

**A Study of Self Represented Litigants in
the Supreme Court of Prince Edward Island**

**Ann Sherman
2008**

Acknowledgments

Thanks are due to organizations and people who assisted me by providing material for this report and otherwise supporting this project.

The members of the Law Foundation graciously provided financial support to the project. I thank them for their interest in, and concern for, people representing themselves before the court.

Members of the project committee, in particular Sandra MacDonald of the Law Foundation, who were helpful throughout the project, both while I was gathering material and in reviewing the report in draft form.

Donna Langille, Kelly Robinson and Anne Nicholson, collectively the staff at Community Legal Information Association (CLIA), provided me with a great deal of support and assistance. They reviewed drafts, made valuable suggestions and provided a collegial place in which to work. In particular, I am grateful for the opportunity to work once more with Donna who has so capably taken over the administration of CLIA.

Chief Justice Jenkins, Chief Justice Matheson and former Chief Justice Mitchell and the Supreme Court Staff have been very supportive. In particular, I wish to thank Charles Thompson, Q.C. and Holly Osborne for supplying me with statistics concerning self-representing litigants in both Divisions and all Sections of the Supreme Court.

Notwithstanding all of the above, any errors, omissions or shortcomings of this report are my responsibility alone.

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Executive Summary

Work began on this project “Supreme Court Self-Help Centre” in November 2007. It was completed in June 2008. The project was designed to find out what types of services might realistically be developed and supported to assist self-represented litigants (SRLs) in the Supreme Court of Prince Edward Island.

In January, surveys were developed and distributed to:

- Supreme Court Judiciary (5 returned the survey)
- Supreme Court Staff (9 returned the survey)
- Lawyers (13 returned the survey)
- Self-Represented Litigants (10 returned the survey)

Six people were also personally interviewed.

Of the 10 self-represented litigants who responded to the survey:

- Two are younger than 34; six were aged between 35 and 54 and two were aged between 55 and 64.
- Everyone had graduated from high school and had some post-secondary education. Four were community college graduates and four had graduated from university.
- Four earned less than \$30,000; eight less than \$50,000; and all of them under \$80,000.
- Four females and six males responded.
- Seven were working, two were receiving EI and one person was out of the paid labour force.
- All had telephones, a personal computer and their own email address. Six of them had a public library card.

Most respondents from the legal profession and the courts system perceived SRLs as a “problem” for the Courts. They said that they:

- Do not know the law or procedure.
- Often hold beliefs which do not reflect the law, such as “If I don’t see my child, I should not have to pay child support.”
- Have difficulty with Rules of Court and presenting evidence.
- Have unrealistic expectations and demands.
- Cannot negotiate in an objective way--cannot objectively assess risk, or cost and benefit, and can’t dispassionately communicate with the other side.

- Are too close to the case and get irrelevant and/or emotional issues confused or intermingled with legal issues.
- Do not have access to the assets and services necessary to present their case in proper form.
- Make poor witnesses.

They also said that:

- Court services are stretched and should not be doing more to help self-represented litigants.
- People should not be encouraged to represent themselves in court or, to believe that they do not need to be represented by a lawyer.

These comments were supported by SRLs who said they needed:

- Help with how a trial/hearing goes--the etiquette and format, and information about witnesses.
- Help with the order of events in court.
- A glossary of the legal jargon used by the judge.
- A review of potential outcomes.
- An outline of court procedure.
- More information about the consequences of not going vs. going to court.
- Information about actual procedures and how to word applications, motions and variations.

They did not have a lawyer because:

- Legal Aid was denied (four instances).
- They could not afford a lawyer (seven instances).
- They did not need a lawyer to go to court (four instances).

Information from all of the returned surveys was collected and used to develop eight recommendations to be forwarded (with one other) to Community Legal Information Association, the Law Foundation, the Office of the Attorney General and the Supreme Court of Prince Edward Island.

Recommendations:

- 1. That the Supreme Court of Prince Edward Island develop a means of identifying cases involving self-represented litigants so that statistics may be maintained and obtained when required.**
- 2. That CLIA take on the role of developing written materials related to the Supreme Court process and procedures.**
- 3. That CLIA, using recently purchased software, review Court Forms with the object of creating plain language, interactive, PDF documents.**
- 4. That CLIA work in collaboration with the court staff to develop, promote and distribute legal information materials about the court process.**
- 5. That the Supreme Court explore the feasibility of making alternative dispute resolution an integral part of the court process for SRLs.**
- 6. That the Office of the Attorney General expands the current mediation service provided by the Family Law Centre to assist SRLs with the early settlement of child support, child custody and access, and family asset issues.**
- 7. (Notwithstanding the recent announcement of additional funding for legal aid) That the Office of the Attorney General ensures that the availability of legal aid services be increased by raising financial eligibility and expanding civil legal aid to cover a wider variety of family cases and other types of civil disputes.**
- 8. That the Office of the Attorney General establish a Child Custody and Access Office, similar in mandate to the current Child Support Guidelines Office, and providing a similar level of support for people with custody and access issues.**
- 9. That a Law Courts Information Centre be established.**

Background

Considerable work has been done in the past in Prince Edward Island to address the issue of access to justice through the courts and to deal with the problem of unrepresented or self-represented litigants. Of particular note, in 2001, the Honourable Gerard E. Mitchell, the Chief Justice of Prince Edward Island, in cooperation with the Office of the Attorney General, the Law Society and the PEI Branch of the Canadian Bar Association, established a *Task Force on Access to Justice*¹. This spurred a great deal of discussion and some actions to improve access to justice. Because of resource shortages, limited action was taken on the recommendations contained in the *Task Force on Access to Justice Final Report*. Therefore, the report still has relevance for today's PEI Supreme Court.

The Task Force was given a mandate to undertake an “internal review” of the Civil Justice System in the Province, in an effort to improve access to the legal system for all Islanders. As part of this process, the Task Force engaged the services of Smith Green & Associates Inc. to do a qualitative research survey among broadly representative users of the civil court system. The purpose of the survey was to get some idea from the users of the civil justice system as to what they perceive are the strengths and weaknesses of the system. Some of the information collected by Smith Green & Associates was relevant to this project and this document.

The Task Force had four broad objectives. They were to:

- improve access to justice
- reduce the cost of litigation
- simplify practice and procedures, and
- improve technology [in the courts]

In order to best achieve these objectives, Task Force members were assigned to one

¹ *Task Force on Access to Justice Final Report* July 2002

of the following committees and the work of the Task Force concentrated on these four areas:

- Self-Represented Litigants
- Technology
- Court Process
- Legal Aid

Two of the recommendations of the sub-committee on self-represented litigants relate to this current project. They are:

- “...Data should be collected directly from self-represented litigants, the Judiciary, the Bar and court staff [in order] to better understand the challenges and needs created by the self-represented litigants, so as to better facilitate the development and delivery of programs to improve “access to justice” for the self-represented litigant.”
- “A comprehensive review of all available studies and programs addressing the needs of self-represented litigants, Judiciary, Bar and court staff should be undertaken. The purpose of this review is to better identify the specific challenges to each of the stakeholders as well as to identify the solutions developed in other jurisdictions, with a view to developing a customized approach specific to the needs of Prince Edward Island. In this connection, the self-represented litigants’ project in the Province of Nova Scotia is particularly deserving of close study.”

Following the submission of the final report and the winding-up of the Task Force, an Implementation Steering Committee was established to continue the access to justice work. Specifically, the committee was to focus on expanding discussion of the various recommendations with a view to implementing as many as possible within the next two years.

The committee found that some progress had been made. These included changes in

- Small claims
- Family law legal aid
- Family Law Centre

With regard to self-represented litigants, the steering committee reviewed projects in Nova Scotia, Alberta and British Columbia. The committee recommended that an

existing staff person (from the Office of the Attorney General or the Supreme Court) be tasked with developing a self-represented litigants' project in PEI. While this has not happened, the Law Foundation has continued the work with the funding of this current exploration of the issue. The steering committee noted that:

“Self-representing litigants have similar needs wherever they are in Canada. They need to:

- a) Understand the general structure and operation of the area of the justice system where they will be pursuing resolution of their legal problems
- b) Identify their specific legal issues and understand their legal options
- c) Select and complete the necessary court forms
- d) Conduct any relevant legal research in order to complete forms and prepare their submissions
- e) Be prepared to present their case and speak to their issues in court”

The Steering Committee felt that these needs could best be met by a multi-disciplinary approach led by a dedicated staff person charged with three different initiatives:

1. “The development of a regularly provided short educational program that all self-representing litigants can attend to find out what is involved and where to go for assistance. The curriculum would be developed by judges, lawyers, and court staff and delivered by supervisory lawyers, court staff and CLIA staff.
2. “The development of a self-representing litigants' site on the Supreme Court section of the government Website containing a range of information for those persons planning to represent themselves in court. This could be based on the work done in Nova Scotia or Alberta. It requires a dedicated person to pull the information together and ensure that it is correct before it goes live. Eventually it would include court forms and “wizards” that would guide users in the completion of the forms.
3. “An exploration of the feasibility of the establishment of self-help centres in the Charlottetown and Summerside courthouses. A dedicated staff person could be tasked with developing a discussion paper that will explore the feasibility of providing these services. This paper would look at the numbers of self-representing litigants, potential services provided by help desks, staffing issues--including the provision of legal advice vs. legal information and/or legal education and the *Legal Profession Act*, space/location issues, cost estimates, and anything else that may be

relevant. Input into this paper should come from the Law Society, Judiciary, Office of the Attorney General, private bar, court staff and individual litigants.

“Court based self-help desks situated in the Supreme Court buildings in Summerside and Charlottetown were recommended by the Task Force. We believe the allocation of a staff resource and this aforementioned process would help us to provide informed advice on the implementation of this recommendation.”

In September 2003, members of the Implementation Steering Committee wrote to the Minister and the Chief Justice noting that while some of the recommendations in the Task Force report had been implemented, they had been those dealing with administrative issues and changes to the Rules of Court rather than those which would make a substantive difference to people trying to access the civil justice system. The committee added,

“without funds we are without a purpose and members have been frustrated by our inability to move many of the recommendations forward...With all due respect, if the Committee does not have the support of the sponsors of the Task Force in implementing the remaining recommendations we believe that it is fruitless to continue our task.”

Between then and now, additional products and services offered to self-represented litigants are:

- Two sets of family court education workshops offered by Community Legal Information Association (hereafter referred to as CLIA) in 2004 and 2005. A pamphlet called *Family Court Procedure* published by CLIA in 2006. Information about drafting a separation agreement² also published in 2005. This work was part of a project called *Family Law Information Sessions Development Project* that was funded by the Department of Justice Canada Child Centred Justice Fund in 2004 and further developed in 2005.
- Improved access to the Small Claims Court through a booklet and website information titled: *Prince Edward Island Small Claims Section Actions Where*

² Based on information originally developed by Daphne Dumont for the PEI Bar Admission Course and used with permission

the Debt or Damages Claimed Do Not Exceed \$8,000, Rules of Court. This is essentially the amended Rule 74, bound with amended forms, published under separate cover and available through the Prothonotary's office or on line through the Supreme Court website. This information is supplemented by a document called *Unrepresented Parties – Procedure to be Followed in Court* also available on the Supreme Court website.

- *Access to Court Information [With Particular Reference to PEI]*, written by former Chief Justice Gerard E. Mitchell. This is a general digest of the law about access to court information in Canada and in particular to Prince Edward Island.

During the *Family Law Information Sessions Development Project* key stakeholders identified issues to be addressed through a short educational program designed for self-represented litigants in family law cases. A set of frequently asked questions (FAQs) were developed with their input and the sessions attempted to answer them. These FAQs are available in both Official Languages³ in written format from CLIA and are also available on the CLIA website.

In the Evaluation Report⁴ on the 2004 project, a substantial list of 32 recommendations was compiled for CLIA. Those recommendations that are particularly relevant to this project include:

Program Content

1. Include a mock trial as a way to teach participants about the court process.
2. Include information about the costs involved for each step outlined (eg. filing documents, Divorce Kit, etc.).
3. It is important to ensure participants have realistic expectations about going to court without a lawyer while at the same time not adding to their stress by continuing to emphasize how difficult it will be without

³ Family Law Information Sessions: Frequently Asked Questions About Family Law 2005

⁴ Family Law Information Sessions Development Project: Evaluation Report 2004

a lawyer. Some people really do not have any other option and commenting repeatedly on the challenges only adds to their anxiety.

Program Resources

1. Develop a handout which includes a table outlining comparisons, including costs, decision-making control, benefits and disadvantages, between decision making options.
2. Develop a glossary of frequently used legal terminology and their meanings.
3. Develop a flow chart showing the forms needed through process.
4. Develop a web site for self-representing litigants which includes all of the materials created for the program.

Many of the recommendations were incorporated in subsequent information sessions, but with its limited resources and staffing difficulties through 2006 and 2007, CLIA has been unable to continue with this activity. Plans are now underway to repeat the sessions and a local family law lawyer has volunteered to present information focusing specifically on family violence in a family law setting.

Recently, there have been additional developments in the administration of justice. As this report was in the final stages of completion, the Attorney General made the following statement in the PEI Legislative Assembly:

“...I am very pleased to announce that we will be increasing the budget for Legal Aid by \$299,000.

This additional funding will enhance the Legal Aid program in our province, and it is a much needed increase.

