

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

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## **TABLE OF CONTENTS**

Part I: General	3
Section A:    Canada	3
Articles in Academic Journals	4
Selected News Reports (Legal and General Press)	7
Canadian Reports and Lectures	9
Section B:    United States	14
Section C:    Other Jurisdictions	25
Part II: Unbundling and Legal Coaching	31
Section A:    Canada	31
Section B:    United States	36
Section C:    Other Jurisdictions	40
Part III: Other Access to Justice Solutions	42
Section A:    Canada	43
Section B:    United States	45
Section C:    Other Jurisdictions	50

## **PART I: GENERAL**

### **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, Michelle. "Self-Represented Litigants, Active Adjudication and the Perception of Bias: Issues in Administrative Law (2015) 38 *Dalhousie Law Journal* 119.
3. Pillar, Andrew. "Law and the Business of Justice: Access to Justice and the Profession / Business Divide" (2014) 11 *Journal of Law and Equality* 5-33.
4. Salyzyn Amy, Isaj Lori, Piva Brandon, and Burkell Jacquelyn. "Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice" *Windsor Yearbook of Access to Justice* 2, November 2, 2016.
5. Semple, Noel. "The Cost of Seeking Civil Justice in Canada" (2015) 93 *The Canadian Bar Review*.
6. Vayda, Paul. "Chipping Away at Cost Barriers: A Comment on the Supreme Court of Canada's Trial Lawyers Decision" (2015) 36 *Windsor Review of Legal and Social Issues*, 207.

#### *Selected News Reports (Legal and General Press)*

1. Anton, Suzanne. "The Attorney General's Page" *The Advocate*, February 20, 2017.
2. Best, Donald. "Advice for Self-Represented Litigants: Part 1: Walking Away is Sometimes the Best Decision" *Donald Best*, March, 2016.
3. Boyd, John-Paul. "A2J DIY 5: Provide Some Services on a Flat-Rate Basis" *Slaw*, February 12, 2016.
4. Burton, Sarah. "What Self-Represented Litigants (Actually) Want" *LawNow*, June 30, 2015.
5. CBC News. "Lawyer Offers Albertans Cheaper Legal Help Online" December 9, 2016.
6. "High Priced Justice" *The Globe and Mail Editorials*, January 5, 2014.
7. Level, Elliot. "Plain and Simple Will Boost Access to Justice" *Canadian Lawyer*, October 12, 2015.
8. Watson Hamilton, Jonnette. "How Persistent Does a Vexatious Litigant Have To Be?" *University of Calgary Faculty of Law*, July 27, 2011.

#### *Canadian Reports & Lectures*

1. Boyd, John-Paul and Bertrand, Lorne. "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 Family*, 2016.
2. British Columbia Ministry of Justice, Family Services Branch "Vancouver Justice Access Centre Evaluation Report" September, 2014.

3. Buckley, M. "Access to Legal Services in Canada: A Discussion Paper" Action Committee on Access to Justice – Canadian Bar Association, April, 2011.
4. Buckley, Melina. "Evolving Legal Services: Review of Current Literature" Community Legal Education of Ontario, December, 2013.
5. Canadian Bar Association Legal Futures Initiative. "How Can Legal Services be Changed to Increase Access to Justice?" October 21, 2013.
6. 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.
7. Community Legal Education Ontario. "Better Legal Information Handbook: Practical Tips for Community Workers" September, 2013.
8. Community Legal Education Ontario. "Public Legal Education and Information in Ontario: Learning from a Snapchat" December, 2015.
9. Cromwell, Thomas. "Access to Justice: Towards a Collaborative and Strategic Approach" Viscount Bennett Memorial Lecture, 2011.
10. 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.
11. Macfarlane Julie, Gill Gurleen, and Riley Thompson Piper. "Tracking the Continuing Trends of the Self-Represented Litigants Phenomenon: Data from the National Self-Represented Litigants Project, 2015-2016" The National Self-Represented Litigants Project.

*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 has 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, Michelle. “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.

**3. Pillar, Andrew. “Law and the Business of Justice: Access to Justice and the Profession/Business Divide” (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.

**4. Salyzyn Amy, Isaj Lori, Piva Brandon, and Burkell Jacquelyn. “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice” Windsor Yearbook of Access to Justice 2, November 2, 2016**

The authors sought to determine what in particular makes court forms difficult for non-legally trained people to complete. Rather than using a traditional conception of literacy, the authors utilized a functional literacy approach to shift the focus of the literature away from an individual’s ability to read, towards the ability of individuals to meet the particular task demands associated with court forms. The authors analyzed the following four forms: a Plaintiff’s Claim (Form 7A), that an individual needs to initiate a claim in Small Claims Court, a Form T2-Application, that an individual needs when seeking relief against a landlord before the Landlord and Tenant Board, and an Application (General – Form 8) and Financial Statement (Property and

Support Claims, Form 13.1), that an individual would need to seek a contested divorce, that would include a contested spousal support claim and the division of property.

The authors found that the challenges inherent in court forms include the difficulty in generating information which requires expert legal knowledge, inferring the meaning of technical legal terms, and moving between multiple information sources while completing court forms. There are also many “distractors” contained in court forms that risk confusing readers, such as broad requests for information, or the use of unclear terms. Although associated court guides provide some guidance, the authors found that the guides were often incomplete, and also potentially difficult to access, due to the overall complexity of the guide themselves as well. The work concludes with a preliminary discussion of possible solutions to the issue of court form complexity, including court form redesign, the use of dynamic electronic forms, and the provisioning of unbundled legal services.

### **5. Semple, Noel. “The Cost of Seeking Civil Justice in Canada” (2015) 93 The Canadian Bar Review**

This article compiles empirical data about the monetary, temporal, and psychological costs that confront individual justice-seekers in Canada and proposes a taxonomy of the private costs of seeking justice. The analysis is derived from the interview data conducted by the NSRLP National SRL Study in 2013. The study also offers a few hints that the private costs associated with family law are higher compared to other civil legal needs.

The author argues that a costs-based analysis that includes monetary, temporal, and psychological costs can move access to justice forward in two ways. First, it can help public sector policy-makers identify ways to reduce those costs, either with or without new funding. Second, it can also help lawyers and entrepreneurs identify new, affordable ways to reduce the costs that are most onerous to individual justice-seekers, who have many different legal needs. The author concludes as follows: “The monetary, temporary, and psychological costs of seeking civil justice in this country are high, and indeed often prohibitive for individuals. However, there is enormous potential for creative policy-making and innovative legal practice to decrease these costs, and thereby make civil practice more accessible to Canadians”.

### **6. Vayda, Paul. “Chipping Away at Cost Barriers: A Comment on the Supreme Court of Canada's Trial Lawyers Decision” (2015) 36 Windsor Review of Legal and 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".

