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

May 2016 V.4

Windsor Law
University of Windsor

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SECTION A: CANADA

Articles in academic journals

1. Birnbaum, R. & Bala, N. "Views of Ontario Lawyers on Family Litigants without Representation" 65 University of New Brunswick Law Journal, (2012) 99-124.
2. Flaherty, M. "Self-Represented Litigants: A Sea Change in Adjudication", University of Ottawa, Faculty of Law Working Paper No. 1013-07, November 1, 2013
3. Michelle Flaherty, "Self-represented Litigants, Active Adjudication and the Perception of Bias: Issues in Administrative Law" (2015) 38 Dalhousie Law Journal 119
4. Paul Vayda, "Chipping Away at Cost Barriers: A Comment on the Supreme Court of Canada's Trial Lawyers Decision" (2015) 36 Windsor Rev. Legal & Social Issues 207
5. Andrew Pillar, "Law and the Business of Justice: Access to Justice and the Profession/Business Divide" (2014) 11 Journal of Law & Equality 5 – 33

Selected news reports (legal and general press)

1. Hasham, A. "Access to Justice: Help Coming for People Headed to Canada's Civil and Family Courts", The Toronto Star, February 5, 2014
2. McKiernan, M. "Public Input Integral for Real Equal Justice", Law Times, News, December 30, 2013
3. "High Priced Justice", The Globe and Mail – Editorials, January 5, 2014
4. Bellaart, D. "City lawyer says she has solution for high cost of fees", Nanaimo Daily News, October 19, 2013
5. Mulgrew I. "Access to justice can be impeded by cost of court transcripts, judge says", The Vancouver Sun, March 25, 2014
6. Doug Jasinski, "The Franchise" *Slaw* (12 February 2016)

[1] Many research assistants and volunteers at NSRLP have worked on this bibliography over the past 3 years. These include Hannah Bahmanpour, Kyla Fair, Katrina Trask, Janice Kim, and Lidia Imbrogno

7. Donald Best, "Advice for Self-Represented Litigants: Part 1: Walking Away is Sometimes the Best Decision" *Donald Best* (March 2016)
8. Elliot Level, "Plain and Simple will Boost Access to Justice" *Canadian Lawyer* (12 October 2015)
9. John-Paul Boyd, "A2J DIY 5: Provide Some Services on a Flat-Rate Basis" *Slaw* (12 February 2016)
10. Ken Chasse, "A2J: Solving the Unaffordable Legal Services Problem by Changing Law Society Management Structure" *Canadian Lawyer* (31 August 2015)
11. Marshall Yarmus, "Do's and don'ts of small claims court", *Toronto Sun* (7 January 2016)
12. Sarah Burton, "What Self-Represented Litigants (Actually) Want", *LawNow* (30 June 2015)

Canadian Reports & Lectures

1. Thomas Cromwell "Access to Justice: Towards a Collaborative and Strategic Approach" (Viscount Bennett Memorial Lecture) 2011
2. Canadian Forum on Civil Justice, "A Roadmap for Change, the Final Report of the Action Committee on Access to Justice in Civil and Family Matters", Slaw, December 13, 2013
3. Buckley M. Access to Legal Services in Canada: a Discussion Paper April 2011, Action Committee on Access to Justice, Canadian Bar Association
4. "How can legal services be changed to increase access to justice?" CBA Legal Futures Initiatives, October 21, 2013
5. Farrow, T. et al, Addressing the Needs of Self-Represented Litigants in the Canadian Justice System, A White Paper Prepared for the Association of Canadian Court Administrators, March 27, 2012
6. Malcolmson J. & Reid G. British Columbia Supreme Court Self-Help Information Centre Final Evaluation Report, August 2006,
7. Better Legal Information Handbook: Practical tips for community workers, Community Legal Education Ontario, September 2013
8. Vancouver Justice Access Centre Evaluation Report, September 2014, BC Ministry of Justice, Family Justice Services Branch
9. Ab Currie, "The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012" (Canadian Forum on Civil Justice, 2013)
10. Community Legal Education Ontario, *Public Legal Education and Information in Ontario: Learning from a snapshot* (Toronto: December 2015)

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

Articles in Canadian academic journals

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

This article reports the preliminary findings from a recent survey of Ontario family lawyers of their perception of SRLs. Findings indicate that in 27% of family cases, one side have no lawyer at all and 21% of cases have no lawyer on either side. When lawyers were asked whether the number of family litigants without lawyers had increased in the previous five years, 37% indicated that there were "many more" such cases and 44% reported "more" cases. Respondents to this survey clearly believe that the inability to afford a lawyer, exacerbated by recent cuts to Legal Aid, is the primary issue with 65% reporting this as the most important reason and another 31% indicating that it is an important reason. 7% of lawyers reported that the most important reason for family litigants to have no lawyer is that they think that they can do as good a job as a lawyer and 19% think that a desire to directly confront one's former partner in court is a factor.

84% of lawyer respondents indicated that those without lawyers usually or always have unrealistic expectations at the start of a case, making settlement more difficult. Almost half (48%) reported that the party without a lawyer looks to them for advice or information "usually" or "always".

57% of the lawyers reported that judges treat those without lawyers "very well" and 31% believe judges provide "good treatment" to those without a lawyer. 90% of the lawyers reported that their clients sometimes or always express concern that the judge seems to favour the party without a lawyer. Finally, 85% of the respondents indicated that they provide some family services on the basis of "limited scope retainers".

2. Flaherty, M. "Self-Represented Litigants: A Sea Change in Adjudication" University of Ottawa, Faculty of Law Working Paper No. 1013-07, November 1, 2013

Self-represented litigants make up an increasingly large proportion of parties appearing before Canadian courts and tribunals. Where much of the literature looks at the administration of the legal system, including the role of court

administrators, the streamlining of procedures, and access to legal aid or duty counsel, this article focuses on the role of the adjudicator. In particular, rising numbers of self-represented litigants have changed our perception of the role of adjudicators and their obligation to remain impartial. Traditionally, adjudicators understood impartiality to require a strict prohibition on assisting any party, including self-represented litigants.

This article charts the evolution in the jurisprudence and shows that decision-makers are now balancing the obligation to remain impartial with a corresponding obligation to ensure a fair process, which often involves assisting self-represented litigants. This article offers a concept of 'substantive impartiality' as a new way to conceptualize the spectrum of active adjudicative approaches in cases involving self-represented litigants. The notion of 'substantive impartiality is a rethinking of traditional approaches to adjudicative duties such as impartiality, which is ill-equipped to meet the challenges posed by self-represented litigants.

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

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

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

4. Paul Vayda <u>"Chipping Away at Cost Barriers: A Comment on the Supreme Court of Canada's Trial Lawyers Decision"</u> (2015) 36 Windsor Rev. Legal & Social Issues 207

In a recent decision, *Trial Lawyers Association of British Columbia v British Columbia (Attorney General),* the Supreme Court of Canada made significant comments on cost barriers and access to justice. Chief Justice Beverley McLachlin stated that access to justice is inadequate when the middle class cannot hope to pay legal fees that average $338 per hour. This leaves many Canadians the choice of representing themselves in court, or giving up on access to justice.

Chief Justice McLachlin argued that this situation threatens the public's confidence in the Canadian justice system: "[w]e can draft the best rules in the world and we can render the best decisions, but if people can't have **access** to our body of law to resolve their own legal difficulties, it is for naught."

Chief Justice McLachlin addressed two issues that she says undermine public confidence: "First, there cannot be cost barriers that deny some citizens access to our courts; and second, lawyers and governments should not be complicit in limiting this access by imposing unaffordable legal fees or costs." (at 208)

5. Andrew Pillar <u>"Law and the Business of Justice: Access to Justice and the Profession/Business Divide"</u> (2014) 11 Journal of Law & Equality 5 – 33

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

to improve access, namely: (1) practice organization; (2) billing and profits; (3) advertising; and (4) legal education.

Selected Canadian news reports (legal and general press)

1. Hasham, A. <u>"Access to Justice: Help Coming for People Headed to Canada's Civil and Family Courts"</u>, The Toronto Star, February 5, 2014

The first step to getting around the complicated civil and family law systems in Canada is by providing better information to the public says SCC Justice Thomas Cromwell. The first recommendations to be implemented will probably be on the front end of the system, providing the public with the information needed to address problems quickly. There needs to be "a unified front end, a single point of entry so people can get to the appropriate place," says Justice Cromwell. Helping people resolve their legal problems as early as possible reduces not only the financial cost, but "the social cost of these festering problems." The Justice Education Society of B.C. has developed an online legal triage system — similar to one in the Netherlands — that invites people to answers a series of questions and then points them to the services they need. Another pilot project is putting legal information outreach workers into the civil courts to help people navigate the system and flag potential roadblocks.