Through the Legal Aid program, lawyers provide legal information advice and representation to clients who are unable to secure legal services on their own. With this increase in funding and a new partnership with the Law Foundation of Prince Edward Island, it will enable to Office of the Attorney general to hire an additional family legal aid lawyer for the Legal Aid office in Summerside.

To complement the increased funding in our budget, the Law Foundation is contributing \$75,000 toward the cost of another legal aid lawyer in Summerside for the fiscal year 2008-2009.

This new position will help address an identified need for increased family legal aid resources in Prince County. We are pleased to partner with the Law Foundation to enhance these services.

The Law Foundation has committed a total of \$590,000 over a seven-year period toward our enhanced Family Legal Aid program and we are most grateful for their support in this important service.

As well, this increased funding will enable additional referrals to outside counsel when the service for family legal aid cannot be provided by staff lawyers. Other enhancements to the Legal Aid program will include a cost-sharing agreement with the federal government to enhance services in criminal legal aid.

Access to justice is a fundamental right for all citizens of our province. In recognition of this important service and as a result of this new funding, the budget for Legal Aid program [sic] has been increased to \$1.615 million.

I am proud to say that this represents an increase of 28% over last year's Legal Aid budget. I thank members of this Assembly for supporting the program."

This responds to the following recommendations made by the Legal Aid sub-committee in the Final Report of the Task Force on Access to Justice:

1. That the Province proceed with consolidation and enhanced funding of the core components of the family justice system, including legal aid, as soon as possible.
2. That the Province increase the family legal aid tariff, including both hourly rates and the number of billable hours per case, to reflect the professional cost of providing the service.
3. That the Province resolve the complexity of the family legal aid delivery system as soon as possible.

The system has been consolidated through the establishment of the Family Law Centre and the development of the Family Law Legal Aid program. Access to, and delivery of, the service is no longer complex. Funding has been enhanced and the legal aid tariff has been increased. This will assist some litigants in family matters who cannot afford to hire a lawyer. It improves the situation, but it is not a solution to the ongoing dilemma of providing services in family matters for people who cannot afford the costs of litigation.

Finally, and also as this report was being completed, I heard of a project being developed by the Members of *Collaborative Law PEI*. This project would offer self-represented litigants (hereafter referred to as SRLs) in family law an interest-based process that would include legal advice for both parties. Essentially, this is settlement negotiation facilitated by lawyers with training in interest-based negotiation. This initiative would appear to offer badly needed resources in the form of trained lawyers who can provide SRLs with a new way of resolving conflict and settling their differences without going to court. The advantage over mediation is that legal advice is an integral part of the process and SRLs would end up with an enforceable settlement.

Introduction

In late 2006, the executive members of the Law Foundation approached the Community Legal Information Association (CLIA) to discuss the continuing problem of self-represented litigants in Prince Edward Island's Supreme Court. In the discussion of various approaches that could be tried, the viability of a "Self-Help Centre" was raised. It was agreed that work needed to be done to find out what solutions key personnel in the legal and courts systems thought would be feasible and appropriate to deal with self-represented litigants (SRLs) --and what solutions might be supported. This project attempts to complete this work.

Funding for this project was approved by the Law Foundation in early 2007. Staffing considerations at CLIA made it impossible for work to begin before late Fall of 2007.

I was hired in September of 2007 and traveled to the annual conference of the Public Legal Education Association of Canada in Halifax in order to attend the workshop organized by the Canadian Forum on Civil Justice. The presenters at this workshop spoke of work being done to assist self-represented litigants in other Canadian jurisdictions, namely British Columbia, Alberta and Nova Scotia.

Beginning in November, I undertook a literature review. This review consisted mostly of materials from other Canadian jurisdictions, but where recommendations or references were made, I also looked at materials from international jurisdictions.

An advisory committee was established and members were requested to use their knowledge and experience to:

- provide input about who to interview (for surveys)
- review survey questions
- check analysis and conclusions

- support recommendations

Committee members were:

- Donna Langille, Executive Director of Community Legal Information Association;
- Sandra Mitchell, Deputy Registrar Family Court;
- Angelie Murnaghan, Child Support Guidelines Officer;
- His Honour Justice Ben Taylor, Supreme Court of Prince Edward Island; and
- Sandra MacDonald, Executive Director of the Law Foundation of Prince Edward Island.

Survey questionnaires were developed, using the Nova Scotia surveys as a model, with permission, and these were distributed to the advisory committee for review in January. In late January, the surveys were distributed to court staff (deputy registrars), judges, and self-represented litigants. CBC carried a news report about the project and advertisements were placed in both *The Journal Pioneer* and *The Guardian* requesting input from people who had represented themselves in the Supreme Court. Surveys were also distributed to various locations for self-represented litigants to complete:

- 40 to Charlottetown courthouse
- 15 to Summerside courthouse
- 5 to East Prince Women's Information Centre
- 4 to the Advisory Council on the Status of Women

Individual interviews were conducted with the Prothonotary, law librarian, family practice lawyers, a corporate law lawyer, child support guidelines officers, the manager of the Family Law Section, and a retired judge. A letter was sent to the Law Society and Council agreed to circulate the survey to members by email.

The challenges facing self-represented litigants are largely affirmed at the anecdotal level. Figures relating to SRLs were included in the Task Force Report and further figures relating only to SRLs divorces were included in the Steering Committee Report. One of the things that I wanted to do at the outset of this project

was to find out how many litigants were going to court without representation. Given that at least one lawyer responded that, “it [self-representation] is a problem that may be overstated,” I wanted to obtain a clear picture. I was surprised at how difficult it was to obtain hard statistics about people representing themselves before the Supreme Court. My request for statistics proved difficult to fulfill and has caused more work and expense than I envisioned, and more than should be necessary. As I began writing this report, work was still underway to provide me with the numbers. I would like to thank Chief Justice Jenkins, Chief Justice Matheson, former Chief Justice Mitchell and the staff at the courthouse for their efforts on my behalf.

The Survey

Survey questionnaires were developed closely following those developed in Nova Scotia as part of the project referenced by the *Task Force on Access to Justice Final Report*. However, the Nova Scotia project was more complex, thorough, and far-reaching than this project. It included visits to 13 “justice centres” court sites, observations in court, meetings with 163 members of court staff, 84 individual interviews and group interviews of a further 79. Forty judges were either interviewed or filled out the questionnaires for the project. Questionnaires for SRLs were available at the courts for about two and a half months and 53 of these were returned including some duplicates.

For this project I developed and circulated questionnaires for judges, court staff, lawyers and self-represented litigants in Prince Edward Island. The number of responses from SRLs was particularly disappointing. While 64 questionnaires were circulated to the courts and a few other locations for completion by those who were, or had previously, self-represented in court, only 10 were returned and one of those was not wholly relevant; 5 judges returned a completed questionnaire; thirteen lawyers responded; and 9 court staff returned questionnaires, including 3 who completed the questionnaire collaboratively.

The questionnaires that were returned contained thoughtful and frank responses. They have provided useful information and in some cases provocative feedback. These were supplemented by additional information provided through the personal interviews.

Responses from Judges

Five Supreme Court Justices returned the survey.

1. Please describe the typical self-represented litigant who comes before you

- 35 to 50 years old
- Both genders
- Middle to low income
- Usually in court on family matters, especially child support in response or on small claims cases, both individual and businesses
- Sometimes have been represented by a lawyer for a while
- In civil appeal cases there are no “typical” self-represented litigants. The variety is wide and the reasons for being self-represented are different
- In criminal appeal cases, the typical self-represented litigant is a prisoner who has not applied for or who has been denied legal aid for his or her appeal

2. Why are people representing themselves?

- Most say they can't afford a lawyer and they don't qualify for legal aid
- Some may have spent all they can on lawyers already
- Some think they can do a better job than a lawyer
- They don't trust lawyers and/or will not accept the advice they've received
- Sometimes they are “plaintiffs on a mission”
- In small claims they represent themselves because of the small size of the case and because they can

3. In your opinion, are self-represented parties generally disadvantaged by their lack of legal representation?

Four of the five judges said “Yes.”

- In custody cases, they don't know the law... and they are not entirely objective. In small and mid-size claims, they don't know the law or procedure, and the judge doesn't necessarily receive all the information
- They have watched too much American TV and they are not prepared for the real thing
- They don't know how to focus on the key issues. They spend more time attacking their opponent than in presenting their own case. They fail to provide evidence required

- A few years ago (when I was a lawyer) I would have answered “yes” without hesitation. Now I see two things:
 1. People who know the system and use their self-represented status to get away with more than a represented party ever could, i.e. they rely on the judge to be their lawyer; and
 2. Parties on a mission – no competent lawyer would advance the claims or positions they demand
- Of course most are disadvantaged, but more and more are abusing the system, the Charter and our “Canadian” desire to be politically correct and fair to all
- They are disadvantaged because:
 - they don’t know the law or procedure
 - they have no one to tell them when their expectations and demands are wrong
 - they can’t negotiate in an objective way--can’t objectively assess risk, or cost and benefit, and can’t dispassionately communicate with the other side
 - they get irrelevant and/or emotional issues confused or intermingled with legal issues
 - they do not have access to the assets and services necessary to present their case in proper form; e.g. secretarial, photocopy, fax, e-mail
 - even if they are advised of the law or procedure they often lack the necessary education to properly express themselves and present their case
 - a self-represented litigant makes a poor witness: he/she cannot ask himself/herself questions and answers. A self-represented on the stand, barring questions (i.e.: help) from the judge, is soon exhausted

4. In your opinion, are the other parties generally disadvantaged by the unrepresented party’s lack of legal representation?

Five judges said “Yes.”

- If one party has counsel and the other has not, then matters get further complicated because the judge must not assist the SRL party to the detriment of the party who is paying for a lawyer. It’s a difficult line to walk.
- It slows things down. If the SRL loses they don’t have the same understanding of why the result was what it was and are less likely to follow it
- Yes, having said this, your question is “generally” – many lawsuits end right away with a default, as they should. The plaintiffs are not disadvantaged because the defendant concedes. If all defendants had access to unlimited free

legal representation or even free legal representation, our system would grind to a halt

- The ideal is the adversary process where competent counsel bring both sides of an issue before a judge. Without that, neither the judge nor anyone else knows what they are missing
- It is not easy to discuss settlement or to agree on procedural matters when one party is a SRL. Sometimes the judge has to help the SRL and this sometimes leads to an apprehension of bias

5. In your opinion, does a self-represented litigant generally participate in the proceedings with confidence and competence?

Three judges answered, “No.” They agreed that most SRLs are not competent to represent themselves, but some are over confident. What was interesting were the comments about SRLs attitudes about and behaviour towards the court.

- I have had some who are overly confident!
- Some (often wrongly) are full of confidence, and are arrogant and abusive towards opposing parties and the court
- Even if they are legally trained, SRLs will most likely do poorly because they cannot lead themselves through their evidence and often get in arguments with witnesses – a situation in which, of course, only the witnesses’ statements count as evidence
- Sometimes, it all depends on the person. Occasionally they are prepared and capable with assistance from the child support guidelines office in family matters and the prothonotary in small claims

6. Would it be easier for you if all parties were represented?

Five judges answered, “Yes.”

Four judges agreed that if SRLs were represented:

- the matter would not have taken so long
- documents would have been better prepared, and
- with help from lawyers the matter may have been resolved without going to court

Two judges said that if SRLs were represented they:

- would not need help with court procedures, and
- would be able to present the case and cross-examine witnesses

Judges also noted that SRLs [sometimes] had literacy, language or communication difficulties/ disabilities. And one judge replied, “Each of these applies sometimes and always one or more applies. The formal trial with the presiding judge [called] “My Lord [or Lady]” and gowned, was never intended to dissolve to the forum of SRLs arguing small claims and child support.”

7. What are some of the biggest mistakes self-represented litigants make in their individual court processes?

The judges say that not knowing the rules of evidence and getting the court processes wrong are the two biggest mistakes made by SRLs. Other common mistakes are: filling out forms wrong; lack of preparation; lack of ability to draft orders and documents correctly; and generally not doing a good job for themselves.

- The biggest mistake is not knowing the law that applies to the case. Such lack of knowledge leads to unreasonable expectations. Often they seek a remedy that is not available.
- - 1 - Failure to understand what is evidence and what is not and how to get evidence admitted especially: hearsay, documents, opinions;
 - 2 - Failure to claim what they want, which results in attempted changes of direction during trial;
 - 3 - Failure to provide disclosure to and seek admissions from the other side;
 - 4 - Lay litigants often argue with witnesses and make statements of fact in the course of questioning witnesses. The lay litigants think their unsworn statements made during cross examination are evidence.

8. Do you have any suggestions or solutions to help court services cope with self-represented litigants and the challenges they create?

- It is difficult to make any meaningful suggestion when the real answer is legal representation. I suppose some sort of short course on process and how to adduce evidence by asking questions would help. SRLs don't understand evidence and the fact judges make decisions based on the evidence presented in court and not on references to out of court proceedings.
- Often I hear SRLs say “Oh I could have had so and so here to testify but I didn't think I needed him.” Or “I have that document at home! I didn't think I needed it.”