*Selected Canadian News Reports (Legal and General press)*

### **1. Anton, Suzanne. "The Attorney General's Page" The Advocate, February 20, 2017**

The Honourable Suzanne Anton argues that innovation is key to addressing access to justice issues. She asserts that the approach of the Ministry of Justice in British Columbia to combatting issues of cost, complexity, and delay is by supporting existing institutions and programs, while also exploring for new and innovative ways of resolving legal disputes. Innovation is at the forefront of the Ministry's endeavours. In planning, pursuing, and implementing innovative initiatives, the Ministry has been guided by two elements: to obtain a fundamental change in the user's service experience that results in a significant, measurable increase in user satisfaction, and a significant, measurable reduction in costs, complexity, and delay when comparing the traditional service to the transformed service.

The Ministry's efforts are informed by The Hague Institute for Internationalization of Law Innovation Process, which is structured around the following six pillars:

1. Engage citizens early and often to ensure that their needs are understood.
2. Seek out different perspectives from beyond the justice sector – many issues dealt within the justice system are not solely specific to justice itself.
3. Remain open and flexible to possible solutions rather than landing on an easy answer that may not meet desired outcomes in the longer term.
4. Have a clear vision and enlist prominent and persuasive allies to promote your vision.
5. Have a solid business rationale that articulates potential economic benefits (including costs and savings) and the sustainability of innovation.
6. Implement, monitor, measure, report on results, and make necessary adjustments as you learn.

The Honourable Suzanne Anton concludes that innovation improves access to justice, as "we cannot solve the issues facing the justice system today by doing things the way we did them yesterday".

### **2. Best, Donald. "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.

**3. Boyd-John Paul, “A2J DIY 5: Provide Some Services on a Flat-Rate Basis” Slaw, February 12, 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.

**4. Burton, Sarah. “What Self-Represented Litigants (Actually) Want” LawNow, June 30, 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.

**5. CBC News. “Lawyer Offers Albertans Cheaper Legal Help Online” December 9, 2016**

Sarah Bisbee, a lawyer from Brooks, Alberta, is offering legal services online, for a fraction of the cost, as a part of a growing movement of do-it-yourself legal representation. Bisbee was inspired by the many individuals with sad stories who would contact her and later on inform her that they could not afford her \$300 hourly services. Bisbee realized that most of the hourly fee was going to overhead costs, so she decided to begin an online law practice. Now, Bisbee offers potential clients a \$79 online consultation, and from there, clients can choose what kind of help they want from her, as a lawyer, if any.

**6. “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?

**7. Level, Elliot. “Plain and Simple Will Boost Access to Justice” Canadian Lawyer, October 12, 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 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.

**8. Watson Hamilton, Jonnette. "How Persistent Does a Vexatious Litigant Have To Be?" University of Calgary Faculty of Law, July 27, 2011**

*Wong v Giannacopoulos* (2011 ABCA 206) illustrates some of the weaknesses in the current vexatious litigant provisions in Alberta, as a vexatious litigant can keep bringing applications for leave subsequent to a judicial declaration of their status as a vexatious litigant. *Wong v Giannacopoulos* also suggests that vexatious litigant orders are only granted in extreme cases.

*Canadian Reports & Lectures*

**1. 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**

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 unbundled 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.

**2. British Columbia Ministry of Justice – Family Justice Services Branch. "Vancouver Justice Access Centre Evaluation Report" September, 2014**

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?)

**3. Buckley M. "Access to Legal Services in Canada: A Discussion Paper" Action Committee on Access to Justice - Canadian Bar Association, April, 2011**

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. Buckley, Melina. “Evolving Legal Services: Review of Current Literature” Community Legal Education of Ontario, December, 2013**

This literature review provides an overview and analysis of research findings on civil legal needs and the effectiveness of various forms of legal services delivery programs in providing meaningful access to justice, including PLEI (public legal education and information). The review’s focus is on research and reports that assess legal services on a rigorous basis, and on outcome-based evaluation, and on the processes and methodologies used in these studies. The purpose of this research is to provide context and background for researchers, to develop a framework for research, and to refine the research’s focus and research questions to ultimately guide the selection of methodologies and case studies for the ELSRP (Evolving Legal Services Research Project). This review also outlines the following for researchers: key lessons, a suggested approach to framing outcome measurements, a reframing of the research focus, and thoughts on site selection criteria.

#### **5. Canadian Bar Association Legal Futures Initiatives. “How can Legal Services be Changed to Increase Access to Justice?” 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”?

## **6. 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, the 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.

**7. Community Legal Education Ontario. “Better Legal Information Handbook: Practical Tips for Community Workers” 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. Community Legal Education Ontario. “Public Legal Education and Information in Ontario: Learning from a Snapshot” 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.

**9. Cromwell, Thomas. “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.

**10. 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**

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.

**11. Macfarlane Julie, Gill Gurleen, and Riley Thompson Piper. “Tracking the Continuing Trends of the Self-Represented Litigants Phenomenon: Data from the National Self-Represented Litigants Project, 2015-2016” The National Self-Represented Litigants Project**

The National Self-Represented Litigants Project collects information from self-represented litigants across Canada. This Report presents data from 73 respondents collected from April 1, 2015 to December 21, 2016. The Report examines the following variables: the gender, age, party status, first language, education level, and annual income level of self-represented litigants, whether their opposing party was represented by legal counsel, whether the self-represented litigants were involved in civil or family matters, which provincial jurisdiction and court level the self-represented litigants were involved in, whether they had prior experience with legal services or prior retention of legal representation in their present legal cases, whether they were comfortable in doing their own legal research, whether they were seeking (free, subsidized) legal assistance, the use of mediation, and whether self-represented litigants brought a support person with them to Court.

The data reveals that most self-represented litigants are lower income individuals. However, there is a significant proportion who earn closer to a middle-class income – this supports the theory that legal services are not seen as affordable. The data also reinforces the finding that when possible, Canadians prefer to be represented by legal counsel, but simply cannot afford to be, as the data indicates that more than half of those who report being self-represented began their case being represented by a lawyer, but could no longer retain legal counsel due to the high financial cost. Several self-represented litigants reported their frustration that they were unable to retain a lawyer to assist them with just even a part of their case, in a way that was realistic given their budget. The data demonstrates that self-represented litigants constantly seek out any resources or assistance that may bolster their case – many respondents sought out assistance from various pro bono and publicly funded legal resources. However, many self-represented litigants are still not bringing a support person with them to Court. The information also shows that many self-represented litigants feel confused and overwhelmed with the legal process, suspect bias and hostility due to their self-representation, and thereby feel a sense of disillusionment with the legal system and a resulting mistrust towards the justice system.