2. McKiernan, M. <u>"Public Input Integral for Real Equal Justice"</u>, Law Times, News, December 30, 2013

The Canadian Bar Association's access to justice committee report outlines the "abysmal" state of access to justice in this country, and proposes 31 targets for the profession intended to transform the situation by 2030. A number of the report's targets rely on the CBA converting public anger into government action, with the authors calling for a return to 1994 legal aid funding levels by 2020, as well as eligibility expansion to cover all Canadians at or below the poverty line. Legal commentator Mitch Kowalski says he would like to have seen more focus on immediate, low-cost changes to the way law is practised in this country.

Julie Macfarlane of the NSRLP hopes the CBA's push for public engagement will result in a two-way conversation, something her own research on self-represented litigants has shown has been historically lacking. Macfarlane says

the issue of limited scope retainers is a microcosm of the legal profession's slow adaptation to system users' needs. She says many of her self-represented subjects made attempts to get help from lawyers without full representation, but were "baffled that lawyers wouldn't take their money" to perform discrete legal tasks.

3. "High Priced Justice", The Globe and Mail – Editorials, January 5, 2014

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

4. Bellaart, D. "City lawyer says she has solution for high cost of fees", Nanaimo Daily News, October 19, 2013

Waymark Law, the brainchild of long-time legal aid lawyer Denise Barrie, is an enterprise designed to give affordable legal guidance to those willing to self represent in court. For a growing number of people, the cost to hire a lawyer poses a dilemma: the need for justice, versus the risk of losing a case after spending thousands on legal bills. Rather than pay a hefty retainer, and steep legal bills, clients pay a flat $150 an hour to learn how to build a solid case to represent themselves.

5. Mulgrew I. "Access to justice can be impeded by cost of court transcripts, judge says" The Vancouver Sun, March 25, 2014

The B.C. Supreme Court has asked the provincial government to look at court transcript costs as a way of relieving some access-to-justice concerns for those in need. In a constitutional appeal to provide a transcript of a provincial court proceeding, Justice Bruce said that the application has raised serious and complicated issues about the adequacy of the government's actions to ensure access to justice for all persons regardless of their economic status. She referred to a Canada-wide effort underway with all levels of government

and court to ensure accessibility and an important issue with cost of litigation.

6. Doug Jasinski, "The Franchise" *Slaw* (12 February 2016)

New models for retail law firms are emerging. Doug Jasinski believes Axess "represents one possible path for the emergence of a National Law Brand – an entity that can readily be recognized as a "law firm" at heart. However he maintains that one is not shackled to all the baggage that a traditional law firm model often brings to bear, and takes full advantage of technology, branding, and a consistent service delivery model to effectively compete in low-margin service areas.

7. Donald Best, "Advice for Self-Represented Litigants: Part 1: Walking Away is Sometimes the Best Decision" *Donald Best* (March 2016)

People, who are forced to take their cases into their own hands due to high legal fees, see the legal system as one that is designed to allow lawyers to overwhelm and obliterate self-represented litigants. They view it such that discovering truth and justice does not matter to the courts.

8. Elliot Level, "Plain and Simple will Boost Access to Justice" *Canadian Lawyer* (12 October 2015)

There are two specific solutions that are proposed in this article to the access to justice problem: 1) An increase in plain language and 2) More administrative tribunals and tribunal-style rules for civil courts.

The first solution would allow for a better understanding of legislation, which would in turn foster benefit future relations such as landlords and tenants. The second proposes that if the rules of civil procedure were more alike to the rules of administrative tribunals, simpler and flexible, it would obtain fair results and provide a more educational experience for participants for the future.

9. John-Paul Boyd, "A2J DIY 5: Provide Some Services on a Flat-Rate Basis" ***Slaw*** **(12 February 2016)**

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

10. Ken Chasse, "A2J: Solving the Unaffordable Legal Services Problem by Changing Law Society Management Structure" ***Canadian Lawyer*** **(31 August 2015)**

Ken Chasse gives a "Top 10" list of the major defects plaguing provincial law societies in Canada. These issues serve to further exacerbate Canada's access to justice issues. Among others, this includes an unwillingness to attack the causes of difficult problems such as the unaffordability of legal services, because their primary loyalties are to their corporate clients and institutional employers, who are their major sources of income. The second half of the article deals with recommendations to curb these issues, and an analysis of why current initiatives have fallen flat.

11. Marshall Yarmus, "Do's and don'ts of small claims court", ***Toronto Sun*** **(7 January 2016)**

This article outlines some of the major points why people choose to self-represent in Small Claims Court and why a lack of understanding for procedure in the court system may mean losing a case for a self-represented litigant.

12. Sarah Burton, "What Self-Represented Litigants (Actually) Want", ***LawNow*** **(30 June 2015)**

As the numbers for self-represented litigants are being driven up, ignoring their needs will not solve the problem. Engaging in meaningful conversation and understanding what self-represented litigants are looking for, could be a move towards finding feasible solutions.

This article highlights that self-represented litigants want: clear and practical legal information; an explanation of the difference between information and legal advice; access to seminars and coaching; a different approach to legal services (i.e. limited scope retainers and non-lawyer assistance); and to be treated with respect

Canadian Reports & Lectures

1. Thomas Cromwell "Access to Justice: Towards a Collaborative and Strategic Approach" (Viscount Bennett Memorial Lecture) 2011

The problem: current A2J situation falls short of providing access to the knowledge, resources and services that allow people to deal effectively with civil and family legal matters. The Ontario Civil Legal Needs project found that 1 in 7 low and middle-class Ontarians with a civil legal problem in the past three years did not follow through with it because of cost. The presence of self–represented litigants in the courts adds to delay and cost and in some cases perhaps even may jeopardize the rights of other, represented litigants. 80% of the people surveyed in Ontario thought that the justice system favours the rich.

The National Action Committee on Access to Civil and Family Justice sees three key elements to reforming the legal system in order to provide better access to justice. These are: fostering engagement by all of the players with the issue of access to justice; fashioning a strategic (not piecemeal) approach; coordinating the efforts of all members to avoid duplication and to ensure that agreed upon priorities are receiving meaningful attention in a world of flat or diminishing resources.

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

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

case and lays out recommendations for what can be done to bring full access to justice to Canadians.

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

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

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

3. Buckley M. <u>Access to Legal Services in Canada: a Discussion Paper</u> April 2011, Action Committee on Access to Justice, Canadian Bar Association

Includes a list of needs identified by SRLs in studies including help with forms, understanding procedure, and a realistic expectation of what will happen. Includes in-person assistance. Singles out Law Help Ontario (Pro Bono Ontario) as a “unique program” combining self-help with duty counsel assistance. Also presents a critique of current self-help models – only useful

to those more educated, and requires in –person and institutional supports to be really effective. As well, self-help cannot replace legal assistance.

The report advocates for the maintenance of a small firm and solo practitioner model of legal services that enable representation in A2J and legal aid cases; entry point triage; and more opportunities for ADR. The "national agenda" requires looking at the distribution of public assistance using criteria that are not only income-based, but also related to impact. More national co-ordination of initiatives is needed. The report also includes the Canadian Bar Association recommendations on Legal Aid (2010) in an appendix.

4. <u>"How can legal services be changed to increase access to justice?"</u>
CBA Legal Futures Initiatives, October 21, 2013

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

Alternative structures are becoming realities outside private practice as well. British Columbia's *Civil Resolution Tribunal Act*, passed in May 2012, will create North America's first online tribunal to deal with small claims and strata property disputes.

It is hoped that alternate ways of doing business will improve access to justice. Outsourcing, unbundling and fixed fees may reduce costs for clients. Or they may have a softer impact: one US study that shows unbundled legal services "make little difference to outcome" but "enhance procedural fairness." The CBA's Reaching Equal Justice project takes a more cautious approach to limited scope retainers and recommends that they "are only offered in situations where they meet the meaningful access to justice standard." Mitch Kowalski suggests that capping lawyers' salaries would free up resources to be used in innovations and access to justice.

Some commentators have suggested that the law schools have a role to play in facilitating access to justice: through offering practical learning opportunities like pro bono work and legal clinic internships, and by ensuring more low-income students get an opportunity to enter the profession. The CBA's Reaching Equal Justice project envisions a multifaceted role for law schools, and recommends that all graduating law students "know that fostering access to justice is part of their professional responsibility." Professor Adam Dodek suggests that for access to justice to be a part of a Canadian lawyer's professional responsibility, it needs to be matched by a commitment to access to justice within lawyers' Codes of Professional Conduct.

The path to improving access to justice may differ based on how we conceive of A2J. Is it simply about keeping legal costs down, and providing alternatives to market-based legal services for those who need them? Or is it a more robust concept, requiring "that laws and remedies must be just, equitable, and sensitive to the needs of the poor and marginalized"?