- SRLs think it is easy to properly present their case only to find out after judgment how difficult it is and by then it is too late
- Court staff can assist – to a point – but can't give legal advice and this is what the party needs most
- More funding for family legal aid.
- Other things can also be done, but none would have the impact of providing more money to help in family cases. "Duty Counsel" who can help even for ½ hour on the day of court would be a great start.
- Judges talk about this a lot. We've made a great many changes in recent years to make the courts more accessible to lay litigants. Right now, I don't have any brand new ideas or novel approaches.
- Increase small claims limit to \$15,000 with no discovery permitted without leave; and move small claims out of Supreme Court and into an adjudicator's forum with right to appeal to Supreme Court with leave.
- Extend child support service to both sides and develop an out-of-court non-judge settlement process.
 - Access to justice is being denied on a widespread basis.
 - People who work seasonally in low paying jobs cannot afford a lawyer at all for these matters.
 - Lawyers services for these matters cost too much.
- The way matters are heard needs to be changed to accommodate the public need for an effective publicly funded facility for the resolution of disputes. The courtroom with a gowned judge is not the ideal.
- It is not enough and too tired just to say "lawyers charge too much." We need to revise the structure of the public service that decides disputes.
- I think we should create a resource -- law information centres that can help SRLs learn about basic court procedures, locate and fill out court forms, learn about legal advice options and alternatives to court and get general legal information. These centres need to be centrally located and well resourced.
- A lot of research has been done in this area and a lot of good ideas have come forward. The challenge is to get government to give this matter some priority and to put money into dealing with the problem.

Responses from Lawyers

Thirteen lawyers returned the survey.

1. Please describe the typical self-represented litigant

Lawyers who returned surveys tended to answer questions one and two together. They did not focus on demographics but on the reasons why people represent themselves. From their perspective the self-represented litigant is often:

- A person who holds strongly to a belief or principle not endorsed by lawyers
- A person with a very strong sense of justice and an incredible faith in the justice system to see things “their way.” They think if they keep trying and going they will prevail.
- In fairness, the cost of access to justice has gotten out of the reach of a whole middle spectrum of citizens...Also PEI has no civil legal aid aside from criminal/some family.

They did agree that most self-representing litigants are:

- In court on family matters or small claims.

2. Why are people representing themselves?

There was little agreement on this point. While some lawyers agreed that cost was a factor, others did not.

- Usually cost, people cannot afford or don't wish to pay for a lawyer.
- People are representing themselves because they think they know as much or more than a lawyer would and they don't need a lawyer. There is the expectation that they only need to go to court and tell the judge their story.
- They may have gone through one or more lawyers and can't get another.
- Someone who has rejected legal advice and is convinced s/he is better able to mount her/his own [case] in family court. Many would take this route even if they could afford a lawyer of choice.
- Choosing to represent themselves for reasons other than cost.

3. In your opinion, are self-represented parties generally disadvantaged by their lack of legal representation?

Eight of the lawyers answered “Yes,” one replied “No,” and the others were not sure.

One pointed out that if both parties were unrepresented it was fine; and a couple were not sure that SRLs were disadvantaged because they relied on the judges for guidance and also received allowances and assistance from judges. A few lawyers noted that sometimes litigants felt that by representing themselves they could be more effective in presenting their case. The lawyers said that this is normally untrue because SRLs are too close to their case, are unable to view their case objectively, and their cause or their personality may get in the way and lose them the court's sympathy.

The lawyers said that SRLs:

- Have difficulty with rules of court as well as with evidence
- Are too close to their case, cannot be objective, and they misunderstand the litigation process
- Don't know what evidence to present or how to present it
- Are too nervous to do a good job
- Are not familiar with the law or rules of court
- Are unfamiliar with the law and often hold beliefs which do not reflect the law, such as "If I don't see my child, I should not have to pay child support"

They added that:

- The law [in regard to court] is made up of substantive law and the actual procedure and presentation of a case. Both are complicated and technical. SRLs don't know about this and will miss things.
- Due to their lack of knowledge of the process, the proceedings take much longer and increase court and opposing party's time and expense.
- It's a mixed bag. Invariably they will do something wrong, especially if they are not in touch with other lawyers or court house staff. That said, they probably get sympathy from court house staff, as well as from the court itself.
- It varies. Oftentimes, the judge is placed in the awkward position of assisting them and risks becoming their advocate. This phenomenon can prejudice the represented party.
- If both parties are unrepresented there's no disadvantage, but then they need to rely heavily on the judge to guide them. They can be disadvantaged if the other party has counsel. Oftentimes, the judge will guide the self-represented party and give them indulgences/allowances a lawyer would not [be given].
- They are disadvantaged even though judges are good with SRLs and help them. Sometimes they [judges] show more patience and will walk SRLs through the process

4. In your opinion, are the other parties generally disadvantaged by the unrepresented party's lack of legal representation?

Eleven of the lawyers felt that unrepresented litigants disadvantaged the other party in court. Most of the comments had to do with how judges were required to assist SRLs and with the relaxed standards imposed by judges when SRLs ignored or did not know the Rules of Court or procedural matters.

- Represented client is disadvantaged by fact that SRL almost always files very late or impossibly late. e.g. in the morning of the case going to court, or at the time the case goes to court.
- SRLs often put lawyer representing the other party in terrible position or even a conflict. Certainly they open the door to overzealous lawyers who can take advantage of ignorance. Also put lawyers in conflict with Judges who do not penalize SRLs for not following the rules/process particularly in the area of filing times [deadlines].
- Often self-represented litigants are afforded relaxed standards with respect to process and rules of court. There has, on occasion, been the expectation that opposing counsel should assist self-represented litigants and not expect them to be held to the Rule of Law and Rules of Court.
- Compromises are very difficult to achieve [with SRLs, so are] agreements on points of evidence or on procedural points before or after trial. Things as simple as not being able to serve documents by fax or achieve easy communication with [the other] party are also difficult.
- It tends to run up costs and the aggravation factor. A lawyer has to do everything by the book when SRLs are involved. Lawyers are bound by a code of conduct and SRLs are not. SRLs will take things that lawyers say out of context. You cannot have a dialogue. I once was taped by an SRL. You can't deal by telephone; everything has to be put in writing.
- The judge is required to spend more time explaining things. This makes the process more expensive for the represented parties. Adjournments are often required, adding cost for the represented party. The Code of Professional Conduct requires that counsel be generally accommodating to the unrepresented litigant. This tends to raise suspicion in the lawyer's own client. The court [often] requires counsel to prepare court documents for the unrepresented litigant and, in doing so, opens the lawyer up to complaints to the Law Society if the unrepresented litigant dislikes the way the documents are prepared. It adds expense for the represented party.
- A represented party is at a significant disadvantage when the other party is

not represented. Costs and frustrations mount with the party's lawyer dealing with:

- an often unhinged individual with an axe to grind;
 - [an SRL] doing things incorrectly which need to be corrected;
 - needing to watch their every step as to not be seen to be taking advantage;
 - dealing with the sympathy often afforded them [i.e. the SRL]; and
 - not wanting to communicate directly with the unrepresented party for fear of how the conversation will be received/reported/interpreted.
- The other party's counsel bears the burden of all drafting etc. and in addition cannot rely on the Rules of Court because of special allowances made for the other party. And it typically drags things out because you're dealing with someone who doesn't understand the way things work and does not follow rules, thinks they can achieve something they can't, also run up legal bills for the other side because they don't have to pay their own counsel fees.
- When the judge bends over backwards to help SRL's, this raises issues of fairness.
- Matter takes longer to negotiate and, often needlessly, proceeds to court.
- Their lack of knowledge slows the process and puts everyone, particularly the judge, in a difficult position as he [she] tries to preserve the integrity of the process while protecting the unrepresented from his [her] own mistakes.
- By cost and time factor dealing with SRL (e.g. Lawyer is obliged to deal with SRL. They're not disadvantaged as to the result, but often their client feels blindsided).
- Sometimes the judges end up giving legal advice and assisting SRLs. There are significant delays in getting documents done, and sometimes counsel for the opposing party are asked to draft orders for SRLs.

5. In your opinion, does a self-represented litigant generally participate in the proceedings with confidence and competence?

Eleven of the lawyers said "No," two answered "Yes," and one "Yes and No."

Confidence

- Confidence – sometimes; and, sometimes, over-confidence.
- It's [confidence] often misplaced. They are convinced that they're right and believe that they will win.
- Typically the confidence thing borders on cocky self-righteousness.
- Sometimes are confident when they shouldn't be.
- Often with great confidence and little competence, a disastrous combination

Competence

- They generally are not competent and can waste a lot of time for everyone else.
- They are all incompetent when compared to lawyers.
- Generally lost, disorganized etc.
- SRLs don't understand procedure, court process, or law. They often ask for unreasonable things and cannot provide reasons for their requests.
- Belief in legal myths is a huge problem. SRLs often go to court with a false sense of competence.
- Often with great confidence and little competence, a disastrous combination.
- SRLs are incompetent with negotiations, letter and document stage. They are competent in court with the judge's assistance. The problem is the plaintiff has to go first; SRLs are uncomfortable with the questions.
- Most are not competent -- a few are prepared but not prepared for new things that arise.

The lawyers had other points to add:

- Family cases are quite different. Look at the child support guidelines. Anyone could represent themselves there. There should be a whole other forum for that.
- They [SRLs] tend to rely upon the judge to assist them. At times they are suspicious of opposing counsel. They don't understand that, when counsel makes submissions in argument, these are not intended to be personal attacks.
- [There is a] complete range
 - "I am smarter than any lawyer and know that I am right."
 - Some are petrified -- they have tried to get a lawyer there because they don't know what else to do.
 - SRLs don't know the law and don't know procedure. They don't have the skills to follow procedure and make arguments.
 - Some purely think about costing the ex money by driving up their legal bill.

6. Would it be easier for you in court if all parties were represented?

- Twelve of the lawyers said "Yes."
- Eleven said that with representation:
 - the matter would not have taken so long;
 - it may have been resolved without going to court;
 - the SRL would not have needed help with court procedures.
- Ten said that with representation documents (and pleadings) would have been better prepared.

- Eight said that SRLs were unable to present the case or cross-examine witnesses.
- Seven noted that SRLs sometimes had literacy, language or communication difficulties/disabilities.
- Five said that fewer documents would have been needed (and fewer processes) with representation.
- One noted that occasionally the matter would not have been resolved so quickly.

Responses from the lawyers sometimes reflected a tension between SRLs and lawyers, noted earlier but also reflected here:

- There is an almost total lack of trust with SRLs. They drag things on and there's a lot of animosity.
- Communication in an unfamiliar environment influenced by a *Law & Order* TV perception.
- SRLs most often have no documents when coming to court and therefore court has to hear oral evidence and explain procedure.
- Justice would more likely have been done, and been seen to have been done [if SRL had lawyer].
- Sometimes, technical issues and jargon get in the way

One lawyer said “To avoid all of the difficulties noted above, it is best when either both parties are represented, or neither are represented. Both sides then bear the burden of legal fees. If one [party] does not, this can affect the case resolution.”

Another lawyer noted that, “Sometimes there are literacy problems where the SRL cannot write or write by hand clearly. They forget the simplest things, (i.e. clerks need to ensure that basic contact info is on the forms).” Others replied:

- SRLs tend not to understand the court process and therefore that takes a lot of extra time because they expect they can do whatever they want, but not have to provide documents or follow procedures that make the process happen in a timely manner.
- It is often a problem for a represented individual where the judge is forced to provide assistance to an unrepresented litigant. The person who has engaged counsel often feels that the judge is favoring the self-represented litigant

7. What are some of the biggest mistakes self-represented litigants make in their individual court processes?

- Twelve lawyers agreed that the biggest mistakes were:
 - lack of knowledge of rules of evidence, and
 - lack of ability to draft orders and documents correctly.

On this note, one lawyer said “The Courts often expect the opposing counsel to prepare the Orders and, frankly, it is better if this is done as SRLs don’t know how.”

- Ten lawyers thought that lack of preparation was one of the biggest mistakes
- Nine cited filling out the forms wrong, and
- Eight cited getting court processes wrong

Again the issue of judges requesting that the represented party’s lawyer complete Orders was raised. In these cases, the other party carries the cost. One lawyer commented about being threatened by a SRL and reported being tense when appearing against a SRL.

Other comments about the challenges of dealing with SRLs:

- Lengthy affidavits are filed with too much information. Service missed (documents not served) causes delays and lengthens court process at represented clients cost.
- Lack of preparing documents at all, lack of communication with opposing counsel; lack of understanding about the law and, therefore, dragging on the process when it really could have been settled.
- Lack of knowledge of basic principles of law, as well as refusal to acknowledge such points of law, often results in cases going before court where the chances of success are very slim.
- The adage that a lawyer who acts for themselves has a "fool for a client" applies with at least equal force to self represented litigants. They are simply too close - too self interested in - too biased as to the issue. Dispassionate professional distance makes the process work as intended.
- Time limits and deadlines are routinely ignored.
- SRLs don’t put enough information when providing evidence in a statement of claim, defence or factum. They’re not legally literate.
- Exhibits have to be sworn.
- Affidavits are all over the place, not in a sensible order and sometimes incomprehensible.
- They misunderstand the process, take things personally, are emotionally

attached to the case, can't admit when they are wrong, rely on the judge for assistance, force opposing counsel to do tasks for them, and add time and expense for the opposing party.

- They show up without documents.
- They [SRLs] don't know the law, cannot apply facts to the law. If they can do prep work it makes the court process easier. Information they do not include does not get before the judge.
- Because they do not know or understand the law, they [SRLs] frequently worsen their legal position with ill-advised representations to the court. It's like watching a train wreck you can see coming, but can do nothing to prevent.

8. Do you have any suggestions or solutions to help court services cope with self-represented litigants and the challenges they create?