## SECTION B: UNITED STATES

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17. Rhode, Deborah L. "Access to Justice: A Roadmap for Reform" 41 Fordham Union Law Journal 1227, 2013-2014.
18. Rhode, Deborah, and Buford Ricca, Lucy. "Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement" 82 Fordham Law Review 2587, 2014.
19. Schauffler, Richard, and Strickland, Shauna. "The Case for Counting Cases" 51:2 Court Review 52, 2016.
20. Sullivan, Joseph A. "United States: Civil Gideon and Access to Justice" January 15, 2014.
21. The 2016 Justice Index.
22. The Honourable Rogers, Chase T. "Access to Justice: New Approaches to Ensure Meaningful Participation" New York University Law Review 90:5, November, 2015.

23. Tyler, Tom. "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures" 22 *Law and Society Review*, 103, 128, 1988.
24. Zimmerman, N, and Tyler, Tom. "Between Access to Counsel and Access to Justice: A Psychological Perspective" 37 *Fordham Urban Law Journal*, 2010.
25. Zorza, Richard. "An Overview of Self-Represented Litigation Innovation, Its Impact, and an Approach for the Future: An Invitation to Dialogue" 43(3) *Family Law Quarterly*, February, 2009.

**1. Applegate, A and Beck C. "Self-Represented Parties in Mediation: 50 Years Later It Remains the Elephant in the Room" 51(1) *Family Court Review* 87, 2013**

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.

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

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.

**3. Boston Bar Association Task Force on the Right to Civil Counsel. "The Importance of Representation in Eviction Cases and Homelessness Prevention" 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 is 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.

#### **4. Carpenter, Anna. “Active Judging and Access to Justice” February 9, 2017**

The article aims to contribute new data and a new conceptual framework to the study of how active judges engage with self-represented litigants. The frequency of active judging is analyzed in the context of a particular American court. Three dimensions of active judging were assessed: adjusting procedures, explaining law and processes, and eliciting information. The results reveal that all judges in the sample engage in at least one dimension of active judging. All of the judges in the sample were seemingly willing to adjust civil procedures to accommodate self-represented litigants. However, in regard to the other two dimensions, the judges' practices varied; the greatest variance occurred in eliciting information from self-represented litigants. Carpenter ends on an optimistic note by asserting that judges in this sample clearly see themselves as playing a significant role in facilitating fairness and access to justice for self-represented litigants – more research is needed to understand how other judges are responding to the self-represented litigant crisis to ultimately understand how different approaches of active judging affect individual litigants and the justice system as a whole.

#### **5. Columbia Law School Human Rights Clinic. “Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases”**

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.

## **6. Commission on the Future of Legal Services – American Bar Association. “Report on the Future of Legal Services in the United States” 2016**

Access to affordable legal services is critical in a society that depends on the rule of law. Yet, legal services are becoming more expensive, time-consuming, and complex – many who need legal advice are unable to hire a lawyer and are forced to represent themselves. In this Report, the American Bar Association proclaims that the Justice System is overdue for fresh thinking, technological changes, and innovation to address the lack of access to affordable justice. The American Bar Association wishes to inspire innovation, suggest new models for the regulation of legal services, encourage new methods for delivering legal services, educate lawyers, and to foster the development of financially viable approaches to delivering legal services that more effectively meet the public’s needs.

The American Bar Association is well positioned to lead this effort – the American Bar Association can inspire innovation, suggest new models for regulating legal services, encourage new methods for delivering legal services, and educating lawyers, foster the development of financially viable approaches to delivering legal services that more effectively meet the public’s needs. The American Bar Association set up the Commission on the Future of Legal Services, to examine the realities of the public’s lack of access to legal services. The Commission produced the following recommendations:

1. The legal profession should support the goal of providing some form of effective assistance for essential legal needs to all persons otherwise unable to afford a lawyer.
2. Courts should consider regulatory innovations in the area of legal services delivery.
3. All members of the legal profession should keep abreast of relevant technologies.
4. Individuals should have regular legal checkups, and the American Bar Association should create guidelines for lawyers, bar associations, and others who develop and administer such checkups.
5. Courts should be accessible, user-centric, and welcoming to all litigants, while ensuring fairness, impartiality, and due process.
6. The American Bar Association should establish a Center for Innovation.
7. The legal profession should partner with other disciplines and the public for insights about innovating the delivery of legal services.
8. The legal profession should adopt methods, policies, standards, and practices to best advance diversity and inclusion.
9. The criminal justice system should be reformed.
10. Resources should be vastly expanded to support long-standing efforts that have proven successful in addressing the public’s unmet needs for legal services.
11. Outcomes derived from any established or new models for the delivery of legal services must be measured to evaluate effectiveness in fulfilling regulatory objectives.
12. The American Bar Association should make the examination of the future of legal services part of their ongoing strategic long-range planning.

The Commission concludes that the solutions will require the efforts of all stakeholders in order to implement the recommendations.

**7. Engler, R. “Connecting Self-Representation to Civil Gideon: What Existing Data Reveals About When Counsel is Most Needed” 37 Fordham Urban Law Journal, 2008**

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?”

**8. Hough, B. “Self-Represented Litigants in Family Law: The Response of California’s Courts” 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)

**9. 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.

**10. Kaufman, Risa E, 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 a right to housing (via constitutional litigation), and pilot programs such as in California, Maryland, Texas, Boston, and Wisconsin.

**11. Klein, Stephanie. “Mediating, Judging with Pro Se Parties: A Balancing Act” The Legal Intelligencer, January 19, 2016**

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.

**12. Knowlton, N.A. “High Numbers of Self-Represented Litigants Left Underserved by Family Courts” Institute for the Advancement of the American Legal System 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.

**13. Macfarlane, Julie. “Time to Shatter the Stereotype of Self-Represented Litigants” 20 Dispute Resolution Magazine 1, 2014**

Macfarlane's study of self-represented litigants (SRLs) found that the 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, the 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 self-represented litigants is the responsibility of all of the 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 self-represented litigants more aware of other options such as mediation and how to use dispute resolution effectively

#### **14. Maryland Access to Justice Commission. "Maryland Courts Task Force to Study Implementing a Civil Right to Counsel in Maryland" 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.

#### **15. National Center for State Courts. "Ensuring the Right to be Heard for Self-Represented Litigants: Judicial Curriculum" August 8, 2013**

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.

#### **16. Rhode, D. "Access to Justice: An Agenda for Legal Education and Research" Consortium on Access to Justice**

This is a 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 coordinated 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”.

**17. Rhode, Deborah L. “Access to Justice: A Roadmap for Reform” 41 Fordham Urban Law Journal 1227, 2013-2014**

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.

**18. Rhode, Deborah, and Buford Ricca, Lucy. “Protecting the Profession or the Public: Rethinking Unauthorized-Practice Enforcement” 82 Fordham Law Review 2587, 2014**

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.

**19. Schauffler, Richard, and Strickland, Shauna. “The Case for Counting Cases” 51:2 Court Review 52, 2016**

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.

**20. Sullivan, Joseph A. “United States: Civil Gideon and Access to Justice” January 15, 2014**

The "Civil Gideon" movement, also known 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.