5. Farrow, T. et al, <u>Addressing the Needs of Self-Represented Litigants in the Canadian Justice System</u>, A White Paper Prepared for the Association of Canadian Court Administrators, March 27, 2012

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

6. Malcolmson J. & Reid G. <u>British Columbia Supreme Court Self-Help Information Centre Final Evaluation Report</u>, August 2006,

The purpose of this pilot project was to design a self-help centre for SRLs that would facilitate access by offering advice, information, and education about procedures in the Supreme Court of British Columbia.

User characteristics (based on 35 user interviews)

- Five of every six users came to the Centre a single time.
- A significant majority of users report income at or below $2,000 a month. Majority 60% report income under $2000 a month.
- Over fifty per cent of Centre users report speaking a language other than English at home, with Asian languages dominating.
- Close to three-quarters of users report having both access to and an ability to use a computer.
- An overwhelming majority of users report they are not currently retaining the services of a lawyer, with more than three-quarters saying they could not afford a lawyer.
- 40% said they had had a lawyer at some time, and half this group said they could not afford to continue.
- More than three-quarters of services provided fall into the family law area. For brief service users, the breakdown between family and civil law services saw civil law users accounting for over 40 per cent of the total.

Users report that the Centre has saved them "time and grief". They say that they need to be treated with dignity and respect, and this is a difficult and complex process no matter how much help they receive.

7. Better Legal Information Handbook: *Practical tips for community workers*, Community Legal Education Ontario, September 2013

The handbook covers the fundamentals of designing accessible legal information systems for the public including: knowing your audience and writing for them; choosing the best format for your information; and usability testing and evaluating. It draws together the principles of plain language and design and gives practical advice on how to apply them.

8. Vancouver Justice Access Centre Evaluation Report, September 2014, BC Ministry of Justice, Family Justice Services Branch

Diverse demographics of client group (14% no high school grads, 15% high school grad, 17% college, 22% university) 63% less than $30,000, 12% over $50,000

Generally high satisfaction rates but only a bare majority thought that going to the JAC meant that their case went more smoothly in court, or their case went more quickly because they had been helped at the JAC and slightly more (64%) thought that they were better prepared to present their case because of the JAC. These numbers were slightly lower again for those with a lawyer.

Diversion rate 67% (but not clear if these people simply gave up?) 23% of those who had already started a court case did not continue/ were diverted (what does this mean?)

9. Ab Currie, "The State of Civil Legal Aid in Canada: By the Numbers in 2011-2012" (Canadian Forum on Civil Justice, 2013)

Legal aid in Canada has been a significant dimension of the response to the access to justice problem in Canada. There are 13 legal aid boards, one in each province and territory. Although the boards operate at arms-length from the government, government is the primary funder of legal aid. Legal aid has held its ground in terms of the amount of full services provided (approved applications) and has increased the number of duty counsel services. Without additional resources to repair the erosion caused by two economic recessions, legal aid will not be able to play the important, and perhaps key, role it might in enhancing access to justice in Canada.

10. Community Legal Education Ontario, *Public Legal Education and Information in Ontario: Learning from a snapshot* (Toronto: December 2015)

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

11. Boyd, John-Paul E. and Lorne D. Bertrand. "Comparing The Views Of Judges And Lawyers Practicing In Alberta And In The Rest Of Canada On Selected Issues In Family Law: Parenting, Self-Represented Litigants

<u>And Mediation"</u>. *Canadian Research Institute for Law and the Family* (2016)

This report draws on the findings of a survey, conducted by the Canadian Research Institute for Law and the Family, Professor Nick Bala and Dr. Rachel Birnbaum, of the participants at the 2014 National Family Law Program in Whistler, British Columbia, and compares the views of Alberta respondents with those from the rest of Canada on a number of issues, including parenting after separation, self-represented litigants, access to justice and mediation.

The report proposes a series of recommendations including: the utilization of unbundles services, the amendment of the Divorce Act; mandatory mediation where at least one party is self-represented; the provision of limited legal services in family law matters by paralegals; and, the use of standardized questionnaires by lawyers screening for domestic violence.

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24. “Standing up for themselves: self-represented litigants”, ABC Radio National Programs Law Report, April 3, 2014
25. Deborah L Rhodes, “Access to Justice: A Roadmap for Reform,” (2013-2014) 41 Fordham Urban Law Journal 1227
26. Risa E Kaufman et al, “The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel,” 45 Columbia Human Rights Law Review 772 (2013-2014)
27. Laura N Mancini, “Increasing Access to Justice for All: the Programs and Community Partnerships of the Adams-Pratt Oakland County Law Library and Their Impact on Self-Represented Litigants in Southeastern Michigan,” (2013) 14 Journal of Law & Society 65
28. Kristen M Blankley, “Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services,” (2013) 28 Ohio St J on Dispute Resolution 659
29. James E Cabral et al, “Using Technology to Enhance Access to Justice,” (2012) 26 Harvard Journal of Law & Technology 241

30. Jeanne Charne, “Celebrating the “Null” Finding: Evidence-Based Strategies for Improving Access to Legal Services,” (2013) 122 Yale L J 2206
31. Kevin M P O’Grady, “Making the Limited-Scope Relationship Work,” (2013) 35 Family Advocate 22
32. Forrest S Mosten, “Unbundling Legal Services Today – and Predictions for the Future,” (2013) 35 Family Advocate 14
33. Deborah L Rhode and Lucy Buford Ricca, “Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement,” (2014) 82 Fordham L Rev 2587
34. “Ensuring the Right to be heard for Self-Represented Litigants: Judicial Curriculum”, National Center for State Courts August, 8, 2013, pg 1-4
35. Julie Macfarlane, “Time to Shatter the Stereotype of Self-Represented Litigants,” (2014) 20 Dispute Res Mag 1
36. Judge Denise S Owens, “The Reality of Pro Se Representation,” (2013) 82 Supra
37. Richard W Painter, “Pro Se Litigation in Times of Financial Hardship – a Legal Crisis and Its Solutions,” (2011) 45 Fam LQ 45.
38. Meghan Lenahan, “DIY Forms Programs: Helping Unrepresented Litigants Navigate the Court System in New York” 18 AALL Spectrum 15 (2013-2014)
39. Stephen R. Crossland & Paula C. Littlewood, “The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession,” 65 S. C. L. Rev. 611 (2013-2014)
40. Elizabeth Chambliss, “Law School Training for Licensed Legal Technicians - Implications for the Consumer Market” 65 S. C. L. Rev. 579 (2013-2014)
41. The Honorable Chase T. Rogers, “Access to Justice: New Approaches to Ensure Meaningful Participation” *New York University Law Review* 90:5 (November 2015) 1447.
42. Dan Jackson & Martha F. Davis, “Gaming a System: Using Digital Games to Guide Self-Represented Litigants” (2016) Northeastern University School of Law Working Paper No. 252-2016.
43. Deborah Beth Medows, **“**Justice as a Luxury: The Inefficacy of Middle Class Pro Se Litigation and Exploring Unbundling as a Partial Solution” (2014) 29 BYU Journal of Public Law 29.
44. Stephanie H. Klein, “Mediating, Judging with Pro Se Parties: A Balancing Act”, *The Legal Intelligencer* (19 January 2016)

45. Richard Schauffler & Shauna Strickland, "The Case for Counting Cases" (2016) 51:2 Court Review 52.
46. Robyn M. Moltzen & Mary Pinard Johnson, "Outreach Beyond The Traditional Adapting Services to Promote Access to Justice", *American Association of Law Libraries Spectrum* 19:6 (April 2015) 24
47. The 2016 Justice Index

1. Hough, B. <u>"Self-Represented Litigants in Family Law: the Response of California's Courts"</u> California Law Review Circuit Summer (2010)

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

JusticeCorps recruits and trains 250 university students annually to augment court and legal aid staff who are assisting SRLs in court-based self-help programs in select locations throughout California. Students provide in-depth and individualized services to SRLs and assist litigants in completing pleadings under attorney supervision. The students also assisted in giving the litigant a better understanding of the court system.

The California Bar Association allows lawyers to provide limited scope assistance, where the services sought are limited to specific tasks.

Courts are changing the roles of court staff and judicial officers and their handling of cases with SRLs (see 2007 Report: Bench Guide on Handling Cases Involving Self-Represented Litigants)

2. Greacen J. <u>Effectiveness of Courtroom Communication in Hearings Involving Two Self Represented Litigants</u> Greacen and Associates for the Self Represented Litigants Network, published by the National Center for State Courts 2008

Empirical study involving surveys and observation protocols of 15 hearings with two SRLs in four courts (in states judged to be the most advanced in providing support to SRLs).