Some lawyers had obviously given thought to specific solutions and made the following suggestions:

- Create an office where SRLs are given some initial advice on how to proceed.
- Increase legal aid availability.
- Alberta has a video *A Successful Day in Civil Court*.
- A mock trial process that would involve people might be helpful.
- We need a public fund to which the middle class could apply for legal aid in deserving cases vetted by a qualified panel. Perhaps a \$5.00 surcharge fee on every court filing goes into establishing the fund - plus a front end government contribution to get it started.
- We also need mandatory court annexed mediation after the pleadings and right after the documents are exchanged, but before oral discovery.
- We need expanded civil legal aid to cover the poor beyond criminal / family disputes into other meritorious types of civil disputes.
- One solution is pro bono work by lawyers.
- Having a court officer who could provide some level of assistance to SRLs, especially in finding precedents. This person does not have to be a lawyer helping people navigate through the system is what is needed. The person would have to have some training. Seminars/workshops might be helpful. Could give general advice, not specific.
- Knowledge shouldn't be an advantage. We need to develop more written material.
- Use the BC process (Law Courts Education Society and Self-Help Centre) as a model for SRLs.
- Everyone representing themselves has to take a one or two session course. This would include mock trials and/or hands on description of how court goes and one session could be about the rules of court.

- I have seen that in Ontario, courts have, at least in family court, the do-it-yourself forms available and someone on hand to assist and a magistrate to sit for parties who are both self-represented. At present all we have is the child support guidelines office – it would be beneficial if similar support for documents etc were available for self-represented litigants in other areas (custody & access).
- Establish a help centre where you have a room in the courthouse that is between CLIA and legal aid. You would have legal information and assistance and a computer. Staff it with legal expertise, almost like a duty counsel.
- Make an Interactive Courtroom [like that] on the *educaloi* website
- There should be more emphasis on negotiation
- There is no substitute for proper legal aid services.
- What about proper duty counsel for family i.e. maybe through a weekly Legal Resource Day?
- We need a custody and access office like the child support guidelines office. An experienced lawyer is needed to staff it, not someone newly qualified with no court experience.
- Early mediation is essential.

Other lawyers focused on the Rules of Court and the Court process:

- SRLs need to be held to the Rules of Court which are readily available on-line. It is a difficulty for the courts, judges, and lawyers alike but, it is difficult to find a way around it. Perhaps having the Rules committee of the Law Society look at rules with respect to self-represented litigants may not be a bad idea.
- First and foremost we need to streamline the civil court process and reduce the cost of access to justice. The Ontario based Rules we use in PEI prescribe an unnecessarily complex and hard to understand process. I always preferred the old Nova Scotia based Rules we used before 1988. They were not perfect, but better.

Additional Comments from Lawyers

These focused mainly on concerns that some lawyers had about SRLs appearing in court without knowing what they are doing and the concern that some had about the fact that when an SRL loses he or she often does not understand why the case is lost and puts it down to bias or other miscarriage of justice.

- People have a legal right to self represent. To facilitate this, they should

- have access to counsel to assist them and to explain the situation. In family, legal aid should be available.
- The burden is on the judge, because of fairness, appeals etc. A person has the right to go to court, but without an understanding of the law there may be a feeling of injustice. SRLs often don't feel that the process was fair.
 - Training for the self-represented is well intentioned, but may actually exacerbate the problem as citizens persuade themselves they are capable. We live in a well-informed world. The internet encourages self-help problem solving. We see this in medicine where patients self-diagnose before they go to the doctor. It's all a sign of the times. However, the reality is that aside from Small Claims Court, professional help is highly advisable.
 - Despite the convenience and good sense of having counsel [for the other party] do certain tasks, this should not be done as it requires counsel to appear to be acting against his or her client's interests, causes more work and expense for the client and opens the lawyer up for complaints to the Law Society.
 - Court services should not be doing more to help self-represented litigants—they already do too much. This gives an unfair advantage to SRLs when the other side is represented. Rather, there should be more expansive legal aid.
 - Self-represented litigants are a nightmare. They really subvert processes. It is true that some people cannot afford representation, but I also believe this problem has been overstated. I believe that this is not the majority of SRLs. I believe most of them [SRLs] think that they can represent themselves on the cheap by looking things up on the Internet and whatnot. Many of them have an axe to grind with the legal profession and the legal system. These problems would be solved either through expanded legal aid, or simplification of the court process so that more people could represent themselves effectively.
 - Pro Bono is often involuntary [?]. We have no society and no process for doing this. In a very small province such as ours, organized pro bono work could easily cause problems. I don't think it would work here.

Responses from Court Staff

Nine responses were returned by court staff. I also interviewed the registrar, law librarian and Child Support Guidelines officers.

1. Please describe the typical self-represented litigant who comes before you.

- in the family area, both sides,
- across the economic and educational gamut, but
- typically working poor.

2. Why are people representing themselves?

- Usually, if it's a family case, the litigant has hit the \$30,000 mark. They're broke, jaded and/or cannot continue with legal representation.
- In my experience, lawyers have often set people adrift.
- Family cases are the most dramatic and stress filled cases.
- I find that most people are motivated and have ability.
- The cap on personal injury means that fewer people come in for that area of law.
- I deal with quite a few who are going to tax court or in bankruptcy.
- Some people choose to [do so] and require a little bit of assistance, others want to represent themselves but are incapable—for any number of reasons.
- Cost is one thing.
- Maybe an unfortunate experience with a lawyer.

3. In your opinion, are self-represented parties generally disadvantaged by their lack of legal representation?

- Yes, sometimes cases are so complicated that SRLs never get past square one, but not always.

4. In your opinion, are the other parties generally disadvantaged by the unrepresented party's lack of legal representation?

- Not always. It will make it more difficult to get to the bottom of the case. One observation is that lawyers sometimes clam up and are difficult to deal with when appearing [against a SRL].

5. At what stage of the court process are self-represented litigants asking the most questions of court staff?

Court staff agree that most self-represented litigants are looking for information early on in the process. Pre-filing and filing are the most intense times, although questions do come throughout the process. The law librarian said that she is often first contacted after the settlement conference.

6. At which of these stages are you most likely to spend time with a self-represented litigant at her or his request?

Again the court staff spend most of their time dealing with SRLs at the pre-filing, filing and pre-trial stages.

- In family [Divorce], lay litigants are now encouraged to substantially complete all the documents before coming in to file. Staff still spend a lot of time explaining things, particularly the Petition and Divorce Judgment documents.

7. Describe how much time it takes, on average, to answer an inquiry by a self-represented litigant

Court staff estimate that it routinely takes between 10 and 25 minutes to deal with a SRL in person, but people come back two, three or four times in person and also by phone. Phone calls take less time, with staff estimating an average of 5 to 10 minutes with each person. When SRLs are looking for assistance with forms, the staff say that helping them takes longer. The first visit to the law library takes longer and is usually about 40 minutes or so. The librarian gives SRLs the “abc’s” of how to use the library and discern what is most helpful for their case. She noted that a checklist like the NS barristers use would help.

How much time do you spend doing this in an average day?

There is quite a variation in the amount of time court staff spend with SRLs each day. This varies by Division and Office.

- Some days, three or more unrepresented litigants are in looking for information; other days, no-one comes in.

Two to three hours would seem to be an average estimate except for the law librarian who spends more time with SRLs. She notes:

- There is a cyclical nature to enquiries. After Valentines Day it increases until mid May. It's quiet through the summer, then after Labour Day it increases again until December.
- I never have more than two people at a time. I sometimes feel that this reflects how busy law firms are.
- I spend about two hours with a SRL at first then whatever is needed. Anger and frustration are high at first meeting then lower.
- Division of debts and assets is a big issue for SRLs so looking at quantum is one of the things they want [to do].
- Three out of five clients may end up using resources from the judges' library.

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9. What are some of the questions most often asked at each stage?

Most questions are asked at the pre-filing stage and have to do with child support, custody and access.

a) Questions at the pre-filing stage

- What is the filing process?
- Where can I find information? (many expect us to do it for them)
- Where do I begin?
- What Rules of Court do I use?
- Do you provide forms?
- If not, where do I find these forms?
- What are the costs involved?
- Is there a time factor involved in my filing the necessary forms?
- How many copies of the documents do I need to provide?
- How do I file?
- What does it cost to file?
- How much should I claim?
- Where can I get legal advice—as I have to have a lawyer—as I have to go to court?
- Can I file in my circumstances?

- What happens if I am awarded the claim?
- What if I don't have defendant's address?
- How does custody/support variation work?
- Can I see my lawyer's correspondence?
- Do you have any information about wrongful conviction, personal injury, small claims?
- The small claims booklet is a great help.

b) Questions at the filing stage:

- Do I have to serve the document before filing it?
- How do I serve the document?
- What do I have to provide to show proof of service?
- Does the document appear to be properly completed?
- How long before there will be a court hearing?
- [How to] complete the Claim?
- [What is the] Notice of Claim?
- How long does it take?
- What are next steps?

c) Questions at the pre-trial and trial stages

These are usually handled by the case management coordinator unless the lay litigant is filing a pre-trial document and is asking questions about service or filing trial documents. The librarian noted, "At this point it's all case research. I don't do research for people. I point out the resources they might use."

- Who attends?
- Where will it be?
- Can I attend by phone?
- Do I need a lawyer?
- What is the process in courtroom?
- How can I postpone the date?
- How do I file a response (in divorce)?
- How do I file additional documents?
- If he's ordered to pay how do I get my money?

c) Questions at the post-trial stage

- Has there been a decision?
- How do I get a copy of the custody order?
- When will the decision be available?
- What is the appeal process?

9. In your experience, at which stage is it most important to provide information to a self-represented litigant?

Court staff believe that it is most important to provide information early on in the process. Pre-filing, filing and pre-trial are the most important stages. They say that this is so that lay litigants:

- Get off to the right start if they still decide to represent themselves after discussing the procedure with court staff.
- Are aware of the process or steps involved and the direction in which a claim can go.
- Complete the documents correctly in the first instance, which saves time amending or changing them later.
- Obtain an explanation of the court process.

Staff did note that questions, attitudes and responses often depend on people's level of frustration. Regular problem solving has not worked for them so far. If a system is set up that deals with SRLs questions as they arise, that would be great.

10. In your opinion, does a self-represented litigant generally participate in the proceedings with competence and confidence?

- They're always confident in the "rightness" of their cause, and most are competent.
- Yes, after they've come to see me, they realize that this is a right they have and that they are not asking for anything that they're not entitled to.
- Once I've given them information about what they are entitled to they feel more confident.
- Yes, very few say "I can't do it." I tell people that if you cannot get up and speak in court, you have to go to a lawyer.

11. What is the impact of self-represented litigants on your job?

- They are time consuming because of stories, questions, mistakes in claims and it's difficult to anticipate what will happen.
- Most of the SRLs I deal with don't go to court. They are doing uncontested divorces. We help with making sure forms are correctly filled in, etc.
- They cause concern when we feel that they should seek legal guidance and choose not to, for whatever reason, and then later end up feeling that they are overwhelmed with the process.

- Not enough time to do all the requirements of the job.
- Most times [I am] far too rushed.
- There is enough work in family court to have an additional position as it stands now.
- A duty counsel would relieve the workload associated with lay litigants greatly.
- Court hearings are cancelled because parties weren't served or just don't show up.
- I would not have a job without self-represented litigants.
- It's part of my job. The Statute says that the law library is open to the public as well as to members of the Bar. Access was granted in the early 1990s. I've great respect for people who come in [to the library] trying to solve their problems. Mind you, there has occasionally been an issue of security.

12. In your experience, what are the greatest frustrations in dealing with self-represented litigants? (please rank by number from 1-7)

The court staff were asked to rate the level of their own frustration when dealing with SRLs.

SRLs inability to understand what they are being told and the court staff's inability to answer their questions, when what they are really seeking is legal advice, ranked as the most frustrating experiences.

Closely after this, ranked the fact that SRLs do not know what they are doing, nor do they know what the court process is.

Staff ranked a lack of initiative and lack of follow-up on the part of SRLs as low.

Interestingly, a poor, or bad, attitude on the part of SRLs was ranked at both highest and lowest levels by staff.

The "other" category led to the following comments:

- Many divorce petitioners don't want to get or pay child support and can't understand why they cannot proceed to divorce unless this is done (both sides).

- People ignore what I say and believe that if they can just get to the judge everything will be fine.
- (This could be #1) Often the claims are between family members, or [have to do with] poor decisions on their [SRL's] part and they feel they have been wronged. This can be frustrating in that you know they may never get their money.
- Ensuring that [SRLs] understand that I cannot do the work for them. "I have to state in many different ways the fact that **they** have to find the answer to their questions."
- Usually clients who come into the library have a grasp of what they need they're very motivated.
- Their [poor] attitude usually changes through the process.
- The application form [to use the library] is very helpful because it makes it clear that clients are "under the direction of the librarian."

One person said that she had dealt with all of the frustrations at one time or another.

