detailed to explicitly cover what different court personnel may do to assist SRLs, defining “legal advice” and modifying unauthorized practice laws to permit specific types of legal services to be provided by non-lawyers. Additionally, Johnstone suggests that court personnel should attend training sessions, which would inform them as to what the applicable rule does and does not permit.

The article also notes the stresses on the system of affluent parties making use of services devised to help SRLs of lesser means. The article notes that if assistance to affluent persons from assistance centres, law school legal clinics, or legal aid would result in substantial cost to the organizations in terms of time or money, the organization should have the option of declining services to affluent SRLs.

6. MODEL GUIDELINES

Existent model guidelines come predominantly from the writings of John M. Greacen, and, in particular, his 1995 article summarized below. Various states and provinces have articulated guidelines, which will also be outlined below.

John Greacen. “No Legal Advice From Court Personnel, What does that Mean?” (1995) 34 Judges J. 10.

In this article, Greacen argues that the phrase “legal advice” has no inherent meaning and that its use by the courts have negative consequences for the ability of the court to provide consistent service. The ambiguity as to what legal advice consists of can lead to a situation where some are offered advice and others are not. In this situation, Greacen states, the court clerks act on their own determinations as to what consists of legal advice.

Greacen offers five general principles: (1) Court staff have an obligation to explain court processes and procedures to SRLs, the media and other interested citizens; (2) Court staff have an obligation to inform litigants and potential litigants how to bring their problems to court for resolution; (3) Court staff cannot advise litigants whether to bring problems before the court or what remedies to seek; (4) Court staff must remember the duty of impartiality and never give advice or information for the purpose of giving one party an advantage; and (5) Court staff must be mindful of the principle that counsel cannot communicate with a judge *ex parte* and should not let themselves be used to circumvent that principle.

Greacen, John M. “Legal Information vs. Legal Advice: Developments During the Last Five Years” (2001) 84(4) *Judicature* 198.

This article outlines the issue, faced by court staff, of the apprehension that they are practicing law without a license. Greacen notes his opinion that rules prohibiting the unauthorized practice of law do not apply to court staff performing tasks at the direction of the court. He fears that a focus on the unauthorized practice of law by court staff is a focus on the wrong issues and provides too much or too little guidance to courts as to what information can and should be provided. Greacen uses, as an illustration of the authority of court staff, the Supreme Court of Florida’s family court rule, Rule 12.750, which reads: “The services listed in subdivision (c), when performed by non-lawyer personnel in a self-help program, shall not be the unauthorized practice of law”. Similar rules have been applied in Washington and Vermont.

Greacen explains that courts must provide SRLs with the information they need to bring their cases before the court. In providing such information, however, courts must be cognizant of their duty of impartiality. Greacen states that court staff are fully competent to direct litigants to the correct forms, an essential part of what a SRL needs to bring his or her case to court.

Beaudet, Donna. “How to Provide Access without Giving Legal Advice: Practical Guidelines for Court Staff” (1999) 14(2) The Court Manager 22.

This Guide, from the District Court of Michigan, outlines practical guidelines for court staff about how to provide access without giving legal advice. The author notes that the distinction between legal information and legal advice concerns more than merely court clerks, as various other court staff come in contact with people asking questions about the court system. Beaudet states that court staff have a tremendous amount of responsibility and can significantly affect the administration of justice. Thus, it is important that staff be properly trained as to what is and is not legal advice.

Beaudet notes three problems which have resulted in no such comprehensive training throughout the State of Michigan: (1) lack of information regarding what is and is not legal advice; (2) no state-wide standards; (3) available information has not been in a format that can be easily accessed.

The article goes on to state the following roles and responsibilities of court staff: to provide information and access to the court system, provide customer service, and provide accurate information. Beaudet states that sometimes “legal advice” is used merely as an excuse not to give people the help they are requesting. Instead, staff should determine, based on set criteria and sound training, what types of information they can and cannot give. The chart provided in the article mirrors that from the Michigan Judicial Institute’s article, “Legal Advice v. Access to the Courts: Do YOU Know the Difference?”, cited above.

Greacen’s approach is heavily relied upon by Beaudet and she discusses his 1995 article to a great extent.

Charn, Jeanne and Richard Zorza. “Civil Legal Assistance for All Americans” (2005), online: <<http://www.bellowsacks.org>>.