Data showed that (1) judges had a higher opinion of SRLs appearing before them in these individual cases than in surveys regarding "general impressions" of SRLs (2) SRLs had a high level of understanding about the legal and procedural issues (3) SRLs used effective communication skills (8.7 on a 10 point scale) (4) distinguished between procedural fairness of the hearing and the outcome (5) SRLs were less of a drain on court time than perceived (6) judges developed a range of effective communication practices with SRLs including asking questions, framing the issues, explaining the law, explaining their decisions, describing compliance and effects of non-compliance.

3. Rhode D. Access to Justice: An Agenda for Legal Education and Research Consortium on Access to Justice

Report of a meeting among academics and the newly created Obama office of A2J in US Justice Department. Describes lack of empirical research and need for more co-ordinated actions including using law school programs.

The report notes the lack of national data on numbers of SRLs; the lack of consistency or clarity in studies of impact of lack of representation on outcomes; the lack of research on long term or cluster impacts of involvement in legal action as SRL; the fact that 4/5 of Americans believe that the poor has a right to counsel and that their society is highly litigious: in this way, "stories displace statistics".

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

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

for a Day program offering limited legal assistance for participating in mediation.

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

5. Zorza, R. <u>Access to Justice: Challenges and Response</u> (National Center on State Courts 2009

A 2009 survey of judges showed that there was a 60% increase in cases with SRLs. More middle class coming without lawyers- these clients have higher expectations, get more frustrated.

Self help programs and courts are responding to this need in creative ways for ex: getting more volunteers, creating take away packages and fact sheets, working with local 411 service to provide referrals, workshops etc- emphasis on collaborative work with other agencies. When self-help programs are cut, studies show that almost 80% reported additional litigant confusion at the hearing, and 50% reported additional adjournments – costs go up. Most cost effective ideas include: law library partnering; unbundling; clerk and staff training- on what can and cannot be done to assist SRLs; judicial education- focus judicial education programs on SRL issues; justice corps student volunteer program- students work in the court to assist SRLS; plain English forms; translation of plain English forms.

6. Zorza, R. "<u>Self-Represented Litigants and the Access to Justice Revolution in the State Courts: Cross-Pollinating Perspectives toward a Dialogue for Innovation in the Courts and the Administrative Law System"</u> 29 J. Nat'l Ass'n Admin. L. Judiciary (2013)

There has been relatively little cross-pollination of ideas between the courts and the administrative law system on issues of A2J. This paper describes court-based innovations in response to the "tidal wave" of SRLs and their

impact on the administrative law system in order to lay groundwork for broader dialogue. Court innovations designed to improve access to the system itself (eg programs that assist litigants to prepare and file in person or electronically- standardized plain English forms, self-help centres, internet based information, document completion software, staff training in the appropriate role) are changing the role of courts from "case-deciding" to "accessing the system".

Zorza also describes innovations in staff training (for example guidelines to clarify when court staff should be giving information) and the use of unbundled legal services (Discrete Task Representation), and case management techniques for SRL cases. He identifies best hearing practices including:

- setting the stage- judges framing the subject mater, summarizing prior proceedings, presenting issues of present day proceedings, explaining the process that will be followed
- informing litigants that they will be asking questions/probing for more information, eliciting needed information with varied techniques
- allowing litigants to make initial presentations to the court
- breaking hearing into topics and making topics clear
- moving back and forth between parties in order to maintain control of the courtroom, and giving litigants an opportunity to be heard.

7. John Greacen, <u>The Benefits and Costs of Programs to Assist Self-Represented Litigants</u> Judicial Council of California Center for Families Children and the Courts 2009

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

Findings include: (1) providing services in a workshop to SRLs reduces the number of court hearings and the time of staff at the public counter; (2) courts that provide one-on-one support and information services to litigants save at least one hearing per case, and 5 to 15 minutes of hearing time for

every hearing held in the case and/or 1 to 1 ½ hours of court staff time related to providing assistance to SRLs and to reviewing and rejecting proposed judgments; (3) courts that provide assistance to SRLs to resolve cases at the first court appearance save future court hearings (note that on average, an individual who came to court for one hearing would spend approximately $80 in lost wages and/or child care); (4) providing a monthly seminar at which such litigants could get help with completing all of the forms, calculating child support amounts, and mediating child custody issues significantly reduced the length of time to hear self-represented domestic relations matters and the number of reopened cases dropped significantly.

8. Tom R. Tyler "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures" 22 Law & Society Review 103, 128 (1988)

Paper addresses two issues: (1) whether the justice of the procedures involved influences citizen satisfaction with outcomes and their evaluation of legal authorities; and (2) how citizens define "fair process" in such settings. Based on interviews with 652 respondents in Chicago with recent personal experiences involving the authorities (police or courts). Underlying dimensions of procedural justice include consistency, decision quality, bias suppression, and representation (voice).

As past studies have found, those receiving favorable outcomes think that the procedures used to get to those outcomes are fair. Consistency, accuracy, impartiality, and representation were the criteria that explained most of the variance in citizens' judgments about whether fair procedures were used. Impartiality was also important, but more in the form of subjective bias, the effort to be fair, and honesty. Procedures used for resolving disputes were more likely to be judged in terms of opportunities for input and consistency of treatment.

The major criteria used by citizens to assess process fairness are those aspects of procedure least linked to outcomes- ethicality, honesty, and the effort to be fair- rather than consistency with other outcomes. Ethicality is important to people because it relates to their self-respect.

Results suggest that there are shared cultural values about the meaning of procedural justice within the context of particular situations. These common

values facilitate the efforts of officials by suggesting the public concerns they ought to focus on to gain acceptance of their efforts by citizens.

9. Zimmerman, N. & Tom R. Tyler, "Between Access to Counsel and Access to Justice: A Psychological Perspective" 37 Fordham Urban Law Journal (2010) 473

Traditionally, increasing access to justice has been correlated with increasing access to legal counsel. The authors assess the American Bar's proposal to institutionalize a right to counsel in certain civil cases, and consider empirical knowledge in evaluating whether increased access to justice simply means increased access to lawyers. The article also considers the normative evaluations of both represented and self-represented litigants of the value of legal representation. They also ask whether being denied access to counsel influences the decision to proceed with a legal matter.

10. Engler, R. "Connecting self-representation to civil Gideon: what existing data reveal about when counsel is most needed" 37 Fordham Urban Law Journal (2010) 38

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

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

11. Blasi, G. (2009) "Framing Access to justice: Beyond Perceived Justice For Individuals" 42 Loyola of Los Angeles Law Review (2009) 913

Blasi suggests that access to justice has been framed too narrowly as access to an individual to a lawyer or some form of legal assistance that will be a partial substitute to a lawyer, to help deal with a problem already framed in legal terms. Instead, he suggests, access to justice should be framed to include exploring legal options where these are not immediately apparent, and including both procedural justice and outcomes.

This broader frame for access to justice would include (1) claim making; (2) legal organizing and coordination to overcome collective action problems and to assert group claims; and (3) monitoring and enforcement, which would include legal and investigative assistance to monitor and enforce compliance.

12. Applegate A. & Beck C. <u>"Self-Represented Parties in Mediation: 50 Years Later it Remains the Elephant in the Room"</u> 51(1) Family Court Review (2013) 87

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

13. Froomkin, D. <u>"U.S. Ranks Low in Access to Justice Compared to Other Wealthy Nations"</u> Huffington Post, November 28 2012

The U.S. is ranked extremely low relative to its high-income peer nations in relation to access to legal counsel in civil disputes and protection under criminal law. The World Justice Project found that in some categories the U.S. ranked lower than some developing nations. One obvious difference between the U.S. and other countries such as Finland that ranked higher is that, legal services are much more widely available, and subsidized, for low-income

people. The survey's authors said they still see police discrimination against minorities in many countries. Nations in the Middle East still struggle with fundamental rights -- though there has been significant improvement in Morocco and Tunisia. China continues to rank very poorly on issues including freedom of speech and assembly, government accountability and corruption. The five countries that ranked worse on fundamental rights were Pakistan, China, Uzbekistan, Zimbabwe and Iran.

14. Moorhead, R. "How to Improve Access to Justice: the Legal Services Corporation Tech Summit Report 2013", Lawyer Watch, January 1, 2014

The US Legal Services Corporation is leading an initiative that seeks to maximize the potential for effective assistance to be provided through technology. The report draws on a strategy developed from a summit of experts and interested parties, which seeks to develop a coherent set of priorities for tackling access to justice problems. The following topics are explored in the report: document assembly for self-represented litigants; better "triage"—that is, identification of the most appropriate form of service for clients in light of the totality of their circumstances; increased use of mobile technologies; remote service delivery; the development of expert systems and checklists; and the expansion of unbundled legal services.