**21. 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.

**22. The Honourable Rogers, Chase T. “Access to Justice: New Approaches to Ensure Meaningful Participation” New York University Law Review 90:5, November, 2015**

This work 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.

**23. Tyler, Tom. “What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures” 22 Law and 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.

**24. Zimmerman, N, and Tyler, Tom. “Between Access to Counsel and Access to Justice: A Psychological Perspective” 37 Fordham Urban Law Journal, 2010.**

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.

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

Litigant-friendly innovations have thus far provided “win-win-win” situations to litigants, courts, and lawyers. These innovations ensure courts are more efficient, that lawyers enjoy more efficient proceedings, lawyers receive broader referral pools, and self-represented litigants

interact with a more accessible justice system. Examples of these innovations are outlined in the article. However, there continues to remain a need for greater transformative change in the justice system for self-represented litigants to access justice. Zorza outlines some of the significant issues inherent in the justice system. He asserts that the justice system is too complex, too expensive, and too time consuming. He further elaborates on the system's inability to deal with particular issues, like family law cases. Zorza suggests that a dialogue needs to take place between the justice system's stakeholders, particularly between the court and the bar to build a stable, more efficient systems that works for self-represented litigants, such as by discussing the availability of more cost-effective services.

## SECTION C: OTHER JURISDICTIONS

1. “Access to Justice for Litigants in Person” Civil Justice Council Report and Recommendations to the Lord Chancellor, England and Wales, 2011.
2. “Access to Justice in Australian Courts – Inquiry Launched” TimeBase Online Legislation Research, October 24, 2013.
3. Ackland, R. “Increase Legal Aid But Lawyers Must Better Their Game” Sydney Morning Herald, September 13, 2013.
4. Garton Grimwood, Gabrielle. “Litigants in Person: The Rise of Self-Represented Litigant in Civil and Family Cases in England and Wales” House of Commons Library Brief Paper No 07113, January 14, 2016.
5. Grainger, Julie. “Litigants in Person in the Civil Justice System – Learning from New Zealand, the United States, the United Kingdom” The Winston Churchill Memorial Trust of Australia, November 1, 2013.
6. Ministry of Foreign Affairs of Finland. “Elements for Discussion: Access to Justice for Persons Living in Poverty” February 7, 2014.
7. Moore, D. “Cuts to Legal Aid Deny Hundreds of Thousands Access to Justice in the United Kingdom” World Socialist Web Site, November 20, 2013.
8. Moorhead, R, and Sefton, M. “Litigants in Person: Unrepresented Litigants in First Instance Proceedings” Department for Constitutional Affairs Research Series – England and Wales, February, 2005.
9. Neacsu, D. “Access to Justice – Issues of Comparative Law” Social Science Research Network – Contemporary Legal Institutions, Volume 2, October 29, 2010.
10. Pleasance, P, and Balmer, NJ. “Mental Health and the Experience of Social Problems Involving Rights” 16(1) Psychiatry, Psychology, and Law, 2009.
11. Robins, J. “Pro Bono Making a Splash” New Law Journal, November 14, 2013.
12. The Law Society. “Litigants in Person: Guidelines for Lawyers” June, 2015.
13. Toy-Cronin, Bridgette. “Keeping up Appearances: Accessing New Zealand’s Civil Courts Without a Lawyer” (PhD Thesis).
14. Tyler, T. “What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures” 22 Law and Society Review, 1988.
15. Wangui, J. “Kenya Urged to Back Access to Justice as Global Standard” AllAfrica, January 30, 2014.

### **1. “Access to Justice for Litigants in Person” Civil Justice Council Report and Recommendations to the Lord Chancellor, England and Wales, 2011**

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 McKenzie 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.

## **2. “Access to Justice in Australian Courts – Inquiry Launched” 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 Australian’s civil dispute resolution system, focusing on constraining costs and promoting access to justice and equality before the law, looking at:

- The current costs of accessing justice services and securing legal representation.
- Recommendations on the best way to improve access to justice and equity of representation, including, but not limited to, the funding of legal assistance services.
- 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.
- 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.
- Data collection across the justice system that would enable better measurement and evaluation of cost drivers and the effectiveness of measures to contain these.

## **3. Ackland, R. “Increase Legal Aid But Lawyers Must Better Their Game” 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 trial 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.

**4. Garton Grimwood, Gabrielle. “Litigants in Person: The Rise of Self-Represented Litigant in Civil and Family Cases in England and Wales” House of Commons Library Brief Paper No 07113, January 14, 2016**

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 family cases outside the margins of the legal aid. Evidence suggest 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.

**5. Grainger, Julie. “Litigants in Person in the Civil Justice System – Learning from New Zealand, the United States, the United Kingdom” The Winston Churchill Memorial Trust of Australia, November 1, 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 on-line self-help strategies access to face-to-face assistance.

**6. Ministry of Foreign Affairs of Finland. “Elements for Discussion: Access to Justice for Persons Living in Poverty” 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.

**7. Moore, D. “Cuts to Legal Aid Deny Hundreds of Thousands Access to Justice in the United Kingdom” 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.

**8. Moorhead, R, and Sefton M. “Litigants in Person: Unrepresented Litigants in First Instance Proceedings” Department for Constitutional Affairs Research Series – England and Wales, February 2005**

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. Self-represented litigants were common. It was usually defendants who were unrepresented. Obsessive, or difficult litigants were a very small minority of self-represented litigants 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-represented 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 self-represented litigants;
4. Self-represented litigants participated at a lower intensity but made more mistakes. Problems faced by self-represented litigants 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 self-represented litigants took longer, though cases involving self-represented parties were less likely to be settled;
6. Judges recognized that self-represented litigants posed a challenge to the passive ‘arbiter’ model of judging and responded to that challenge with varying degrees of intervention;
7. Court staff recognized self-represented litigants’ needs, but were unsure of what help was permissible because of the way the ‘no advice’ rule was managed.

**9. Neacsu, D. “Access to Justice – Issues of Comparative Law” Social Science Research Network – Contemporary Legal Institutions, Volume 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.

**10. Pleasance, P, and Balmer, NJ. “Mental Health and the Experience of Social Problems Involving Rights” 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 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.

### **11. 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 centers— 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 Centers 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 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”.

### **12. The Law Society. “Litigants in Person: Guidelines for Lawyers” June, 2015**

These guidelines outline good practices for lawyers when they need to work with self-represented litigants. At times, the lawyer’s duty to the court and to the administration of justice will demand a lawyer to assist a self-represented litigant, such as by explaining the processes of the court. A list of resources is located in Annex B for lawyers to pass along to self-represented litigants in a manner that is unlikely to compromise the lawyer’s duty to their clients (these resources are specific to the United Kingdom). The work also contains an explanation to clients on how their lawyers will operate in a case involving a self-represented litigant, along with a guideline for self-represented litigants on how opposing lawyers are to treat them and what they can expect from opposing lawyers.