13. What are some of the biggest mistakes a self-represented litigant makes in his or her individual court processes?

Respondents from court staff agreed that the biggest mistakes SRLs made were being generally unprepared, filling the forms out wrong (or filling out the wrong forms), and not knowing about, or following, the Rules. They also noted that many SRLs get the court process wrong and cannot correctly draft orders and affidavits. Staff members also noted that SRLs did not do a good job for themselves because they often are:

- Unprepared to give evidence.
- Unable to articulate what they mean or not clearly seeing the direction in which the court hearing is going.
- Unable to write what they wish to say in written documents.
- Getting the court processes wrong. Understanding this is complicated!
- [Ignorant] of rules of evidence.
- [Ignorant of] how do legal research, what cases to look for; or what is the norm in this type of case.
- Unable to draft orders and documents correctly – (this is a real problem in small claims court). "SRLs don't know how to draft an order and, if they've been ruled against, they will never come back in to sign the order."

One person noted that, in family cases, she has found that some SRLs expect the court staff to do everything for them. She said “They fail to read the material they are given, fail to fill out the forms, make no attempt to read or follow the Rules, and come to court unprepared to deal with the case.” Another noted that even when they [SRLs] have been told that they must limit the information they put before the court, they get into past issues that have no relevance. She said, “I think it’s just that they have to get it out!”

14. What management or information measures have you been using to deal with the challenges of self-represented litigants, and how successful are they? (Are there special lineups, time or staff who deal with SRLs? Any special information materials or resource lists that you hand out?)

- All legal questions are directed to the Prothonotary and as for procedural issues, we refer the lay litigant to the government web site where they can review the Rules of Court, Forms and Statutes.
- I try to prepare them [SRLs] in advance for the next step.
- I hand out suggested wording for the divorce judgment.
- I give out PEI Small Claims Court Rules in hard copy as well as the website address.
- Refer to CLIA and the lawyer referral service for those requiring legal advice.
- I hand out the family law kit from CLIA.
- I provide as much information as possible i.e. Child Support Guidelines Kit and enclosed pamphlets [from CLIA].
- Being very clear that I cannot do the research for SRLs.
- Telling them that I cannot give them legal advice.

15. What information would you like to be able to give self-represented litigants that you don’t have now?

In what format?

- The majority of SRLs doing their own divorce have enough information in the kit to get through.
- I would like more printed materials.
- A video which has been set up on a web site that would explain how a person is expected to represent themselves in a court of law [You Tube!].
- A family kit for applications/motions in child support – and enforcement of orders (which seems to be a really common request these days).

- More print resources.
- Check list and steps from Nova Scotia re: what you can and cannot do.
- I don't think videos would be useful.

On what subject matters?

- Where to go and what to do if custody and access is not being followed as per their current agreement/order.
- Importance of completing legal documents correctly.
- Importance of completing legal documents in a timely manner.
- Importance of seeking legal guidance before filing legal documentation.
- Importance of knowing the possible consequences in not properly representing yourself.
- Importance of proper courtroom etiquette.
- On completing documentation on a timely basis.
- The consequences of incorrect wordings.
- On applications/motions in child support and enforcement of orders.

16. Do you have any other suggestions or solutions to help court services deal with self-represented litigants and the challenges they create for courts and other areas of the legal system?

- It would be easier for me if all the "courts" expectations were the same. It would allow me to better prepare SRLs.
- It would be very beneficial to have an in-house lawyer to answer legal questions (which we cannot do) and to guide lay litigants in completing their court documents.
- A family law kit (see above).
- Duty Counsel.
- Continuing Education and professional development for staff.
- Two additional staff, if not lawyers, then in a Clerk capacity to work with SRLs.
- Public user guides.
- Checklists would help in terms of what we borrow from the judges' library.
- Start with text books; zero in on print.
- Help people who are having difficulty with access or visitation.
- Establish an office like the child support guidelines office for custody and access.
- We should have more automated forms for example, plain language simple forms with simple instructions. Check out the California Courts website. Their forms have a lot of check boxes and use positive language.

We need:

- Witness information.
- Information about court process and fees.
- Information about evidence and argument.
- Certain principles of family law could be set out. For example “Joint custody is the rule.”
- New staffing positions to help SRLs.
- Simplified forms and at least a court clerk to assist SRLs.

Please add any comments/suggestions you have

- Many times lay litigants approach the court having been sent here by law firms and told simply to go to the court and pick up a form. This would only be true in small claims. There are samples of the forms in the Rules but again they must be prepared from scratch. Even the term “General Heading” must be explained.
- It would be of great benefit to have a divorce kit for couples who wish to file jointly. These save a significant amount of time in many respects. Currently, I think some people are obtaining them either on line or at book stores.

Additional Questions for Child Support Guidelines Officers

The Child Support Guidelines Officers have a different mandate than the rest of the court staff. They were asked these questions in addition to those listed above. There are two Child Support Guidelines Offices and I have synthesized the responses.

In your mandate it is specifically stated that you “assist self-represented clients applying to the courts for either first-time child support or a variation of child support in an existing order or agreement.” Please describe how you assist your clients.

- Basically helping them prepare all their documents, motions, orders and affidavits and making sure that all the information that the court requires is included in their documents. I meet clients one on one in the office, 2 or 3 a day.

Do you ever attend court with your clients?

- Yes, before we get into court I try to prepare them: tell them court etiquette,

basic info if they need to question other party, proper court proceedings, etc. If a lawyer is present for the other party, the lawyer writes up the order. If both parties are unrepresented, I type it.

- Sometimes both parties come into my office and I assist both. I need to make sure that nothing one person says to me, beyond what is in the affidavit, is said to the other person.
- I received early training [from CLIA] in the difference between legal information and legal advice, but it's been a long time since then...

In your opinion are self-represented parties generally disadvantaged by their lack of legal representation?

- No, I guess the cases we deal with are as straight-forward as possible. Most clients are very good at telling me what they need done. They are fairly well prepared before they get into court. If a lawyer is representing the other party, they [SRLs] can get intimidated. The judges try to be fair within limitations.

In your opinion are the other parties generally disadvantaged by the unrepresented party's lack of legal representation?

- Not sure about this. I don't find that judges help the unrepresented litigants to the detriment of represented litigants. They tell them that they [the judges] are not their lawyers.

Responses from Self-Represented Litigants

As noted I received a disappointing response from SRLs. Only ten returned the surveys or were interviewed. However, those who did respond had useful information to share.

1. Age range

Of the ten responses: two people were aged between 25 and 34; six were aged between 35 and 54; and two were over 55.

2. Educational level

The respondents were mostly well educated: two had some post-secondary education; four were community college graduates; and four were university graduates.

3. Paid worker (any working income)?

Seven respondents were working; two were receiving EI; and one person was not in the work force.

4. Income Level

One person 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

5. Are you male or female?

Four respondents were female, six were male.

6. Which of the following do you have at home? (circle all that apply)

All ten respondents were accessible by telephone, had access to a personal or home computer; access to the internet and a personal email address.

Six of the respondents held a public library card.

7. Why don't (didn't) you have a lawyer representing you in court? (circle all that apply)

Legal Aid was denied in four instances; seven of the respondents replied that they could not afford a lawyer; and four felt that they did not need a lawyer to go to court.

- Our marriage broke up because of financial considerations, the other party had a lawyer.
- I was told a lawyer would not change the outcome.
- I thought I didn't need one because it was small claims court.

8. If you answered that you don't need one, please tell us why you don't need/want a lawyer

Four respondents said that their case was a simple, straightforward matter which did not need a lawyer; three said that they had a previous bad experience with a lawyer; two felt that they could do just as good a job themselves; and one person said that since she was going to small claims court she did not have a lawyer.

- I felt it did not make any sense retaining a lawyer at \$150 per hour to attempt to collect \$3,000 from a client through small claims. I truly thought it would be a very straightforward matter. Unfortunately it did not happen that way at all.

9. Would you have felt more confident if you had a lawyer?

Six of the ten respondents would have felt more confident if they had the services of a lawyer.

- I had no idea what was going on.

10. Did you have any advice from a lawyer at any stage of your case?

Eight respondents did have contact with a lawyer; two did not.

- I went through lawyer referral. I was represented at beginning of the initial case, but the lawyer bailed out citing problems with communication [with me].
- At the beginning.
- A quick consultation.
- They charged too much and I was confident, having read the *Family Law Act*, that I was going to get 50% of our assets.

11. Did you represent yourself at any/all stages of your court case?

Seven respondents represented themselves through the whole process. One person was self-represented at pre-trial and trial.

- I did not go to court.
- Our case did not end up going to court. He did not file a defence so it was mostly paperwork that I had to do.
- At all stages. In order to force the mom to bring child back from Moncton I took her to court, she was awarded custody but later she moved back to the Island. She has since moved to Calgary. Before she went she made an application to move but was unsuccessful. Our son now lives with me and she visits him and has him stay with her when she is home.
- I don't know what the stages are, but I've prepared Responses to Motions on my own and Motions with the help of a child support guideline officer. I've always represented myself at the Court Hearings.
- Yes, from filing the small claims case to dealing with the judge in court representing my small business.
- I had a lawyer for my divorce, but not for other issues afterwards.

12. What kind of case are you involved in?

Four respondents were in small claims court; five were involved in family matters; and one person was involved in a fisheries matter.

- I went to Consumer Services, then to a lawyer, then to small claims court.

13. At what stage are you in your court case?

Responses were received from people at all stages of their court action.

- My case is just beginning.
- Custody agreement drawn up in 1998 was not changed. She moved out of the province but our son is now with me. I have day-to-day custody. Mom keeps in touch and has been home a couple of times.
- The court case is finished, and our lives have been ruined.
- Currently, I'm preparing a Motion with the assistance of the Charlottetown Child Support Guidelines Officer to be heard at a hearing in February.
- The case is over. It happened some years ago.
- Judge dismissed case. Crown is appealing, I am the defendant.
- My case is completed.

14. Where did you get information about the law and court process for your case?

Courthouse staff and the Internet were the most used sources of information.

Eight of ten respondents obtained their information this way.

- Four respondents obtained information from lawyers.
- Four people used CLIA, and pamphlets/brochures for information.
- Three people used friends.
- Two people received information from relatives.
- One person went to the public library.
- One person obtained information from a health professional.

In addition:

- The judge helped – was very patient.
- I went to the Queen's Printer and got a copy of the Family Law Act.
- I used the law library and CANLII (website of the Canadian Legal Information Institute).

15. What kind of information did you get? (please tell us about all the help you received and what was most helpful)

- Staff at small claims are terrific! Pleasant, well informed and very helpful.
- I was told it was pretty straight forward process. I received a book from CLIA and read up on it. Then I came to Small Claims office and Nancy Cook was excellent. She helped me through the process.
- I already had experience with being in court. I refuted statements made in my ex's affidavit and was able to do this because I had affidavits from

- previous experience in court and used these as a model.
- I received most, if not all, of my information from the Internet, the online resources of mainly other provinces, and legal information sites. The information was comprehensive but there was not a lot of information on the rules for presenting evidence and the rules for cross examination. I did not find any advice or information on how to cross examine, how to research case law and how to present case law precedents to the Court.
 - The staff at the court explained to me the protocol to follow when filing a small claim. They also assisted me when filling out forms and explained that I needed to serve my former client etc.
 - Verbal advice from lawyers, family, friends. Divorce kit from courthouse.
 - The law librarian was extremely helpful, I found case studies, precedents, laws, and information about child support guidelines with her help.

16. What, if any, additional information would you have found useful to help you represent yourself?

- Access to cases of a similar nature.
- The main thing I needed help with was how a trial/hearing goes. The etiquette and format. For instance, I wanted to call a witness to support that my son had stayed with me for longer than stated by my ex. I didn't know that she should not be in the court to hear other evidence.
- I would have liked help with the order of events in court. (e.g. opening and closing statements, cross examination etc.).
- A glossary of legal jargon utilized by the judge.
- Potential outcomes in the case.
- How to proceed when a party misrepresents the truth under oath.
- Outline of court procedure.
- I needed to know more about the consequences of not going to court. Now I feel that I should have gone even though everyone advised me not to go.
- More on actual procedures and how to word applications, motions and variations. Sometimes I would get to court and the judge would tell me that I had not completed the forms properly. Once my application was adjourned so that I could correct mistakes.

17. Did you get help from the courthouse staff?

One person did not ask for information or help. Two said that they received no help from the courthouse staff. Others said:

- Yes, and it made it easier.

- They were excellent.
- I'm not sure if the child support guidelines officer is court staff? Excluding this person, I found Courthouse staff (other than the commissionaires, in both Summerside and Charlottetown, who were very helpful) very cold. You are left with the feeling from Courthouse staff that you should not be there. Front line court staff seems to be all female, and I feel, because I'm male, because they know I'm there in regards to child support, they are not neutral and that they support the other side. Or maybe they are cold and unfriendly to everyone.
- Everyone was female and I felt that there was a gender bias. One person I dealt with treated me in a "school-marmish" manner and I got the feeling that being male was a negative. I felt everyone I came into contact with saw me as the bad guy.

18. What kind of help did you get from the staff at court?

- How to properly complete forms, which forms to complete, and they review completed forms for errors.
- They helped me fill out and file the appropriate papers.
- Clerk advised that audio cassettes would be available and gave me tips on court etiquette.
- I received no help from the Child Support Guidelines office in Summerside.
- From the Child Support Guideline office in Charlottetown, I received help and advice in preparing the Motions to the Court.
- Where to sit, pen and paper.
- Staff gave some advice on filling out papers.
- I attended one of the courthouse information sessions presented by the former Chief Justice.

19. What more help would you have liked to have received?

Five SRLS said they would have liked help with:

- The options for resolving disputes out of court.
- Information on how to present my case in court.
- Information on the court process for my case.

Five would have liked:

- Information on how to fill out court forms.