15. Mui, S. "Should small firms be the ones to close the access-to-justice gap? How to be a great local counsel", ABA Journal Law News Now, November 22, 2013

The New York City bar Association has announced a New Lawyer Institute, offering a year-long comprehensive CLE curriculum for 2014 law grads, and a law firm incubator that would "enable new lawyers to address the unmet civil legal needs of the middle class while developing their own sustainable professional practices." "Access to justice is a problem for the profession, but it's one that all lawyers share," Carolyn Elefant writes. "For that reason, I think that we need to divorce our conversation about access to justice from the problem of unemployment and starting a law practice. Not only is it unfair to view solo practice as the solution to access to justice, but we also cheat the entire profession by confining solo practice to low-bono work rather than encouraging them to explore new avenues for growth that in the long run might expand more meaningful access to justice."

16. Johnson, A. "Arkansas Access to Justice Commission Releases Recommendations for Addressing Pro Se Needs", Arkansas Access to Justice November 19, 2013

The Arkansas Access to Justice Commission has released a comprehensive set of recommendations for addressing the legal needs of the growing number of Arkansans who are unable to afford to pay for representation in civil cases that deal with such basic needs as family stability, health care, and economic security. Funded by a 2012 technical assistance grant from the State Justice Institute, the study was completed earlier this year by Greacen Associates, LLC.

17. Maryland Courts, Task Force to Study Implementing a Civil Right to Counsel in Maryland, Maryland Access to Justice Commission, October 1, 2013

The Task Force to Study Implementing a Civil Right to Counsel in Maryland was established by the General Assembly of Maryland through the enactment of Senate Bill 262 will study the current resources available to assist in providing counsel to low–income Marylanders compared to the depth of the unmet need; study whether low–income Marylanders should have the right to counsel at public expense in basic human needs cases; study alternatives regarding the currently underserved citizenry of the State and the operation of the court system; study how the right to counsel might be implemented in Maryland; study the costs to provide meaningful access to counsel and the savings to the court system and other public resources; study the possible revenue sources; and provide recommendations in a report by October 1, 2014.

18. Columbia Law School Human Rights Clinic, Access to Justice: Ensuring Meaningful Accessing to Counsel in Civil Cases, August 2013

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

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

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

19. Joseph A. Sullivan, "United States: Civil Gideon And Access To Justice", January 15, 2014

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

20. Zorza, R. "Attorneys General Kennedy and Katzenbach Articulated Access to Justice Vision in 1964", January 29, 2014

Attorney General Robert Kennedy spoke at University of Chicago Law School in 1964 urging broader responsibilities upon lawyers. He stated that, rarely if

ever do the best lawyers and the best law firms work with the problems that beset the most deprived segments of our society. He further argued that, "First we have to make law less complex and more workable… (S)econd we have to begin asserting rights which the poor have always had in theory… (T)hird, we need to practice preventive law on behalf of the poor…Fourth, we need to develop new kinds of legal rights in situations that are not now perceived as involving legal issues." Kennedy went on to argue that there must be new techniques, new services and new forms of inter-professional cooperation to match our new interests. There are signs too that a new breed of lawyers is emerging, dedicated to using law as an instrument of orderly and constructive social change.

21. Knowlton, N.A. "High Numbers of Self-Represented Litigants Left Underserved by Family Courts", IAALS Online, February 7, 2014

Figures show that over half of all civil and family law litigants in 2013 were self-represented—specifically, 63 percent in civil cases and 60 percent in family law cases. People that are unrepresented are at a great disadvantage and is almost always detrimental to their interests; it deprives judges from receiving all the information they need to make just and fair judicial rulings; and it clogs court dockets and delays justice for all court users.

22. Thorpe, S. "Broadening citizens' access to justice", Detroit Legal News, March 28, 2014

In partnership with the Michigan State Bar, the Access to Justice Campaign to raise funds to improve access to justice for low-income people with civil legal needs. The percentage of Michigan's population eligible for free legal aid increased by 59 percent from 2000 to 2011 and nonprofit legal aid programs must turn away about half of all those who have requested assistance. Moreover, funding for legal assistance has decreased with the number of people living below poverty increased by 50 percent from 2000. While there is a right to counsel for criminal matters, the same does not exist in civil cases. A voluntary Pro Bono Standard has been adopted by the State Bar of Michigan requiring all active members of the bar to deliver pro bono legal services to the poor each year. The Bar has also developed a presentation on their website called 'A Lawyer Helps' where they outline the programs.

23. Sloan, K. "ABA Jobs Corps Targets Access to Justice 'Paradox'", National Law Journal, March 27, 2014

The American Bar Association will pay $5000 - $15000 to organizations that come up with innovative ways to match unemployed law school graduates to unmet legal needs for the poor. Law schools were urged to submit proposals and reward the best ideas with financial support.

24. "Standing up for themselves: self-represented litigants", ABC Radio National Programs Law Report, April 3, 2014

Self-represented litigants are increasing as legal fees are increasing in civil and family court systems. Self-represented litigants explained their frustration with the confusing and stressful court system. While John (the self-rep featured in this piece), received some assistance in preparing his case he found the system very complex. There are measures in place to assist self-represented litigants, including judges however such measures are limited as the integrity of the adversarial system must be protected. Further, the article elaborates on the importance of managing expectations such as delays. Approximately 30 percent of trials in Family Court involve unrepresented litigants, which is indicative of the importance of addressing the lack of access to justice.

25. Deborah L Rhodes, "Access to Justice: A Roadmap for Reform," (2013-2014) 41 Fordham Urb L J 1227

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

Financial: Cites statistics from Legal Services Corp. showing that there is one legal aid lawyer per 6,415 low-income individuals and that legal aid contributions amount to less than $1 a day for each person in the US. Analyzes studies and concludes that the US is more priced out of legal services than comparable countries.

Structural: Refers to a study by the American Bar Foundation regarding funding for civil legal services and cites a 2007 civil legal aid national survey

that found only 11 states had comprehensive programs to help SRLs. Notes a survey of divorcing parents that suggested lawyers hurt – not helped – their problems.

Doctrinal: Considers some effects of restrictive unauthorized practice of law rules despite literature suggesting they do not protect litigants and the limited availability of court-appointed counsel.

Political: Cites surveys showing widespread misconceptions about civil legal and the importance of lawyers. Also notes the role of the Bar in upholding unauthorized practice of law rules, opposing non-lawyer assistance, and sabotaging mandatory pro bono initiatives.

Suggests reform by using non-lawyers, matching cases with the most cost-effective service providers, enforcing a right to civil counsel, setting mandatory pro bono requirements of lawyers, promoting unbundled services, ensuring legal education, and researching what methods would be most effective.

26. Risa E Kaufman et al, "The Interdependence of Rights: Protecting the Human Right to Housing by Promoting the Right to Counsel" 45 Columbia Human Rights Law Review 772 (2013-2014)

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

The author evaluates the impact of legal representation on a right to housing, drawing on both qualitative accounts by litigants represented by legal aid in Wisconsin, and quantitative research surveys showing statistics that represented individuals have more favorable outcomes in family law, domestic violence, small claims, administrative agencies, and housing court disputes than unrepresented litigants. The paper discusses the challenges faced by SRLs regarding rights to housing and notes efforts to lobby for for a

right to housing (via constitutional litigation), and pilot programs such as in California, Maryland, Texas, Boston, and Wisconsin.

27. Laura N Mancini, "Increasing Access to Justice for All: the Programs and Community Partnerships of the Adams-Pratt Oakland County Law Library and Their Impact on Self-Represented Litigants in Southeastern Michigan" (2013) 14 Journal of Law & Society 65

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

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

28. Kristen M Blankley, "Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services" (2013) 28 Ohio St J on Disp Resol 659

The author reviews a number of studies showing the disadvantages of self-representation, including that SRLs are unfamiliar with the law and court procedure, that they have fewer research resources, that they may face bias from counsel and the court, that they may not understand alternatives to litigation, that they struggle to properly value their cases, and that they are more likely to lose than represented litigants. She canvasses how alternative dispute resolution techniques and limited scope representation can address

these concerns and form a new type of law practice. The paper provides concrete examples of services that could be offered, including coaching or representation for negotiations, settlements, and mediation, and facilitating arbitrations. Finally, the paper sets out policy reasons supporting the use of limited scope agreements or unbundled legal services: SRLs would gain valuable resources, it would encourage settlement, it would improve imbalances in bargaining power, SRLs would become more autonomous, and the legal services would be a good value.

29. James E Cabral et al, "Using Technology to Enhance Access to Justice," (2012) 26 Harvard Journal of Law & Technology 241

The author notes that the US has offered legal aid to the poor since 1964 and that Legal Services Corp. (LSC) has managed these services since 1974. Explains that LSC began exploring how technology can help unrepresented litigants in 1998 when it held its first summit on using technology to improve access to justice. LSC subsequently launched a Technology Initiative Grant (TIG) in 2000. By 2012, TIG had received more than $40 million in grants. In June 2012, LSC held a second summit on using technology to assist SRLs.