### **13. Toy-Cronin, Bridgette. “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”.

#### **14. Tyler, T. “What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures” 22 Law and Society Review, 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.

#### **15. Wangui, J. “Kenya Urged to Back Access to Justice as Global Standard” AllAfrica, 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.

## **PART II: UNBUNDLING AND LEGAL COACHING**

### **SECTION A: CANADA**

1. Boyd, John-Paul. “DIY A2J 4: Unbundle Your Services, Reinvent Your Billing Model” *Slaw*, December 5, 2016.
2. Canadian Bar Association – Alberta Branch. “The Limited Scope Retainer”.
3. Cheung, Kevin. “The Case for Limited-Scope Retainers” *Canadian Lawyer Magazine*, February 13, 2017.
4. Cooper, James. “Access to Justice for the Self-Represented Litigant” *Selfreplawyer.ca*, February, 2016.
5. Cunningham, April. “Unbundled Legal Services Fill Gap in Family Law” *Advocate Daily*
6. Gallant, Jacques. “Concept of ‘Unbundled’ Legal Services Gaining Support” *Toronto Star*, January 26, 2017.
7. Giroday, Gabrielle. “Fellow Will Focus on Helping Self-Represented Litigants” July 4, 2016.
8. Hendry, Mallory. “Unbundling for the Underserved Family Law Client” March 27, 2017.
9. Jerome, Amanda. “Alberta Research Project Aims to Study Impact of Unbundled Legal Services” *The Lawyer’s Daily*, April 20, 2017.
10. Mushtaq, Amer. “Exploring New Frontiers for the Delivery of Legal Services in Canada” *LawNow*, March 2, 2017.
11. Pinnington, Dan. “Unbundled Legal Services: Pitfalls to Avoid” *Slaw*, April 15, 2013.

#### **1. Boyd, John-Paul. “DIY A2J 4: Unbundle Your Services, Reinvent Your Billing Model” *Slaw*, December 5, 2016**

Boyd discusses the problems inherent with the comprehensive service billable hour model of practice, particularly that few clients are able to afford full legal representation and pay for start-to-finish legal services. Boyd then delves into the “unbundled alternative”, where a client can pick and choose particular tasks for a lawyer to accomplish, according to their needs and budgets. The author outlines typical unbundled tasks in family law matters: initial legal advice, second opinions, independent legal advice, drafting agreements, on-going advice (or coaching), assistance with court forms, guidance through the disclosure process, assistance with legal research, assistance with drafting, commenting on written arguments, conducting examinations for discovery, attending a client’s discovery, preparing desk-order divorce applications, or representation at trial. Boyd discusses his positive experiences with unbundling and how he likes unbundled work “a great deal more” than many of his full-service files. He advocates for a change in the profession’s resistance to unbundled legal work as many individuals wish to hire counsel on an unbundled basis, and by allowing individuals to do this, unbundling will improve access to justice. He concludes his work by providing tips and suggestions for lawyers who wish to attempt to take on some work on an unbundled basis.

#### **2. Canadian Bar Association – Alberta Branch. “The Limited Scope Retainer”**

This work acts as an introduction for lawyers to the notion of unbundled legal services, or in other words, to the limited scope retainer. The Honourable Jonathan Denis, former Minister of Justice and Solicitor General begins the work by noting the importance of unbundled legal services for self-represented litigants – limited scope retainers can help alleviate the strain of legal costs on individuals and the strain on the justice system where many truly do not access justice. In this work, the Canadian Bar Association also discusses the benefits of limited scope retainers for lawyers, the ethical and practical issues associated with limited scope retainers, how to limit the risks associated with limited scope retainers, the best practices in offering limited scope retainers, the public’s great desire for the availability of unbundled legal services, perspectives from the Bench on limited scope retainers, limited scope retainers in small practices, limited scope retainers in criminal law, innovations in the provision of Alberta’s Legal Aid Services, and the benefits and importance of pro bono work.

**3. Cheung, Kevin. “The Case for Limited-Scope Retainers” Canadian Lawyer Magazine, February 13, 2017**

Cheung begins his work by arguing that limited-scope services offer a way for lawyers to target unmet legal needs – many people do not seek full legal representation, and there is an unmet market of legal work that is being largely ignored as many lawyers do not proactively offer unbundled legal services. Unbundled legal services can also foster a strong lawyer-client relationship as the client is obtaining what they truly desire, and it can free up a lawyer’s time to pursue other work. Cheung also highlights the following three cautionary tips for lawyers to keep in mind when offering limited-scope services: a written retainer agreement must clearly define the scope of work, a lawyer should communicate to the lawyers involved in the matter, and to the Court (if applicable) that the lawyer is only acting on a limited-scope basis, and full investigation into a matter must still be done as the duty of competence cannot be ignored.

**4. Cooper, James. “Access to Justice for the Self-Represented Litigant” Selfrelawyer.ca, February, 2016**

James Cooper argues that limited scope retainers can facilitate access to affordable legal assistance to litigants in a search for legal help on a tight budget. Limited scope retainers can be customized to a self-represented litigant’s particular needs and budgetary constraints – the litigant can negotiate a fixed fee for very specific tasks. However, Cooper notes that limited scope retainers can pose difficulties for lawyers by creating opportunities for confusion as limited scope retainers are often customized and non-standard. Clients may perceive that their limited scope retainer with a lawyer goes far beyond the scope for which the retainer was intended – as a consequence, lawyer may spend an inordinate time in communicating with clients to ensure there is no confusion.

However, Cooper demonstrates that lawyers can get around this complication by maintaining a firewall between the services they offer, and the services that they do not offer. For instance, Cooper primarily conducts legal argument development/legal research for self-represented

litigants. He maintains a firewall by only undertaking legal argument development and legal research, and does not undertake procedural tasks. He claims this firewall allows clients to avoid any misunderstanding that he possesses full carriage of the file as a lawyer. He also tells his clients that he should not be copied on any correspondence with the opposing party. Cooper concludes by saying that, in order for a limited scope retainer to work most effectively, the lawyer must communicate to the client as to when the limited retainer begins and ends, and must strictly define the exact task or tasks that the retainer is limited to – by doing so, the lawyer is able to offer affordable fixed quotes for strictly defined tasks, which enables a self-represented litigant to get full control over their legal budget, while at the same time getting the benefit of affordable access to justice for the limited tasks that they cannot handle on their own.

### **5. Cunningham, April. “Unbundled Legal Services Fill Gap in Family Law” Advocate Daily**

Many individuals would benefit from unbundled legal services, as although many individuals cannot afford to hire full legal representation, they may be able to afford a lawyer to handle portions of their case. This article highlights Lisa Gelman, a Toronto family lawyer who advocates for unbundled legal services, as “it provides a service to clients because there’s a huge gap for people who are not entitled to Legal Aid, but can’t afford a full-time lawyer”. Gelman discusses how she, as a lawyer, tackles unbundled legal services and how she interacts with clients seeking unbundled legal services.