Four wanted:

- Information on how to behave in court.
- The fees and costs of going to court.

Three wanted

- Information on appealing court decisions.
- Information on complaining about judges or the court.
- Information on which court forms to use.

Two wanted:

- Information on which court forms to use.
- Information on enforcing court orders.
- Information on how to find lawyers.
- Definitions of legal words.

One person wanted:

- Information on how to complain about the lawyer representing the other party.

One person thought that courthouse tours would be useful.

- A video of all stages of the process performed by actors or actresses available online. I've seen one online for another province. BC, I believe. It was excellent and showing each stage of the process with a narrator adding additional info. However, the process is different in PEI, so though it was helpful, it wasn't directly applicable.
- Information on Court procedures such as the rules for presenting evidence and cross examination.
- Information on how to research case law and how to present case law precedents to the Court.
- How to proceed when my [former] client and his witness blatantly misrepresented the truth while being in court and under oath.

20. Any other comments?

- The major complaint I have is that there is no parking! I have been in court for as little as less than an hour and as long as seven hours. There is designated parking for police and judges, why not for plaintiffs?
- For my situation it was something very easy to handle. I think more people should be made aware that they can do this on their own and the staff is there to assist them in any way.
- The other party's testimony (with a lawyer) was a complete fabrication. I was not able to say what I needed to say or put my case before the court. We went from a hearing before the Prothonotary to a full trial. There was no disclosure on the other party's part. Nothing worked for us. The Prothonotary told us nothing about the process. The judge didn't seem to know the rules of court and at one point called an adjournment. I was in court before the judge for

nine hours. I didn't understand the process, and no-one gave us full information about the hearing or what happened next.

- The first time I represented myself was to respond to a Motion to vary child support at a hearing in Summerside. I completed the response to the motion on my own using the Internet as a reference. The hearing was informal.
- In the end, I'm not sure if a lawyer would have made a difference but they may have been able to argue some points more skillfully than I did.
- A year ago, I applied for a Motion to vary child support in Charlottetown. I attended the information session put on by [the Child Support Guidelines Office] as required. She assisted me in preparing the Motion, and advised me on how to serve the Motion. After my experience in Summerside Provincial Court, I prepared for the hearing on that basis. However, the Court procedure was very different from the Summerside Court. We were told minutes before the Judge entered the court room that all questions must be prefaced by "Is it true.....?" I wasn't prepared to ask questions in this manner, and feel I should have been told this **before** the hearing. When the Judge entered, he explained that he would only hear evidence from the witness stand. I didn't know how to proceed at this point. I told the Judge I didn't, and that it wasn't like this in Summerside. He said he didn't know how Summerside ran their court but this was the way it was in his court. All through the hearing, the Judge had to step in, and explain how to proceed because I was not given any information about Court procedure before the hearing.
- I sincerely believe family matters should be heard in a dedicated family court by Judges who specialize in family law.
- After recently representing myself I've some observations.
 1. Explanation to the litigants re: how to cross examine has improved.
 2. If you are representing yourself, it is very difficult to tell your side because you can not obviously ask yourself questions.It's left to the Judge, and he/she may or may not ask you anything, and he/she certainly doesn't know the questions he/she should ask as your lawyer would. It puts a greater responsibility on the judge hearing to case to adhere to the court procedures and the legal process which he/she may or may not do. The lawyers in the courtroom normally ensure this happens.
- In situations where it is not cost effective to hire a lawyer, you are damned if you have a lawyer, damned if you don't. A lawyer might help ensure you win your case and if you win, there might be some small net financial gain but if you lose, you've just increased your cost.
- I've represented myself three times. Each time, I think I learn from the last time, and I do. I prepare carefully based on my past experience, but as soon as you step into the courtroom, the expression, "the fog of war" is, I feel, the most accurate way of describing what it is like representing yourself. It exists even if you are represented by a lawyer, but it certainly is much

- thicker if you are representing yourself.
- Having spent a full day in court and seeing my [former] client and his witness blatantly misrepresent the truth, I realized that it had all been a waste of time/energy and I said to myself, “What the Hell and I doing here? I should be at my office, serving clients who deserve my time and attention and appreciate the services of my company.”
 - The \$10 referral is a waste of time. As soon as the lawyer realized he was not going to get hired, he couldn't get me out of his office fast enough. People should be able to dial a number and get straightforward information about the process they will be involved in.
 - The process, for me, was very simple. The guide [divorce kit] was easy to follow. People at the courthouse were very friendly and willing to help or offer some guidance.
 - I feel that the adversarial system is not appropriate for family matters. There should be some other way of dealing with these things.
 - Every time I went to court I got the feeling that I was “bucking the system.” I don't feel that the justice system is fair, the decision was totally swayed in my ex's favour. Financial equality doesn't happen and child custody rulings are worthless. I have joint custody but my ex moved 60 kms and changed my child's school without telling me. I am never informed about medical issues.
 - The government must find a way to institute real and meaningful legal aid for family matters.

Discussion

As a whole, there was a fair level of synchronicity in the responses and some interesting differences. There were also some comments and suggestions that, while they are outside of the mandate of this study and beyond my ability to assess, might serve to provoke discussions by the Courts, the Law Society (Bench and Bar, and Rules Committees in particular) and CLIA. These suggestions are appended to the recommendations.

At the outset there were two pieces of information I wanted to obtain. I wanted to get the number of people representing themselves in the Supreme Court, and I wanted to see if there is a “typical” self-represented litigant.

I approached the courts for numbers only to discover that they are not readily available. Statistics of the actual numbers of SRLs in the Supreme Court are difficult to obtain. The following information has been provided through the offices of the Chief Justice of Prince Edward Island, the Honourable David H. Jenkins and the Chief Justice of the Trial Division, the Honourable Jacqueline R. Matheson. They are preceded by a brief description of the two Divisions of the Supreme Court, taken from the Supreme Court website.

“The Trial Division

The Trial Division deals with pre-trial matters and hears trials in general civil matters, family matters, small claims, estate or probate as well as indictable criminal matters heard with or without a jury. The Trial Division also hears applications for judicial review from decisions of tribunals and summary conviction appeals from Provincial Court. Appeals from the decisions of the Trial Division are to the Appeal Division.

“The Appeal Division

The Appeal Division hears appeals from Provincial Court on indictable criminal matters as well as appeals from all decisions of the Trial Division. Appeals from the decisions of the Appeal Division are to the Supreme Court of Canada.”⁵

In the Appeal Division, the numbers are represented in the following table supplied by Chief Justice Jenkins:

“APPEAL DIVISION - REPRESENTATION STATISTICS

YEAR	TOTAL CASES	TOTAL PARTIES	REPRESENTED PARTIES	SELF-REPRESENTED LITIGANT *
2004	34	93	70	23
2005	30	97	76	21
2006	25	78	57	21
2007	32	144**	121	23

NOTE: *Some appeal cases involve the same self-represented litigant.
** This figure may look high given only 32 appeal files opened that year. However, one case has approximately 65 parties who applied to the Court of Appeal for directions on how best to proceed with a trial issue.”

In the Trial Division, it has been more difficult to come up with accurate figures. Available statistics only illustrate a picture of one particular point in time – the time the pleadings are filed. These numbers are not truly accurate as parties may represent themselves at the beginning of a matter and acquire or dismiss legal counsel during the court process. Small Claims cases almost exclusively involve SRLs, while criminal (indictable offences) cases usually involve counsel, even if the accused makes a first appearance without a lawyer. Criminal Legal Aid is available for accused persons who cannot pay for legal counsel and who meet Legal Aid guidelines.

⁵ *About the Supreme Court of PEI*, www.gov.pe/court/supreme/index.php3?number=1003797

Family matters are even more complicated. Family Legal Aid is available to eligible litigants and the Family Law Centre provides services such as the Child Support Guidelines Office. However, many people still appear before a judge without counsel. Although I was unable to obtain definite figures of SRLs, estimates provided by the court indicate that approximately 50% of litigants in family matters are self-represented. Most of these SRLs are not eligible for Family Legal Aid because they earn too much or their family situation is such that they do not fall within Family Legal Aid criteria, and they cannot afford the services of a lawyer to represent them.

With only ten responses from SRLs themselves it's impossible to define a "typical" SRL. In fact the *Alberta Self-Represented Litigants Mapping Project Final Report* suggests that even when there is a greater response the "typical" SRL does not emerge⁶:

"Most available information is based on the observations and perceptions of service providers, rather than the direct involvement of people who are self-representing."

"Recent research that has involved SRLs suggests that although people with annual incomes below \$35,000 are far more likely to be SRLs, members of any social group may become SRLs once involved in a legal process...There are several reasons why available research still only provides a partial picture of the range of SRLs...few available studies are geographically and methodologically diverse. Most research must rely on the willingness of SRLs to take part and it is possible that those with higher levels of education are more willing to do so...there may be elements of involvement with family matters that also encourage SRLs to engage with researchers."

The Alberta Report brings together background information about SRLs from four other Canadian research projects: The *Civil Justice System and the Public* (various reports from the Canadian Forum on Civil Justice); *Self-Represented Litigants in Nova Scotia: Needs Assessment Study* (Department of Justice Court Services, Nova Scotia 2004); *A Report of the Evaluation of the Alberta Law Line* (Community

⁶ Stratton, Mary *Alberta Self-represented Litigants Mapping Project Final Report*, January 12, 2007

Services Consulting Ltd., 2006): and *BC Supreme Court Self-Help Information Centre Final Evaluation Report* (John Malcolmson & Gayla Reid, 2006).

To a great extent this P.E.I. project also looks at SRLs through other people's eyes since ten SRLs returned surveys or responded to an interview. What we know about them is that:

- Two are younger than 34, six were aged between 35 and 54 and two aged between 55 and 64.
- Every SRL who responded had graduated from high school and had some post-secondary education; four were community college graduates and four had graduated from university.
- One SRL has an income below \$15,000; three earn between \$15,000 and \$29,000; four have incomes between \$30,000 and \$49,000; and two SRLs have an income between \$50,000 and \$79,000.
- Four female SRLs responded and six males.
- Seven of the SRLs are working, two are receiving EI and one person is out of the paid labour force.
- All respondents have a telephone, access to a personal computer and the internet, and their own email address. Six of them also have a public library card.

Many respondents from the legal profession and the courts system perceived SRLs as a "problem." While acknowledging that some people have no option but to represent themselves in court, they reflect the concern that some SRLs represent themselves because they do not trust lawyers or the court system. Respondents identified the common challenges SRLs present to court staff, counsel for the opposing party, and the judge hearing the case.

The responses from lawyers and judges also made it clear that SRLs do not know about, the Rules of Court and the Rules of Evidence. SRLs themselves noted that they did not know the Rules, did not know the court "etiquette," did not know how to present evidence and faced delays because they had incorrect documentation.

A few lawyers expressed concern that establishing services to assist SRLs would result in people being persuaded that they do not need the services of a lawyer in order to “win” their case in court.

SRLs present particular problems for judges when they appear in court ill-prepared and ill-informed. They cause difficulties for counsel representing the other party, particularly when counsel is asked to prepare an order for the SRL. Some SRLs are hostile to court staff who refuse to answer questions beyond their mandate or provide legal advice. Finally, without an understanding of the law the SRL may be left with a feeling of injustice, and a feeling that the process was unfair.

While this project was designed to build on previous work in this area, it was also intended to ascertain what support might exist within the legal profession and the courts for remedies designed to meet the needs of SRLs such as a Supreme Court self-help centre. I was pleased to see that, amongst other suggestions, the responses indicate a level of support for a court-based legal information or “self-help” centre.

I was surprised by the fact that SRLS did not mention more about alternative dispute resolution. The only comment remotely related to this was the one stating that,

- The adversarial system is not appropriate for family matters.

This may reflect that fact that the few responses from SRLs do not accurately reflect SRLs or it may be symptomatic of the fact that by the time a case goes to court the parties have become entrenched in their positions and are no longer in a mood to negotiate. Additional resources for mediation and collaborative law processes are badly needed and it would only be positive if the parties in every family case, except those with proven issues such as violence or addictions, had to demonstrate that they have made serious attempts to settle through negotiation,

mediation, arbitration or collaboration before seeking redress in court.

The matter of drafting court orders was an issue frequently raised by lawyers, the practice of having counsel for the represented party draft court orders for the self-represented party is one that causes discomfort and resentment. Lawyers noted that it is difficult to explain to their client, it costs their client money, and it appears to their client that the lawyer is acting contrary to the client's interests. It is my understanding that steps are being taken to resolve this issue and change the process of writing court orders so that they may be completed and signed before the parties leave the courtroom.

There is a spectrum of remedies suggested in the responses to the questionnaires. These range from the development of written materials for self-represented litigants to wide ranging procedural changes to the ways in which litigants, including SRLs, are dealt with by the courts.

Print and Website Materials

One lawyer wrote, "Knowledge shouldn't be an advantage." In collaboration with the Courts and the Bar, CLIA should explore the development and effective distribution of written materials that will support SRLs and alleviate court clerks of the burden of dealing with them. These materials would be available on the CLIA website and made available to SRLs when they make their first contact with the courts.

Written materials already exist although more materials on a variety of topics are badly needed. What we know about the written word is that many people do not read it and even if they do, some people have a hard time understanding it. CLIA does its best to put legal information into plain language but to be most effective we

know that the written word needs to be supplemented by one-on-one personal assistance. The bottom line is that a one size fits all approach is not appropriate and a variety of approaches needs to be developed to best meet the needs of SRLs.