This report proposes a service pyramid to address the needs of persons of limited means. Services at the base of the pyramid suffice for a great many legal issues and those at the very top are needed only by few. The pyramid’s contents are as follows, from bottom up: web-based information; phone information and web-based tools; brief service and advice with web-based tools; lay advisors; paralegal services; law students; recently admitted JDs; midlevel experience; expert attorneys.

In addition to proposing this pyramid, a new way of looking at the service provided to SRLs, the report notes characteristics of a “complex mixed-model delivery system” as follows: multiple providers would deliver the services on the pyramid; users would enter the system through “gateways” to match desires and needs with appropriate providers; litigants would have a choice of service provider; and members of the private bar would be heavily relied upon in service delivery.

The authors call for a “grand bargain” among the following key stakeholders: state courts, private bar, existing staffed providers, law schools, funders and consumers of legal services.

Greacen, John M. “A Fresh Look at Our System for Providing Civil Legal Assistance” (2006) 45 Judges J. 31.

In this article, Greacen summarizes and affirms the findings in the Charn/Zorza report, above. Specifically, he agrees that the report’s recognition that full legal representation for every poor person’s legal matter will never happen. He states that: “Only by building a system in which self-help services meet the needs of many is it realistic to expect that resources can be made available to provide full representation for the cases in which it is essential”. (at 33).

(a) Canadian Provinces that have adopted Greacen’s approach

Alberta, Ontario, Newfoundland/Labrador and New Brunswick, along with the Federal Courts and the Supreme Court of Canada have training materials for court staff which include guidelines derived from the theory of Greacen and detail the distinction between legal information and legal advice. These guidelines are not publicly available but have been attained through personal correspondence with the courts and are on file with the author.

(b) American states that have adopted Greacen’s approach

The states that have enunciated guidelines based on the principles of Greacen are as follows: Arizona, California, Colorado, Delaware, Florida, Idaho, Iowa, Massachusetts, Michigan, Missouri, New Mexico, New Jersey, New York, North Dakota, North Carolina, South Carolina, Utah, Washington, and Wisconsin. The Federal Judicial Center training materials also encompass these guidelines. The American guidelines are more widely published, unlike those in Canada. Some relevant sites are noted below.

- Arizona Institute for Court Management, *Legal Information vs. Legal Advice: A Curriculum for Court Employees (Phase III Project)* (Prescott, Arizona: Institute for Court Management, 2002), online:
<http://www.ncsconline.org/D_Icm/programs/cedp/papers/Research_Papers_2002/ICM_Legal_InfoLegal_Advice.pdf>.
- Arizona Judicial Counsel, “Task Force on Legal Information vs. Legal Advice: Final Report and Recommendations” (2007), online:
<http://supreme.state.az.us/courtserv/Legal_A-I/FinalReport.pdf>.
- Judicial Counsel of California, “Legal Advice vs. Legal Information: A Resource Guide for Court Clerks” (2003), online:
<<http://www.texasatj.org/files/file/MayIHelpYou.pdf>>.
- Iowa Judicial Branch Customer Service Advisory Committee, “Guidelines and Instructions for Clerks who Assist Pro Se Litigants in Iowa Courts” (2000), online:
<http://www.ajs.org/prose/pdfs/Iowa_Guidelines.pdf>.

- Massachusetts Judicial Branch, *State-wide Conference on Unrepresented Litigants: Responding to the Challenge* (Boston: Administrative Office of the Trial Court, Judicial Institute, 2001).
- Michigan Judicial Institute, “Legal Advice v. Access to the Courts: Do YOU Know the Difference?”, online: <<http://www.cj.msu.edu/~outreach/mvaa/Handbook%20of%20Legal%20Terms/LegalAdviceBook.pdf>>.
- “Guidelines for Missouri Court Clerks and Court Staff”, online: <<http://www.ajs.org/prose/Midwest%20Notebook%20Contents/Tab%203/Guidelines%20for%20MO%20Court%20Clerks%20&%20Court%20Staff.pdf>>.
- Eleventh Judicial District Court of New Mexico, “Legal Information vs. Legal Advice: Information available from the clerk’s office”, online: <<http://www.11thjdc.com/info-vs-advise>>.