### **6. Gallant, Jacques. “Concept of ‘Unbundled’ Legal Services Gaining Support” Toronto Star, January 26, 2017**

“A Canadian database launched last year now features [hundreds of] lawyers who offer what is known as ‘unbundled’ legal services – where a person only pays for specific services from a lawyer while still remaining in charge of their case”. This article discusses Dr. Julie Macfarlane’s work through the National Self-Represented Litigants Project in launching the National Database of Professionals Assisting Self-Represented Litigants. Gallant also discusses the National Self-Represented Litigants Project’s recently launched legal coaching initiative, which the Project calls “the next natural step in the evolution of the unbundling model”.

### **7. Giroday, Gabrielle. “Fellow Will Focus on Helping Self-Represented Litigants” July 4, 2016**

The National Director of Pro Bono Students Canada, Nikki Gershain, is using her Community Leadership in Justice Fellowship (awarded from the Law Foundation of Ontario) to look at how legal coaching may help self-represented litigants tackle their legal problems. Gershain will create “teaching tools for a new model of legal service delivery called ‘legal coaching’”. For Gershain, developing legal coaching is part of the unbundling trend – the coaching model is “to set the client up for success ... the lawyer is there to guide the client through the process, teach the client what they need to know to get through the process, and to empower the client to be able to get through it on their own”. Gershain notes that “huge massive numbers of ordinary

Canadians ... cannot afford access to justice” – the greater availability of unbundled legal services and legal coaching may allow self-represented litigants access to some form of legal representation, as many self-represented litigants would prefer to be represented by counsel, but they do not have the financial resources to be able to afford full representation.

#### **8. Hendry, Mallory. “Unbundling for the Underserved Family Law Client” March 27, 2017**

Proponents of unbundling family law services assert that unbundled legal services can help clients access justice, and allow lawyers to tap into a new market. This is also the argument being made by proponents of legal coaching. Nikki Gershain, National Director of Pro Bono Students Canada, was awarded a Community Leadership in Justice Fellowship from the Law Foundation of Ontario in June, 2016 – she is working with Julie Macfarlane on her National Self-Represented Litigants Project to develop curriculum and training materials to be used for professional development work with lawyers to encourage them to incorporate unbundling into their practices. Gershain notes that full representation is no longer realistic due to its high costs and she argues that the legal profession possesses an obligation to “encourage lawyers to offer it, train them to understand what’s different about this model, and to encourage them to promote the service so clients are aware of the fact this is an option for them”. The National Self-Represented Litigants Project is also developing a national database of lawyers across Canada who offer unbundled legal services. The development of unbundled legal services and legal coaching is integral, as “there is a real disconnect in the market – [the Project] hears from people literally every day looking for people to do ... unbundling or coaching, but they don’t have anywhere to look for that”.

#### **9. Jerome, Amanda. “Alberta Research Project Aims to Study Impact of Unbundled Legal Services” The Lawyer’s Daily, April 20, 2017**

No studies have been done in Canada on the impact of unbundled legal services and how it can help lawyers and their clients and possibly lessen the large number of self-represented litigants in the court system. In April, 2017, Rob Harvie (a divorce and family lawyer), and John-Paul Boyd (executive director of the Canadian Research Institute for Law and the Family), launched the Alberta Limited Legal Services Project, which will study the usefulness of unbundled services and assess the satisfaction of clients and lawyers involved in the project. There are two functions of the research the Alberta Limited Legal Services Project is conducting. The first is to determine whether limited legal services possess a benefit in terms of access to justice. The second is to measure lawyers’ satisfaction with unbundled legal services, as their satisfaction may convince the bar as a whole that limited scope services are profitable services that they can incorporate into their existing practices with little effort. Many Canadians cannot afford full legal representation and do not qualify for legal aid, yet unbundled legal services are not popular among lawyers. Boyd hopes the Project will show lawyers the benefits of providing unbundled legal services – “mostly, from an access to justice point of view, I want to show lawyers that you can do this kind of work easily, profitably, and without weird ethical pitfalls”.

**10. Mushtaq, Amer. “Exploring New Frontiers for the Delivery of Legal Services in Canada” LawNow, March 2, 2017**

This article explores some of the new ways in which the legal profession, and emerging technologies are offering new solutions to make dispute resolution more efficient, effective, and affordable, particularly for those who are forced to represent themselves as a consequence of the expense of full legal representation. Mushtaq begins the article by highlighting the effectiveness of unbundled legal services in making justice more affordable. The author specifically highlights National Database of Professionals Assisting Self-Represented Litigants produced by the National Self-Represented Litigants Project – although many lawyers remain resistant to the idea of unbundled legal services, this Database contains lawyers who are willing to provide unbundled legal services.

**11. Pinnington, Dan. “Unbundled Legal Services: Pitfalls to Avoid” Slaw, April 15, 2013**

Pinnington acknowledges that unbundled legal services are one solution to address the issue of access to justice. He outlines a number of steps for lawyers to take to reduce their exposure to a malpractice claim when providing legal services on a limited scope basis. He offers the following advice: limited scope representation does not mean less competent or lower quality legal services, identify the discrete collection of tasks that can be undertaken on a competent basis, confirm the scope of the limited retainer in writing, clearly document work and communications, be careful with communication when opposing counsel is acting on an unbundled basis, recognize that unbundled legal services are not appropriate for all lawyers, all clients, or all legal problems, and be careful providing further assistance to a client after a limited scope retainer is terminated.

## SECTION B: UNITED STATES

1. American Bar Association. “Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force”, 2003.
2. Blankey, Kristen M. “Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services” 28 Ohio State Journal on State Dispute Resolution 659, 2013.
3. Kimbro, Stephanie. “The Ethics of Unbundling” 1 GPSOLO Report 3, October, 2011.
4. Kimbro, Stephanie. “Unbundled Legal Services: Risk Management Practice Guide of Lawyers Mutual” Lawyers Mutual: Liability Insurance Company of North Carolina, December, 2016.
5. Medows, Deborah Beth. “Justice as a Luxury: The Inefficacy of Middle Class Pro Se Litigation and Exploring Unbundling as a Partial Solution” 29 Brigham Young University Journal of Public Law, 2014.
6. Michaelis, Beverly. “How to Reduce Malpractice Exposure While Meeting Client Needs” Oregon State Bar Bulletin, August/September, 2010.
7. Moltzen, Robyn M, and Pinnard Johnson, Mary. “Outreach Beyond the Traditional Adapting Services to Promote Access to Justice” American Association of Law Libraries Spectrum 19:6, April, 2015.
8. Mosten, Forrest. “Unbundled Services to Enhance Peacemaking for Divorcing Families” 53 Family Court Review 3, July, 2015.
9. Mosten, Forrest. “Unbundling Legal Services Today – and the Predictions for the Future” 35 Family Advocate 14, 2013.
10. O’Grady, Kevin. “Making the Limited-Scope Relationship Work” 35 Family Advocate 22, 2013.