Based on the responses, written materials should include information about:

- Alternative Dispute Resolution
- Information about court process and fees
- Which forms you need
- How to complete the forms
- The Rules of Court
- The Rules of Evidence
- The court process (what happens when and in what order)
- Witness information
- A court focused family law kit, something that sets out certain principles of family law, e.g. “joint custody is the rule.”
- Drafting, registering and enforcing court orders, and avenues of redress if orders are ignored
- Appeals

The document *Procedural Steps for SRLs in Civil, Family and Criminal Cases: A (draft) Guide for PLEI Providers*⁷, prepared for PLE/I groups by Canadian Forum on Civil Justice provides a “road map” of civil court information and should be used by CLIA as a guide in the development of new written materials. In addition court staff provided frequently asked questions as part of this project and these, listed below may provide guidance in the development of materials.

In addition to materials explaining the process and providing guidance for SRLs, the suggestion was made that simplified, automated forms be developed. These forms would be written in a positive tone using plain language, and contain simple instructions.

⁷ See Appendix 2

Frequently Asked Questions

As reported by court staff, most questions are asked at the pre-filing stage and most have to do with child support, custody and access. The law librarian says that she is often contacted following the settlement conferences and most questions are asked of her at the pre-trial stage. The list of frequently asked questions generated by this survey and reproduced in Appendix 3 may be used as a further guide for developing materials.

Alternative Dispute Resolution

Only one SRL mentioned that the adversarial system is not appropriate for family matters. As noted below, this issue was raised by other respondents, but not as often as I had thought it would be raised:

- Early mediation is essential.
- There should be more emphasis on negotiation.
- The way matters are heard needs to be changed to accommodate the public need for an effective publicly funded facility for the resolution of disputes. The courtroom with a gowned judge is not the ideal.
- It is not enough and too tired just to say “lawyers charge too much.” We need to revise the structure of the public service that decides disputes.
- We also need mandatory court annexed mediation after the pleadings and right after the documents are exchanged but before oral discovery.

There is no question that additional family court-based mediators to assist people in settling disputes without going to court are necessary. But also needed is a process that includes legal advice while allowing people to settle their issues in an interest-based negotiation. Members of Collaborative Law PEI are currently working on a proposal to develop a pilot project that would offer SRLs in family law an interest-based process including legal advice for both parties. Essentially this is settlement negotiation facilitated by lawyers with training in interest-based negotiation.

This project would require support from the courts to identify space, screen clients

and hold meetings. It fulfills one of the principles contained in The Canadian Judicial Council *Statement of Principles on Self-Represented Litigants and Accused Persons* published in 2006.

“The court process should, to the extent possible, be supplemented by processes that enhance accessibility, informality, and timeliness of case resolution. These processes may include case management, alternative dispute resolution (ADR) procedures, and informal settlement conferences presided over by a judge.”

Legal Aid

There was general agreement about Legal Aid. Respondents said we:

- Need for more funding for legal aid.
- Need to increase legal aid availability (i.e. raise the financial eligibility and expand civil legal aid to cover the poor beyond criminal and [limited] family disputes into other meritorious types of civil disputes.

In some measure the government has pre-empted this report by the recent announcement of additional funding to Legal Aid. In the House, the Minister said in part:

“...I am very pleased to announce that we will be increasing the budget for Legal Aid by \$299,000.

...To complement the increased funding in our budget, the Law Foundation is contributing \$75,000 toward the cost of another legal aid lawyer in Summerside for the fiscal year 2008-2009.

...The Law Foundation has committed a total of \$590,000 over a seven-year period toward our enhanced Family Legal Aid program and we are most grateful for their support in this important service.

...As well, this increased funding will enable additional referrals to outside counsel when the service for family legal aid cannot be provided by staff lawyers.”

Response to this has been largely positive within recognition of the complexity of the issue and the acknowledgement that Legal Aid programs have become “cash cows” readily absorbing every penny thrown at them and still needing more. A

recent editorial in *The Charlottetown Guardian* pointed out that if we accept that access to justice is a basic right of Canadians then that right includes access to affordable legal representation.

While this is a very important and necessary initiative, to be effective, changes to the Legal Aid program must part of wide-ranging changes within the courts system that enable courts to become more responsive to the needs of civil litigants, particularly in the area of family law, who cannot settle their differences and cannot afford to pay for legal representation.

A Law Courts Information Centre (Self-help Centre)

This was a popular remedy raised by each category of respondent. BC has had a Law Courts Education Society for many years, and respondents offered it as one model. Ontario established family law information centres in most of their courthouses and set up the Ontario Justice Education Network some years ago. In PEI, respondents identified the need for centrally located and easily accessible law information centres that can help SRLs:

- Obtain general legal information.
- Learn about basic court procedures and navigate through the system
- Locate the appropriate court forms and complete their court documents
- Learn about legal advice options and alternatives to court

There is agreement that the centre(s) would ideally be a physical space located in or near the courthouse, staffed by a court officer — a lawyer with legal expertise and courtroom experience, who could provide a greater level of assistance to SRLs than is currently provided by CLIA. Respondents used the term “Duty Counsel” in talking about this position but no-one envisioned this person as representing clients in court.

- It would be very beneficial to have an in-house lawyer to be [act like a] Duty

- Counsel.
- What about proper duty counsel for family i.e. maybe through a weekly Legal Resource Day?

While there seems to be general agreement that more questions are asked at the outset and that SRLs need the most help as they begin their case, there is also agreement that help be available throughout the process. This leads to the conclusion that there is a groundswell of support for an office that may not be full-time but, would be available on certain days each week to provide assistance to SRLs.

A staff person, who is a lawyer with experience in court, would be available to prepare SRLs for court by using materials developed by CLIA, meeting with prospective SRLs to discuss their case, reviewing forms and other documents, discussing what is needed for court, and coaching SRLs through the court process and presentation of evidence in court. This person could also support the collaborative lawyers' proposal by screening clients and scheduling meetings for interest-based settlement negotiation.

A variation on the above general court-based information centre may be the establishment of a Child Custody and Support Office. This was envisioned as being similar in mandate to the current Child Support Guidelines Office, providing a similar level of support for people with custody and access issues.

- We need a custody and access office like the child support guidelines office. An experienced lawyer is needed to staff it, not someone newly qualified with no court experience.
- Establish an office like the Child Support Guidelines Office for custody and access.

Establishing a centre would meet recommendation 12 of the Technology Subcommittee of the *Task Force on Access to Justice*:

- A Help Desk with a focus on Family Law should be created to assist

people to access the civil court.

Changing the Existing Process

Finally, there were a couple of interesting suggestions for finding new ways of doing things. Of particular note I believe that the following merit further discussion:

- Establish a public fund to which the middle class could apply for legal aid in deserving cases vetted by a qualified panel. Perhaps a \$5.00 surcharge fee on every court filing goes into establishing the fund - plus a front end government contribution to get it started.

- Increase small claims limit to \$15,000 [also recommended by the Task Force] with no discovery permitted without leave; and move small claims out of Supreme Court and into an adjudicator's forum with right to appeal to Supreme Court with leave.

Recommendations

In putting together this document, I was struck by how much work has already been done within the courts to respond to the recommendations of the Task Force on Access to Justice. I believe that this report will build on this work, providing a roadmap for moving ahead on initiatives that will continue to make a real difference for those who feel they have no option but to go to court without a lawyer.

Judges and lawyers have legitimate concerns about any remedy that would lead litigants to believe that they do not need legal representation. Similarly, they do not wish to see any remedy that appears to promote self-representation in court. I believe that these recommendations will not encourage people to represent themselves if they have an alternative, but will ease the pressure that SRLs place on the court structures, people and processes.

The following recommendations provide a full spectrum of responses for consideration by the Supreme Court, Government (through the Office of the Attorney General), the Law Foundation and Community Legal Information Association.

I recommend:

- 1. That the Supreme Court of Prince Edward Island develop a means of identifying cases involving self-represented litigants so that statistics may be maintained and obtained when required.**
- 2. That CLIA take on the role of developing written materials related to the Supreme Court process and procedures:**

- with necessary staff support (an additional staff person to work on these materials and the forms recommended in #2),
 - in collaboration with the Registrars, other court staff and the Law Courts Information Centre (when it is established),
 - with consideration for the questions raised in this study, and
 - using the outline developed by the Canadian Forum on Civil Justice as a guide.
- 3. That CLIA, using recently purchased software, review Court Forms with the object of creating plain language, interactive, PDF documents:**
- with necessary staff support,
 - in collaboration with the Registrars, Supreme Court Justices, and the Law Society.
- 4. That CLIA work in collaboration with the court staff to develop, promote and distribute legal information materials about the court process:**
- 5. That the Supreme Court explore the feasibility of making alternative dispute resolution an integral part of the court process for SRLs:**
- (The proposed pilot project being developed by Collaborative Law PEI will offer SRLs in family law an interest-based process, including legal advice for both parties.)
- 6. That the Office of the Attorney General expands the current mediation service provided by the Family Law Centre to assist SRLs with the early settlement of child support, child custody and access, and family asset issues:**

- an additional Family Court mediator
7. **(Notwithstanding the recent announcement of additional funding for legal aid) That the Office of the Attorney General ensures that the availability of legal aid services be increased by raising financial eligibility and expanding civil legal aid to cover a wider variety of family cases and other types of civil disputes:**
 8. **That the Office of the Attorney General establish a Child Custody and Access Office, similar in mandate to the current Child Support Guidelines Office, and providing a similar level of support for people with custody and access issues.**
 9. **That a Law Courts Information Centre be established:**
 - jointly supported by the Law Foundation and the Office of the Attorney General,
 - housed in or near the courts,
 - provide personal guidance and assistance for SRLs heading to court,
 - operate for two days a week in Charlottetown and one day a week in Summerside,
 - staffed three days a week by a lawyer with court-based experience,
 - equipped with computers (two, one for staff and one for SRLs) and other equipment (telephone etc.) as required,
 - Working in collaboration with CLIA, developing plain language interactive forms and other written materials.

In addition to the above specific recommendations I recommend that the Supreme Court give serious consideration to the following suggestions:

1. Establish a public fund to which the middle class could apply for legal aid in deserving cases vetted by a qualified panel. (Perhaps a \$5.00 surcharge fee on every court filing goes into establishing the fund - plus a front end government contribution to get it started.)
2. Increase small claims limit to \$15,000 [also recommended by the Task Force] with no discovery permitted without leave.
3. Move small claims out of Supreme Court and into an adjudicator's forum with the right to appeal to Supreme Court with leave.

I recommend that CLIA give serious consideration to the following suggestion:

1. Explore the use of innovative technology (e.g. You Tube™) to make videos on specific topics, e.g. presenting evidence, calling witnesses etc.

Appendices

Appendix 1

The Literature Review

In November 2007, I began reviewing literature available in print and on the Internet. Given that the prevalence of self-represented litigants is a world-wide phenomenon in countries where the rule of law follows English Common Law, there is a great deal of information available. In the main, I restricted my reading to publications and reports from other Canadian jurisdictions. These included:

- A March 2004 report on a needs assessment begun in Nova Scotia in 2001 that was referenced in the final report of the *Task Force on Access to Justice*. Nova Scotia Court Services agreed to let me use their surveys as a basis for the surveys distributed in PEI as part of this project.
- The Canadian Forum on Civil Justice report in January 2007, on a self-represented litigants (SRLs) mapping project that was, “designed to document the range of governmental and non-government services and supports currently available to self-represented litigants in Alberta.”⁸
- The Canadian Forum on Civil Justice document developed for public legal education and information providers, titled *Procedural Steps for SRLs in Civil, Family and Criminal Cases: A (draft) Guide for PLEI Providers*. In the introduction to this document, circulated at the 2007 annual meeting of the Public Legal Education Association of Canada, they state:

⁸ Stratton, Mary Alberta Self-Represented Litigants Mapping Project: Final Report January 12, 2007

“In research conducted to better understand the needs of both SRLs and the courts where they are appearing, it has been strongly suggested that information materials should be developed and made available to SRLs **at the earliest possible stage in their case...**(emphasis mine)

“This guide [has been produced] to assist courts, government, public legal education and information providers and self-help centres to develop materials for SRLs by identifying the significant procedural information which should be addressed for SRLs in civil, family and criminal cases.”

Further, this document defines the term self-represented very simply as individuals proceeding without representation. This term has been chosen in preference to un-represented litigants.

- The Canadian Judicial Council *Statement of Principles on Self-Represented Litigants and Accused Persons* published in 2006. While this is intended as advisory in nature and not as a code of conduct, it provides a framework within which conclusions may be reached and recommendations made.

The first statement listed under section A, *Promoting Rights of Access*, which is contained in the *Statement of Principles on Self-represented Litigants and Accused Persons* reads:

“Judges, the courts and other participants in the justice system have a responsibility to promote opportunities for all persons to understand and meaningfully present their case, regardless of representation.”

The principles listed in this section read as follows:

“Access to justice for self-represented persons requires all aspects of the court process to be, as much as possible, open, transparent, clearly defined, simple, convenient and accommodating.

“The court process should, to the extent possible, be supplemented by processes that enhance accessibility, informality, and timeliness of case resolution. These processes may include case management, alternative dispute resolution (ADR) procedures, and informal settlement conferences presided over by a judge.