This volume contains six papers prepared for the 2012 summit. The first canvasses successful efforts in delivering legal services through the internet. The second looks at barriers to new technologies for SRLs and legal services. The third considers how poor people may access legal services through mobile technology. The fourth canvasses e-filing systems and suggests adopting open technological standards for applications for SRLs. The fifth looks at using technology to match a SRLs needs to the best available services. The sixth considers financial, managerial, personal, and ethical issues with adopting automated legal services applications.

30. Jeanne Charne, "Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services," (2013) 122 Yale L J 2206

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

The author notes in particular three recent empirical studies that considered the effect of having access to a lawyer compared to access only to advice or other limited assistance. The first study considered unemployment insurance applicants appealing a denial or defending a challenger by an employer (see D. James Griener & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?* (2012) 121 Yale L.J. 2118). The second looked at tenants in a district court (see D. James Griener, Cassandra Wolos Pattanayak, & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in Massachussetts District Court and Prospects for the Future* (2013) 126 Harv L Rev 901) and the third looked at tenants in a county housing court (see D. James Griener, Cassandra Wolos Pattanayak, & Jonathan Hennessy, "How Effective Are Limited Legal Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court" (Sept. 1 2012) (unpublished manuscript) http://ssrn.com/abstract=1880078).

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

31. Kevin M P O'Grady, "Making the Limited-Scope Relationship Work" (2013) 35 Family Advocate 22

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

32. Forrest S Mosten, "Unbundling Legal Services Today – and Predictions for the Future" (2013) 35 Family Advocate 14

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

1. vertical unbundling, which covers specified legal services as required, such as for advice, research, drafting, ghostwriting, negotiations, appearances, etc., and
2. horizontal unbundling, which limits a lawyer's involvement to a specific issue or court process.

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

1. Offer services to SRLs (further references Stephanie Kimbro, "Serving the DIY Clients: A Guide to Unbundling Legal Services for the Private Practitioner" ABA 2010)
2. Give collaborative representation with other lawyers or an interdisciplinary team (further references Pauline Tesler, Collaborative Law, 2nd ed (ABA Section of Family Law, 2008) and Forrest S Mosten, Collaborative Divorce Handbook (Jossey-Bass, 2009), and
3. Serve mediation parties (further references James Coben and Peter N Thompson, "Disputing Irony: A Systematic Look at Litigation About Mediation" (Spr 2006) 11 Harv Neg L Rev 43).

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

33. Deborah L Rhode and Lucy Buford Ricca, "Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement" (2014) 82 Fordham L Rev 2587

This article provides a comprehensive overview of how the unauthorized practice of law doctrine has been enforced by bar associations over the past

ten years. It sets out statistical results from a 2013 survey and phone interviews with chairs of unauthorized practice of law committees, and other prosecutors, from 42 states and the District of Columbia. The paper describes and analyzes the total number of unauthorized practice of law complaints received (and from whom) and their outcomes. It also reviews 103 federal and state decisions where the enforcement of the unauthorized practice of law doctrine arose. The article ends with a call for reform to ensure that unauthorized practice offences emphasize the public interest instead of the interests of the legal profession.

34. <u>"Ensuring the Right to be heard for Self-Represented Litigants: Judicial Curriculum"</u> National Center for State Courts August, 8, 2013, 1-4

The curriculum highlights tools and techniques to help judges run their courtrooms effectively, comply with the law, maintain neutrality, and increase access to justice. It was designed to help judges handle the growing numbers of self represented litigants that are appearing in the nation's courtrooms. The curriculum is based on a 2008 judicial curriculum, developed by the Self Represented Litigation Network with funding from the State Justice Institute and launched at a Conference at Harvard Law School. It integrates the Presentation, Bench Guide, Handbook of Resource Materials and Handbook of Optional Activities (available at www.ncsc.org/atj-curriculum).

35. Julie Macfarlane, <u>"Time to Shatter the Stereotype of Self-Represented Litigants"</u> (2014) 20 Dispute Res Mag 14

Macfarlane's study of self-represented litigants (SRLs) found that dominant reason for high level of SRL in courts, particularly family courts, is the cost of legal services There is a general assumption that SRLs are deliberately creating difficulties, however, study found the contrary. Many spent long hours trying to prepare for court. It was also found at a dialogue event at the university of Windsor, whose attendees consisted of 45 justice system actors and 15 SRLs, dialogue was a success where both sides came to understand each other.

The study makes five recommendations for how legal and dispute resolution professionals can prepare for rising number of SRLs:

1) Recognize that the rise in the number of family SRLs is the responsibility of all members of the profession;
2) Be willing to listen to criticism and embrace the challenge of considering new ways to provide services to family clients;
3) Start sharing territory. Some services can be affordable if delivered by paralegals or other specialists;
4) Stop seeing themselves as information gatekeepers and instead help clients understand and appraise their options;
5) Make SRLs more aware of other options such as mediation and how to use dispute resolution effectively.

36. Judge Denise S Owens, "The Reality of Pro Se Representation" (2013) 82 Supra 147

This article discusses the various obstacles that prevent pro se representatives throughout a legal matter and makes a series of recommendations to address these issues. These recommendations include a proposal for a systematic approach to ensuring self represented litigants are informed and can realistically navigate the legal system without significant barriers.

37. Richard W Painter, "Pro Se Litigation in Times of Financial Hardship – a Legal Crisis and Its Solutions" (2011) 45 Fam LQ 45.

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

38. Meghan Lenahan, "DIY Forms Programs: Helping Unrepresented Litigants Navigate the Court System in New York" 18 AALL Spectrum 15 (2013-2014)

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

39. Stephen R. Crossland & Paula C. Littlewood, "The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession," 65 S. C. L. Rev. 611 (2013-2014)

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

40. Elizabeth Chambliss, "Law School Training for Licensed Legal Technicians - Implications for the Consumer Market" 65 S. C. L. Rev. 579 (2013-2014)

This article considers the status of Washington's licensed legal technician initiative and how a similar model could be adopted elsewhere. It argues that, while the Washington model faces obstacles such as lawyer resistance and unregulated competition, law school training for licensed legal technicians is a promising means for institutionalizing a nationally recognized, independent

paraprofessional brand, which itself could promote broader consumer access to routine legal services.

41. The Honorable Chase T. Rogers, "Access to Justice: New Approaches to Ensure Meaningful Participation" *New York University Law Review* 90:5 (November 2015) 1447

Brennan's Lecture discusses innovative approaches that courts are employing and developing to ensure that all participants in court proceedings have meaningful access to justice. These approaches include making the most of technological advancements to provide electronic access to information and to promote an understanding of the legal process, working with the legal community to provide representation to self-represented parties, examining the legal process in order to simplify procedures and better manage resources, and providing workable alternatives to traditional methods for resolving disputes.

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

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

43. Deborah Beth Medows, "Justice as a Luxury: The Inefficacy of Middle Class Pro Se Litigation and Exploring Unbundling as a Partial Solution" (2014) 29 BYU Journal of Public Law 29

It is critical that members of the legal community address the affordability issue of legal services. Unbundled legal services is one service delivery model

which, while not a panacea, offers a potential solution to the predicament of some pro se litigants who cannot afford full representation.

44. Stephanie H. Klein, “Mediating, Judging with Pro Se Parties: A Balancing Act”, *The Legal Intelligencer* (19 January 2016), online: www.thelegalintelligencer.com.

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

45. Richard Schauffler & Shauna Strickland, “The Case for Counting Cases” (2016) 51:2 Court Review 52.

There is a need for more current reports containing reliable and consistent statistics on the number of cases involving self-represented litigants. A proper quantification of the number of SRL caseloads would allow judges and court administrators to identify accurately where there are patterns of representation and assess if parties are obtaining representation at the most appropriate points, which in turn would increase their chances of success.

46. Robyn M. Moltzen & Mary Pinard Johnson, “Outreach Beyond The Traditional Adapting Services to Promote Access to Justice”, *American Association of Law Libraries Spectrum* 19:6 (April 2015) 24, online: www.aallnet.org.

Lawyers in the Library programs have become increasingly popular. Sessions are led by volunteer attorneys who discuss the legal issues and provides information about options and procedures for patrons. Appointments are

given through a lottery system upon which patrons receive an intake form. "The intake form provides a lengthy disclaimer about the program, including important statements that no attorney client relationship is created by this meeting, that there is no guarantee of privacy or confidentiality for the meeting, and that this service may assist both sides in a dispute." It has become a progressively popular service. In 2014, it assisted 265 patrons.

47. The 2016 Justice Index

The National Center for Access to Justice ("NCAJ") created the Justice Index to measure access to justice in the United States. The Justice Index uses data to report on, and urge improvements in, state justice systems. It compares states' performance based on findings in four categories: attorney access, self-representation, language access, and disability access.