### **1. American Bar Association. “Handbook on Limited Scope Legal Assistance: A Report of the Modest Means Task Force”, 2003**

The American Bar Association begins by defining “limited scope legal assistance” as a designated service, or services, rather than the full package of traditionally offered services – the client and the lawyer select the particular services the lawyer will provide. The American Bar Association acknowledges that the handbook on limited scope legal assistance is a response to the self-represented litigant phenomenon. This Handbook is aimed at introducing and explaining limited scope legal assistance to lawyers. The Handbook discusses types of limited scope legal assistance, lawyers who provide limited scope legal assistance to clients, how to provide limited scope legal assistance to clients, how to determine whether limited scope legal assistance is appropriate, special issues that may arise in carrying out limited scope representation, ethical issues posed by limited scope legal assistance, how to end limited scope representation, and limited scope legal assistance programs and initiatives. The Handbook concludes with a number of recommendations for stakeholders in the legal community to implement to encourage lawyers to provide limited scope legal assistance.

**2. Blankey, Kristen M. “Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services” 28 Ohio State Journal on Dispute Resolution 659, 2013**

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.

**3. Kimbro, Stephanie. “The Ethics of Unbundling” 1 GPSOLO Report 3, October, 2011**

Unbundled legal services provide an affordable way for many self-represented litigants to receive the guidance they need to navigate the justice system. However, law firms offer unbundled legal services must take precautions by ensuring ethical compliance with the rules of professional conduct when providing unbundled legal services. The author asserts that unbundling should never result in an inferior quality of service, or a lesser standard of practice. Kimbro notes that the key to ethically providing unbundled legal services begins with a clear definition of the legal services to be provided, in addition to the services that will not be covered during representation. Kimbro further details the factors lawyers and law firms should consider when engaging with clients who seek unbundled legal services to ensure ethical performance. Kimbro also outlines the best practices for law firms and lawyers to undertake when introducing unbundling into their firm.

**4. Kimbro, Stephanie. “Unbundled Legal Services: Risk Management Practice Guide of Lawyers Mutual” Lawyers Mutual: Liability Insurance Company of North Carolina, December, 2016**

This Guide introduces attorneys to unbundled legal services and discusses the considerations and determinations attorneys must undertake when beginning to offer unbundled legal services to properly manage the risks associated with providing unbundled legal services. Kimbro begins the Guide by discussing the benefits of unbundled legal services for both clients and attorneys. She then details a list of questions for attorneys to consider in determining whether integrating unbundled legal services is right for the law firm, or for the attorney. The Guide also details the best practices for offering unbundled legal services, resources for working with self-represented litigants who seek unbundled legal services, the relevant North Carolina Rules of Professional Conduct related to limited legal services, and how to write a limited scope engagement letter.

**5. Medows, Deborah Beth. “Justice as a Luxury: The Inefficacy of Middle Class Pro Se Litigation and Exploring Unbundling as a Partial Solution” 29 Brigham Young University Journal of Public Law, 2014**

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.

**6. Michaelis, Beverly. “How to Reduce Malpractice Exposure While Meeting Client Needs” Oregon State Bar Bulletin, August/September, 2010**

Michaelis discusses the simple precautions a lawyer can take to manage the risks associated with unbundled legal services and reduce the potential for malpractice. A lawyer should screen clients and cases carefully. She notes that although a client may be a good candidate for unbundling, a client’s case may not be. Michaelis provides a list of questions to assist lawyers in making this determination. The author outlines frequent causes of legal malpractice claims and explains how lawyers can avoid the ‘traps’. For instance, lawyers are frequently sued for failing to define or document the scope of engagement – she recommends preparing carefully worded engagement letters explaining the scope of engagement by simply outlining what the lawyer will and will not do. She concludes with an optimistic note on unbundled legal services, by asserting that the potential traps of providing unbundled legal services are well known to lawyers – this implies that lawyers should not be fearful of providing unbundled legal services as they can undertake simple precautions to evade the well-known traps.

**7. Moltzen, Robyn M and Pinard Johnson, Mary. “Outreach Beyond the Traditional: Adapting Services to Promote Access to Justice” American Association of Law Libraries Spectrum 19:6, April, 2015**

Lawyers in the Library programs have become increasingly popular. Sessions are led by volunteer attorneys who discuss the legal issues and provide 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.

**8. Mosten, Forrest. “Unbundled Services to Enhance Peacemaking for Divorcing Families” 53 Family Court Review 3, July, 2015**

Mosten argues that unbundled legal services benefit divorcing families by advancing the ability of lawyers to provide information and support to divorcing families to reduce family conflicts. He notes that lawyers can undertake four unbundled roles when working with divorcing families:

collaborative lawyer, lawyer coach for self-represented litigants, lawyer for mediation participants, and preventive legal health care provider. The author argues that lawyers, in providing these unbundled legal services, can also play a peacemaking role by undertaking a client-centered approach in their work by striving to support and guide their clients to ultimately resolve their family conflicts. Instead of leading their clients into adversarial escalated conflict, lawyers can rather use their role in the particular unbundled service support and guide their client to attain peace in their personal lives.

### **9. Mosten, Forrest. “Unbundling Legal Services Today – and the Predictions for the Future” 35 Family Advocate 14, 2013**

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

- Vertical unbundling, which covers specified legal services as required, such as for advice, research, drafting, ghostwriting, negotiations, appearances., and
- 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:

- Offer services to self-represented litigants (further reference: Kimbro, Stephanie, “Serving the DIY Clients: A Guide to Unbundling Legal Services for the Private Practitioner” ABA 2010)
- Give collaborative representation with other lawyers or an interdisciplinary team (further references: Tesler, Pauline, Collaborative Law, 2<sup>nd</sup> Edition, ABA Section of Family Law, 2008, and Moster, Forrest, Collaborative Divorce Handbook, Jossey-Bass, 2009)
- Serve mediation parties (further references: Coben, James, and Thompson, Peter, “Disputing Irony: A Systematic Look at Litigation about Mediation” Spring 2006, 11 Harvard Negligence Law Review 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.

### **10. O’Grady, Kevin. “Making the Limited-Scope Relationship Work” 35 Family Advocate 22, 2013**

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.

## **SECTION C: OTHER JURISDICTIONS**

1. Greenland, James. “UK Judgment Bolsters Unbundled Legal Services” New Zealand Law Society, November 26, 2015.
2. Ipsos MORI. “Qualitative Research Exploring Experiences and Perception of Unbundled Legal Services: Prepared for the Legal Services Board and Legal Services Consumer Panel” August 6, 2015.
3. New Zealand Law Society. “Practice Briefing: Guidance to Lawyers Considering Acting Under a Limited Retainer” 2016.
4. The Law Society (United Kingdom). “Unbundling Civil Legal Services” April 4, 2016.
5. Dr. Toy-Cronin, Bridgette. “Just an Hour of Your Time?” New Zealand Law Society, March 24, 2016.