“Information, assistance and self-help support required by self-represented persons should be made available through the various means by which self-represented persons normally seek information, including for example: pamphlets, telephone inquiries, courthouse inquiries, legal clinics, and internet searches and inquiries.

“In view of the value of legal advice and representation, judges, court administrators and other participants in the legal system should:

- a) Inform any self-represented parties of the potential consequences and responsibilities of proceeding without a lawyer;
- b) Refer self-represented persons to available sources of representation, including those available from Legal Aid plans, *pro bono* assistance and community and other services; and
- c) Refer self-represented persons to other appropriate sources of information, education, advice and assistance.”

- Community Legal Information Association of Prince Edward Island Inc. (CLIA) *Family Law Information Sessions Development Project: Evaluation Report 2004*
- Community Legal Information Association of Prince Edward Island Inc. (CLIA) *Family Law Information Sessions: Frequently Asked Questions About Family Law 2005*
- *Smith Green Report*
- Task Force on Access to Justice Final Report

Appendix 2

Canadian Forum on Civil Justice, 2007

Procedural Steps for Self-Represented Litigants (SRLs) in Civil, Family and Criminal Cases: A Draft Guide for PLEI Providers

In research conducted to better understand the needs of both SRLs and the courts where they are appearing, it has been strongly suggested that information materials should be developed and made available to SRLs at the earliest possible stage in their case.

General Advice for all SRLs

Legal Advice

SRLs should be encouraged to consider retaining counsel, as the case may raise complicated issues and they will not have the same advantages as if they had legal advice or representation by a lawyer.

- Provide referral information about legal aid and pro bono legal advice
- Individual who have applied for legal aid and been denied coverage may have a right to appeal that decision. Provide information about the legal aid appeal process
- Provide referrals to local pro bono service providers, FLICs, support application workers, duty counsel, lawyer referral services, mediation etc.
- Explain that the judge is an impartial decision-maker and cannot provide legal advice, nor advise on how to proceed, to protect legal rights, nor to represent the case
- Tell the SRL that s/he is responsible for becoming familiar with the trial system and the practice and procedure that is normally followed by lawyers (this does not mean that SRL cannot ask judge questions or seek assistance as the trial proceeds)
- Inform SRL that once trial begins, an adjournment to seek counsel may not be allowed

ADR Options

Explain alternative dispute resolution options that are available within and outside the court system.

Cost Consequences

Advise the SRL about the possible cost consequences of unsuccessfully pursuing or defending a claim, unduly prolonging litigation, or escalating the cost of the proceeding. Explain rules about costs:

- The definition of costs
- Costs follow the event
- Judge has discretion to award costs
- Special rules with respect to SRLs
- Impact of settlement offers
- Quantum/range

- Sanctioning with costs
- Security for costs
- Costs schedule in the Rules of Court

Decorum

Provide SLR with the basic expectations for decorum and conduct in the courtroom.

- Participants in the process
 - The judge
 - The jury
 - The lawyer/party on the other side
 - The Clerk
- Courtroom layout
 - Who sits where etc.
- Hours of sitting
 - Hours court is in session, breaks etc.
 - Arriving early to deal with administrative matters before court begins
- Conduct in the courtroom
 - Stand whenever judge enters or leaves the courtroom
 - In jury trials, stand to show respect for members of the jury when they enter or leave the courtroom
 - While court is in session, SRL should stand and address comments to the judge (not the other party)
 - Only one person will be allowed to speak at a time. Don't interrupt when the judge or the other party is speaking, You will have an opportunity to respond after someone has spoken
 - When speaking to a witness do not use their first name, but address them by title: Mr., Mrs., Ms, Dr., as appropriate.
- Ejection for unruly behaviour
 - SRL has right to be present throughout trial, but must show respect for the rules as well as for the individuals who are taking part. If SRL is disruptive or disorderly, the judge has the power to exclude them from the courtroom, to cite them for contempt of court and to decide on punishment that may include jail.
 - The trial may proceed in the absence of the SRL, or may not start again until the SRL agrees to follow the rules.

Witnesses

1. SRL may call witnesses to support his/her case or to counter the other party's evidence.
 - Witnesses may have to take time off work or make child-care arrangements in order to attend court and so should only be called if the evidence they can give will assist SRL's case or contradict their opponent's case.

- Remind witnesses to bring any documents they might have relating to the case so SRL can have these entered as exhibits when the witness testifies.
 - Witnesses will be required to take an oath or affirm to tell the truth.
2. During the case the SRL is allowed to take the witness stand and testify. When doing this the SRL will be testifying just like any other witness, and will have to take an oath or affirm to tell the truth.

Testimony will be limited to factual matters that relate to the issues in the case.

When testifying the SRL will not be allowed to argue the case, there is a difference between testimony and legal argument which takes place later in the trial after all the evidence from the witnesses has been heard.

In deciding whether to testify, SRLs should be warned about the inferences that can be drawn against them.

Explain that SRL can be cross examined by the other side if they decide to give evidence.

3. The Rules of Court will outline the process, compensation and travel expenses required in order to summon witnesses.
 - Affidavit of Service
 - Service outside of province (Interprovincial Summons Act)
 - Consequences of warrant or arrest if a properly served witness fails to come to the trial or stay there as stated in the summons
4. Any person who is to give evidence at the hearing or trial will usually be asked to stay outside the courtroom until they are called to give their evidence (with the exception of the accused person or parties to the case).

If neither party asks for an order to exclude a witness in civil or family matters, then witnesses may remain in the courtroom. Judge will consider this if the witness has had a chance to hear other witnesses give evidence.

A witness who is interfering with the proper conduct of a trial may also be excluded.

5. Witnesses can give evidence on facts they have witnessed or have direct knowledge about.

Witnesses cannot state their opinion on facts unless they are expert witnesses.

The court has the duty to make the ultimate conclusion on the facts of the case, therefore witnesses should not be asked to tell the judge how they would decide an issue.

6. During testimony, a witness is allowed to refresh his or her memory by referring to any

document, photograph or exhibit. There are few rules relating to that. (Explain present recollection revived and past recollection recorded.)

Leading questions are not permitted when a witness is being examined by the person who called them. (Explain that leading questions are those which suggest the answer.)

Explain the exception for uncooperative witnesses.

7. Once the other side has examined his or her witness, SRL can cross-examine that witness to test the truthfulness, reliability, or completeness of their evidence.

Leading questions are allowed in cross-examination.

During cross-examination, SRL is allowed to discredit the testimony of the witness by challenging credibility and accuracy of the testimony. SRL cannot present evidence to contradict the witness on collateral issues that are not directly the subject of the trial.

Explain process of objecting to questions being asked by the other side, including what will happen if the judge agrees/overrules the objection. Reinforce that the purpose of an objection is to have the judge make the decision about whether the evidence can become part of the court case or not.

The judge will disallow any question that is vexatious or irrelevant to the proceeding. If SRL is subjecting a witness to undue harassment or embarrassment, the judge will interrupt.

8. During the cross-examination it may be helpful to ask questions about:
 - The ability and opportunity that the witness had to observe the things he or she testified about
 - The ability of the witness to give an accurate account of what he or she saw or heard
 - Whether the witness has any reason to be biased or prejudiced, or has an interest in the outcome of the case
9. Once cross-examination is complete, the other party can re-examine its own witnesses. This re-examination is very restricted. New evidence is not permitted and only clarification of points already made, is permitted.

Once re-examination is completed, that is the end of that witness's testimony.

10. The judge has a role in questioning witnesses
 - Ruling on objections
 - The judge has the right to disallow any question put to a witness that is vexatious or irrelevant to the proceeding. The judge must exercise reasonable control over the way the witness is questioned so as to protect him or her from undue harassment or embarrassment.

- The judge may ask some questions of the witness, to clarify the evidence that was presented by the witness. Once the judge has completed his/her questioning the parties are allowed to ask questions on issues that arose as a result of these questions.

Expert Witnesses

- Expert evidence is usually introduced where the expert can provide special information to the court that is outside the experience and knowledge of both the judge and the jury. Therefore, the expert must have special knowledge that goes beyond that of a judge or jury.
- However, before an expert can be called, the judge will consider whether the expert will actually offer relevant information regarding the case (Explain voir dire process).
- An expert's evidence is admissible if:
 - It is relevant
 - It helps the judge make a decision in the case
 - The expert is qualified; and
 - There is no other reason to exclude the evidence
- The judge will allow the evidence to be admitted as long as it is reasonably necessary to decide the issues in the case and will not unduly prejudice one party over another.
- The expert's opinion must also be related to the fact in dispute that, as a matter of human experience, will assist this court in resolving these issues.
- The evidence must also be compelling and address a live and material issue in the case.
- Expert opinion is especially important when a party is trying to establish a particular scientific theory or technique that is not commonly known or well established.
- The party calling an expert must prove that the expert has special knowledge or training in a particular area that is relevant to this case. The person must be an acknowledged expert in that area, either because of his or her education and/or by way of his or her experience and personal knowledge.
- Unlike an ordinary witness, an expert witness is allowed to give his or her opinion but not beyond his or her established expertise.
- There are rules requiring the party calling an expert to arrange for the preparation and service of an expert report in advance of the trial, or the expert cannot testify at trial. This report should set out the expert's name, address, qualifications and the substance of his or her testimony. The report must also disclose the expert's findings, opinions and conclusions, as well as documents, calculations and data upon which he or she bases his or her opinions or conclusions. The judge will not accept a summary of the report prepared by the parties.
- Once the report is produced, that expert may be examined and cross-examined at trial about the factual basis for his or her opinions, including any discussions between the expert and the party calling the expert as a witness.
- Having an expert testify does not mean that he or she is subject to a different standard from other witnesses. The expert's testimony must comply with all the rules of evidence.
- When a party calls an expert as a witness, the first step is to establish the expert's qualifications to express an opinion. This is done by asking the expert about his or her qualifications, training, and experience.

- If the other party agrees that an expert is qualified, they can admit that the expert is qualified to give an expert opinion. They still have the right to question the expert about the facts he or she relied on to form an opinion or to question the opinion itself.
- If the other party does not agree that the expert is qualified, they may cross-examine the expert on his or her qualifications.
- After the judge makes a decision that the expert witness is qualified to give expert evidence, the party calling the expert will lead evidence in chief from the expert.
- The other party will then have an opportunity to cross-examine the expert on his or her opinion. The focus in cross-examining an expert is usually on trying to show that the facts used by the expert in forming the opinion are different than the facts in the case, or that the opinion itself is wrong.
- An expert does not take over the function of the trial judge. The expert is only permitted to interpret the evidence based on his or her special knowledge.
- Refer to the Evidence Act and Rules of Court regarding the number of expert witnesses allowed.

Distinction Between Evidence and Argument

Evidence does not include what is said in the opening statements, the questions asked of the witnesses, or the closing submissions.

- The opening statement is not made under oath and is therefore not evidence in the case. However a party may give testimony after taking an oath or affirming to tell the truth.
- Similarly, in non-trial proceedings (applications/motions) only the evidence contained in affidavits will be considered. Submissions are not evidence.

Communications

Parties must clearly state what they are asking the court to do.

If you don't understand a question or the words that are used, ask the judge.

You make take notes about what happens in the courtroom.

It is important that you hear everything that everyone says in this trial and see everything that a witness may be describing in an exhibit. Tell the judge if you are unable to do so.

1: Need for an Interpreter

Consider whether a party or a witness might need an interpreter. There are arrangements that should be made in advance of the trial or hearing date, if an interpreter is required.

2: Communication with the Court and the Judge

- Parties should not send the judge any letters or attempt to communicate with the judge outside of the courtroom. Any information for the court should be sent through the usual business routes, namely through the court office/court registry.
- Court staff are not able to provide legal advice
- Parties must not talk to any of the jurors during the course of a jury trial.

- There are certain rules governing when you can and cannot talk to a witness during the trial, therefore parties must obtain approval from the judge in advance before speaking to a witness during the trial, while he or she is testifying.

Appendix 3

Frequently Asked Questions (As reported by Supreme Court Staff)

a) Pre-filing stage

- What is the filing process?
- Where can I find information?
- Where do I begin?
- How does custody/support variation work?
- Can I see my [former] lawyer's correspondence?
- Do you have any information about wrongful conviction, personal injury, small claims?
- What Rules of Court do I use?
- Do you provide forms?
- If not, where do I find these forms?
- What are the costs involved?
- Is there a time factor involved in my filing the necessary forms?
- How many copies of the documents do I need to provide?
- How do I file?
- What does it cost to file?
- How much should I claim?
- Where can I get legal advice—as I have to have a lawyer—as I have to go to court?
- Can I file in my circumstances?
- What happens if I am awarded the claim?
- What if I don't have defendant's address?

b) Filing stage:

- Do I have to serve the document before filing it?
- How do I serve the document?
- What do I have to provide to show proof of service?
- Does the document appear to be properly completed?
- How long before there will be a court hearing?
- [How to] complete the Claim?
- [What is the] Notice of Claim?
- How long does it take?
- What are next steps?

c) Pre-trial and Trial stages

- Who attends?
- Where will it be?
- Can I attend by phone?
- Do I need a lawyer?
- What is the process in courtroom?
- How can I postpone the date?
- How do I file a response (in divorce)?
- How do I file additional documents?
- How do I do research for my case?

d) Post-trial stage

- Has there been a decision?
- How do I draft an order?
- How do I get a copy of the custody order?
- When will the decision be available?
- What is the appeal process?
- If he's ordered to pay, how do I get my money?