The findings section includes resources specifically geared for SRLs. The NCAJ seeks to make courts more user-friendly for self-represented litigants.

SECTION C: OTHER JURISDICTIONS

1. Moorhead, R. and Sefton, M. (2005) Litigants in person. Unrepresented litigants in first instance proceedings Department for Constitutional Affairs Research Series 2/05 (England & Wales)
2. Access to Justice for Litigants in Person, Lord Chancellor's Civil Justice Council Working Group, 2011 (England & Wales)
3. Pleasance P and Balmer NJ "Mental Health and the Experience of Social Problems Involving Rights", 16(1) Psychiatry, Psychology and Law (2009)
4. Ackland, R. "Increase legal aid but lawyers must better their game", Sydney Morning Herald, September 13, 2013
5. Kuria, W. "Justice sector to set up electronic case management system in Rwanda", Humanipo, September 13th 2013
6. "Taylor Review recommends radical reform to Scottish civil litigation funding", Pinsent Masons, September 13, 2013
7. Access to Justice in Australian Courts - Inquiry Launched" TimeBase Online Legislation Research, October 24, 2013
8. Tyler, T. "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures" 22 Law & Society Review (1988)
9. Moore, D. "Cuts to legal aid deny hundreds of thousands access to justice in the UK", World Socialist Web Site, November 20, 2013
10. Robins, J. "Pro Bono Making a Splash", New Law Journal, November 14, 2013
11. Linton, L. "Intensified Efforts to Improve Access to Justice", Productivity: Pathway to Prosperity – Jamaica Information Service, January 10, 2014
12. Wangui, J. "Kenya Urged to Back Access to Justice as Global Standard", AllAfrica, January 30, 2014
13. "Access to Justice", Helvetas Swiss Inter-cooperation, Tajikstan, February 7, 2014
14. "Elements for Discussion: Access to Justice for Persons Living in Poverty: A Human Rights Approach", Ministry of Foreign Affairs of Finland, February 7, 2014
15. Neacsu, D. "Access to Justice - Issues of Comparative Law", Social Science Research Network, Contemporary Legal Institutions, Vol 2, October 29, 2010

16. Julie Grainger, "Litigants in Person in the Civil Justice System – learning from NZ, the US and the UK", The Winston Churchill Memorial Trust of Australia, 1 November 2013

17. Gabrielle Garton Grimwood, "Litigants in person: the rise of the self-represented litigant in civil and family cases in England and Wales" (14 January 2016) House of Commons Library Briefing Paper No. 07113

18. Bridgette Toy-Cronin "Keeping Up Appearances: Accessing New Zealand's Civil Courts Without a Lawyer" (PhD thesis)

19. "Access to Justice for Litigants in Person" Civil Justice Council Report and Recommendations to the Lord Chancellor, 2011 (England & Wales)

1. Moorhead, R. and Sefton, M. (2005) <u>Litigants in person. Unrepresented litigants in first instance proceedings</u> Department for Constitutional Affairs Research Series 2/05 (England & Wales)

Report explores detailed qualitative and quantitative data on SRLs from four courts in first instance civil and family cases (does not include small claims). Study shows prevalence and nature of SRLS and the impact of self - representation on themselves, the courts, and their opponents. The main findings of the study are:

1. SRLs were common. It was usually defendants who were unrepresented. Obsessive/difficult litigants were a very small minority of SRLs generally, but posed considerable problems for judges and court staff;
2. Unrepresented litigants were in fact partially represented (receiving some advice on, or assistance with, their case,);
3. Parties self represent for a range of reasons including choice and the lack of free or affordable representation. Even in small cases what was at stake was significant to the SRLs;
4. SRLs participated at a lower intensity but made more mistakes. Problems faced by SRLs demonstrated struggles with substantive law and procedure. There was other evidence of prejudice to their interests;
5. There was at best only modest evidence that cases involving SRLs took longer, though cases involving self represented parties were less likely to be settled
6. Judges recognized that SRLs posed a challenge to the 'passive arbiter' model of judging and responded to that challenge with varying degrees of intervention.
7. Court staff recognized SRLs' needs but were unsure of what help was permissible because of the way the 'no advice' rule was managed

2. <u>Access to Justice for Litigants in Person</u>, Lord Chancellor's Civil Justice Council Working Group, 2011 (England & Wales)

Highlights include:

a. System designed for lawyers and problems for SRLs significant but "this reality" is kept "below the surface" because of the hope of most people that they will not need to come to court
b. Recommendations are about "making the best of a bad job" not solving the underlying problems

c. Use of term “unrepresented” is demeaning and assumes that the norm is representation by lawyers – prefer term SRL
d. The work of the Personal Support Units
e. Differentiation vexatious litigants and the vast majority
f. Impact of adversarialism on many SRLs is to experience it as hostile to them rather than “how the system works”. Leads to reluctance to discuss settlement with a representative on the OS
g. “Court technology efforts should be viewed from the perspective of SRLs”
h. Triage function generally devolves to clerical staff – are they best placed to do something identified as so critical?

3. Pleasance P and Balmer NJ <u>“Mental Health and the Experience of Social Problems Involving Rights”</u>, 16(1) Psychiatry, Psychology and Law (2009)

Using data collected by F2F interview in England and Wales and telephone survey in New Zealand, study shows correlation articulated by respondents between mental health issues and rights issues. Causes: people reporting mental health issues however described (self identification eg have you seen a doctor for stress?) reported higher levels of problems with rights issues (65% of this group compared with 32% of whole population). Also, notes a higher correlation among young people (85% compared to 32% above).

Consequences: in addition 26% of those reporting a problem also reported that it had led to stress-related illness, especially in relation to family breakdown, divorce and employment issues. “People frequently attribute mental health problems – in the form of stress related illnesses – to right problems.” 41% of those reporting initial mental health problems report that problems lead to stress compared to 4% of the rest.

4. Ackland, R. <u>“Increase legal aid but lawyers must better their game”</u>, Sydney Morning Herald, September 13, 2013

Much of the legal profession depends on government money to survive, topped up with interest on clients' funds held in lawyers' bank accounts - a sort of Robin Hood subsidy for legal services. Whenever ''access to justice'' is pitched as a reasonable-sounding national concern it's invariably put in terms of more resources - more legal aid, more lawyers, more judges. It is rarely, if

ever, put in terms of making useful justice reforms that undo the self-serving agenda of the legal profession.

When he was on the election trail the prospective attorney-general George Brandis went so far as to say, ''Legal aid is not properly to be seen as welfare; it should be seen as part of the rule of law''. That sort of purple flourish will not prevent him presiding over cuts to legal aid expenditure. That other rule-of-law man John Howard put the butter knife through legal aid in 2006, slicing the Commonwealth expenditure in half. The effect was devastating. Private solicitors abandoned legal aid work in droves; money was diverted from family law; self-represented litigants choked the courts; representation for welfare, domestic violence, migrants and Aboriginal cases was harder to come by.

5. Kuria, W. <u>"Justice sector to set up electronic case management system in Rwanda"</u>, Humanipo, September 13th 2013

The system is designed to digitized every step of a case, hoping to reduce case duration period and reduce bureaucratic costs in the long-term. Individuals will be able to access their case online and track its progress before attending the court on the day of trial.

The project is expected to have 2,500-3,000 users and cost around US$7 million within the first five years, with the first two years as pilot. The main objective of the JRLOS is to strengthen the rule of law and ensure accountable governance and a culture of peace.

6. <u>"Taylor Review recommends radical reform to Scottish civil litigation funding"</u>, Pinsent Masons, September 13, 2013

The Taylor Review, conducted by former Sheriff Principal of Glasgow and Strathkelvin James Taylor, sets out 85 recommendations for radical and substantial changes to the current system. Sheriff Principal Taylor said that his intention was to remove "obstacles" to access of justice, both in terms of the cost of litigation and recoverability of expenses. One of Taylor's recommendations is allowing solicitors to offer their clients 'no win no fee' agreements, under which their fee would be calculated as a percentages of the damages recovered. These agreements cannot currently be enforced by solicitors but third party claims management companies (CMCs) can enter

into them with their clients. The report also recommended the introduction of qualified one-way costs shifting (QOCS) in personal injury cases, meaning that the party bringing a personal injury claim should generally no longer run the risk of having to pay the other side's legal expenses if the court action fails.

7. <u>"Access to Justice in Australian Courts - Inquiry Launched"</u> TimeBase Online Legislation Research, October 24, 2013

The Australian government Productivity Commission has released a recent paper titled, "Access to Justice Arrangement", which looked at Australia's civil dispute resolution system focusing on constraining costs and promoting access to justice and equality before the law, looking at:

a. The current costs of accessing justice services and securing legal representation;
b. Recommendations on the best way to improve access to the justice system and equity of representation including, but not limited to, the funding of legal assistance services;
c. Alternative mechanisms to improve equity and access to justice and achieve lower cost civil dispute resolution, in both metropolitan areas and regional and remote communities, and the costs and benefits of these;
d. Reforms in Australian jurisdictions and overseas which have been effective at lowering the costs of accessing justice services, securing legal representation and promoting equality in the justice system; and
e. Data collection across the justice system that would enable better measurement and evaluation of cost drivers and the effectiveness of measures to contain these.

8. Tyler, T. "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures" 22 Law & Society Review 103, 128 (1988)

Paper addresses two issues: (1) whether the justice of the procedures involved influences citizen satisfaction with outcomes and their evaluation of legal authorities; and (2) how citizens define "fair process" in such settings. Based on interviews with 652 respondents in Chicago with recent personal experiences involving the authorities (police or courts). Underlying dimensions of procedural justice include consistency, decision quality, bias suppression, and representation (voice).

As past studies have found, those receiving favorable outcomes think that the procedures used to get to those outcomes are fair. Consistency, accuracy, impartiality, and representation were the criteria that explained most of the variance in citizens' judgments about whether fair procedures were used. Impartiality was also important, but more in the form of subjective bias, the effort to be fair, and honesty. Procedures used for resolving disputes were more likely to be judged in terms of opportunities for input and consistency of treatment.

The major criteria used by citizens to assess process fairness are those aspects of procedure least linked to outcomes- ethicality, honesty, and the effort to be fair- rather than consistency with other outcomes. Ethicality is important to people because it relates to their self-respect.

Results suggest that there are shared cultural values about the meaning of procedural justice within the context of particular situations. These common values facilitate the efforts of officials by suggesting the public concerns they ought to focus on to gain acceptance of their efforts by citizens.

9. Moore, D. "Cuts to legal aid deny hundreds of thousands access to justice in the UK", World Socialist Web Site, November 20, 2013

In April the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LAPSO) came into force. It seeks to reform the legal aid system in England and Wales with the aim of saving £350 million a year. The LAPSO legislation stipulates that numerous types of cases are no longer eligible for public funding, including welfare benefits, employment law, child contact, divorce, clinical negligence debt and housing law, except in very limited circumstances. The government admits that over 600,000 cases a year will no longer be funded. Furthermore, advice agencies are reporting they are now being limited in the types of advice they can provide, with nowhere else they can refer people to when they cannot help someone. Cuts to legal aid will affect the most disadvantaged and vulnerable, including those with disabilities and children and those living in rural areas. They will mean some law firms/solicitors will not be able to continue in practice.

10. Robins, J. "Pro Bono Making a Splash", New Law Journal, November 14, 2013

Cuts in public funding, legal aid cuts and the closure of three law centres—Birmingham, Streetwise and Leeds—has left the publicly funded sector in dire straits. Pro bono is not a replacement for public funds and can never fill the gap. There seems to be an increasingly uneasy relationship between the volunteer activities of the legal profession and access to justice. The not-for-profit legal sector now struggles to deal with the post-LASPO fall out as a result of the funding slash. The Personal Support Unit (PSU), which provides support for people facing legal proceedings without representation, reports a 40% rise in clients over the last 12 months. The number of people asking for help on family cases rose by a third before the implementation of LASPO. The courts will have to deal with a new generation of litigants in person. Yet there are only eight PSU offices in England and Wales. Before the introduction the modern legal aid scheme as part of the welfare state there was the Poor Man's Lawyer Service.

During the passage of LASPO, the Law Centre Network reckoned 18 Law Centres were in danger of closing—hardly surprising, as across the network, 40% of funding then came from local authorities and 46% from legal aid. So far three have closed..

Pro bono cannot be "a substitute for services withdrawn as a result of legal aid cuts", argued LawWorks; however it conceded there was "an argument for that message to be nuanced" given that legal aid was for social welfare law is "such a small resource". It would be a misunderstanding of the nature of what is essentially a volunteer activity to think it could ever "fill the gap".

11. Linton, L. "Intensified Efforts to Improve Access to Justice", Productivity: Pathway to Prosperity – Jamaica Information Service, Jamaica, January 10, 2014

The Ministry of Justice has pushed forward for a number of initiatives aimed at enhancing access to justice for Jamaicans. It has been the first time in 51 years that the Court of Appeal has sat in the town of Lucea on a case. This new development to bring justice to people where they reside aims to improve access. The Ministry of Justice has expanded its civil jurisdiction to enable citizens to enforce their legal rights in their home parish courts, rather than having to travel to the Supreme Court in Kingston. The Ministry has also rolled out its Restorative Justice Programme by opening three centres in February. The upgrading and construction of new courts and Legal Aid

Clinics are under way as well. Jamaica has also advanced technological innovation in case management software systems, court reporting, as well as providing new computers, laptops and high-end servers in courts.

12. Wangui, J. <u>"Kenya Urged to Back Access to Justice as Global Standard"</u>, AllAfrica, Kenya, January 30, 2014

Legal lobby group Kituo Cha Shera in Nairobi has urged the government to recommend the inclusion of "Access to Justice" as a target in the coming year. Gertrude Angote, the Executive Director, explains that the goal is to ensure the poor and marginalized can access legal services. She has urged the National Assembly to commence this initiative by approving the Legal Aid Bill. While referring to the recent incidents of the alleged harassment of women by Governors, the legislator observed that the proposed Bill would be a key to fighting impunity.

13. <u>"Access to Justice"</u>, Helvetas Swiss Intercooperation, Tajikstan, February 7, 2014

In co-operation with UNDP Tajikistan, HELVETAS Swiss Intercooperation is implementing an Access to Justice Project started in 2012, financed by the Swiss Agency of Development and Cooperation (SDC). The project contributes to improved access to justice by supporting the Tajik government's efforts to reform its judicial and legal system as well as provide legal assistance and raise legal awareness among the population. Until the end of 2016, the project will promote and develop local capacities and facilitate a dialogue between legal aid providers and the Government in the drafting of a Legal Aid Bill. It will continue to provide institutional and financial assistance to local legal aid providers focusing on their institutional, operational and financial sustainability. At a community level the concept of paralegals will be expanded to complement professional legal assistance.

14. <u>"Elements for Discussion: Access to Justice for Persons Living in Poverty: A Human Rights Approach"</u>, Ministry of Foreign Affairs of Finland, February 7, 2014

The Ministry of Foreign Affairs in Finland analyzes a full range of obstacles that prevent poor women and men face from seeking or receiving justice, and how people can be empowered to claim these rights. The report contains

recommendations for the development of cooperation among professionals on effective ways to support A2J and the rule of law in developing countries, moving beyond traditional legal empowerment approaches.

15. Neacsu, D. <u>"Access to Justice - Issues of Comparative Law"</u>, Social Science Research Network, Contemporary Legal Institutions, Vol 2, October 29, 2010

Access to justice is the fundamental principle of organization for any democratic legal system, as enshrined in all international documents, so has important significance both for procedural and constitutional law. Every individual's right to make claims against a party according to his own appreciation, thus, implying the State's correlative obligation of adopting effective remedies through its' competent institutions of justice, means the free access to justice. Any means of restricting free access to justice is a disregard of a fundamental constitutional principle and the universal international standards, in any real democracy.

16. Julie Grainger, <u>"Litigants in Person in the Civil Justice System – learning from NZ, the US and the UK"</u>, The Winston Churchill Memorial Trust of Australia, 1 November 2013

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

17. Gabrielle Garton Grimwood, <u>"Litigants in person: the rise of the self-represented litigant in civil and family cases in England and Wales"</u> (14 January 2016) House of Commons Library Briefing Paper No. 07113.

In England and Wales, there is evidence that the number of litigants in person ("LIPs") have increased significantly since the *Legal Aid, Sentencing and Punishment of Offenders Act 2012.* The act took many civil and private law children and family cases outside the margins of the legal aid. Evidence suggests that LIPs are now "qualitatively different" than in the past - that

they are no longer self-represented by choice, but because legal aid is not available to them.

18. Bridgette Toy-Cronin "Keeping Up Appearances: Accessing New Zealand's Civil Courts Without a Lawyer" (PhD thesis)

This qualitative research project investigated why more and more people go to court without a lawyer in New Zealand, their experience of litigating without a lawyer, and how the lawyers, judges and court staff perceive them and respond to them. Drawing on interviews with litigants, judges, lawyers and court staff, as well as in-court observations and review of court documents, the research analyzed the experiences and perspectives of the participants through the different stages of litigation. It concluded with various policy reforms and encouraged a re-evaluation of the stereotypical view that people who go to court without a lawyer have a "fool for a client.

19. "Access to Justice for Litigants in Person" Civil Justice Council Report and Recommendations to the Lord Chancellor, 2011 (England & Wales)

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

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