### **1. Greenland, James. “UK Judgment Bolsters Unbundled Legal Services” New Zealand Law Society, November 26, 2015**

In *Minkin v Lesley Landsberg*, the United Kingdom Court of Appeal held that lawyers do not have a broader duty of care when offering legal services. Lord Justice Jackson stated that solicitors acting under a “defined limited retainer” do not owe a broader duty of care to clients that goes beyond the terms of the retainer. It is reported that the Law Society of England and Wales has welcomed this decision, as they now believe that the profession can offer unbundled services with greater confidence that they will not be held liable for issues that fall outside the scope of their retainers. The Law Society of England and Wales further argued that this approach is needed given the growing demand for affordable unbundled services in the wake of the access to justice crisis.

### **2. Ipsos MORI. “Qualitative Research Exploring Experiences and Perceptions of Unbundled Legal Services: Prepared for the Legal Services Board and Legal Services Consumer Panel” August 6, 2015**

The researchers explored the provisioning of unbundled legal services by conducting thirty-five qualitative, in-depth interviews with a range of consumers who used unbundled legal services in regard to civil, family, or immigration matters, fourteen interviews with legal service providers who provided unbundled legal services across the same legal areas, and six interviews with members of the judiciary. The researchers found that the reduced cost of unbundling, when compared to the payment for a ‘full service’ is clearly a key reason why consumers choose to unbundle. For some consumers, unbundling meant that they could access legal advice, when otherwise they would have been unable to. Consumers chose to unbundle due to one of the three

main reasons: an immediate response to a problem with a willingness to save costs, a requirement for advice following escalation of a problem they had been dealing with themselves, or where additional services were required which they could not afford, following the earlier use of ‘full’ legal service provision. The agreements reached were often not in response to advertisement or promoted offers for unbundled services, as consumers accessed the legal services themselves, without the opportunity to unbundle being clearly or obviously available. Consumers felt that they could improve their outcomes when using an unbundled legal service provider, and they did not feel that there needed to be additional safeguards for those engaging in the unbundling of legal services.

Providers felt that unbundling could potentially offer clients some form of legal advice when previously they would have been unable to access any, and potentially secure better outcomes. However, providers highlighted three main difficulties in providing unbundled services to clients: if clients cannot cope with the work then it may adversely affect the outcome of their matter, clients may not fully understand the limits of what the provider agrees to do for them, and there may be a risk of giving advice on the basis of poor initial information from clients. Many providers felt that they had to make substantial changes within their organizations to fully embed unbundling into their practice. Judges shared similar concerns in regard to client capability and scope of engagement, but ultimately regarded the provisioning of some legal advice and assistance as beneficial, as they noted that many self-represented litigants often face difficulty when dealing with court proceedings.

### **3. New Zealand Law Society. “Practice Briefing: Guidance to Lawyers Considering Acting Under a Limited Retainer” 2016**

The New Zealand Law Society recognizes that many cannot afford to pay for full legal representation, and that one suggested means by which lawyers can address this growing justice gap is through the provision of limited or unbundled legal services. In this Guide, the New Zealand Law Society intends to introduce lawyers to unbundled legal services and provide lawyers with a basis to good practice when undertaking limited-scope retainers. The New Zealand Law Society discusses unbundled legal services in the context of its benefits for lawyers, its benefits for clients, its risks for lawyers, risk management strategies for lawyers, and best practices for lawyers considering acting under a limited-scope retainer.

### **4. The Law Society (United Kingdom). “Unbundling Civil Legal Services” April 4, 2016**

The Law Society in the United Kingdom, in this practice note, introduces unbundled civil legal services to lawyers. The Law Society addresses the access to justice issue inherent in the United Kingdom’s justice system – many litigants are ineligible for legal aid and yet cannot afford full legal representation and thus are likely only able to afford to instruct a solicitor on the basis of a limited scope retainer. This practice note for lawyers defines unbundling, details the areas of law where unbundled legal services are likely to be most appropriate, the risks of unbundling, fees,

key points for providing an unbundled service, and how to provide unbundled representation at court.

**5. Dr. Toy-Cronin, Bridgette. “Just an Hour of Your Time?” New Zealand Law Society, March 24, 2016**

Unbundling is beginning to gain some momentum in New Zealand. However, widespread unbundling remains uncommon. Most unbundled services that self-represented litigants access in New Zealand are offered on an ad-hoc basis, from lawyers who normally offer full-retainer services. Qualitative data demonstrates that lawyers oppose unbundling as they wish to control everything, they perceive unbundling as incorporating low monetary awards and high costs, they think there is a difficulty in recording the limits of the retainer and having to be mindful of updating the retainer when the client has returned for further assistance, and that many clients are difficult to work with due to their perceived inability to understand the complexity of their case. Many lawyers in an interview indicated that even if they did offer discrete task assistance, they were very wary of doing so, and very selective about who they offered the service to. However, there is a small number of lawyers in New Zealand who do market themselves as offering unbundled services to the general public, particularly in family law. Dr. Bridgette Toy-Cronin recommends for the legal community to analyze the barriers that prevent the growth of unbundled legal services in an attempt to alleviate the problems people face accessing justice.

## **PART III: OTHER ACCESS TO JUSTICE SOLUTIONS**

### **SECTION A: CANADA**

1. Boyden, Bev. “Explore Ways to Effectively and Efficiently Utilize the Skills and Talents of Legal Support Staff” Legal Education Society of Alberta Program, January 19, 2017.
2. Community Legal Education Ontario. “Don’t Smoke, Don’t be Poor, Read Before Signing: Linking Health Literacy and Legal Capability” Community Legal Education Ontario Centre for Research and Innovation, April, 2015.
3. McHale, Jerry, and Thompson, Kathryn. “Exploring a British Columbia Justice Research Framework” University of Victoria, Faculty of Law Colloquium, May 13, 2016.
4. Provincial Court of British Columbia. “British Columbia Court Adopts Support Person Guidelines” Provincial Court of British Columbia News and Reports, April 11, 2017.
5. Salyzyn Amy, Isaj Lori, Piva Brandon, and Burkell Jennifer. “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice”

#### **1. Boyden, Bev. “Explore Ways to Effectively and Efficiently Utilize the Skills and Talents of Legal Support Staff”. Legal Education Society of Alberta Program, January 19, 2017**

The author acknowledges the pressing issue of a lack of affordable access to justice. She asserts that using paralegals, in the place of lawyers, for particular legal services is a means of providing clients with cost-savings in fees, and that it also has the added benefit of freeing up the lawyer’s time to perform more complex legal services. She advocates for lawyers to recognize and utilize the distinct skills of their legal support staff as a way to provide the most effective and cost-efficient delivery of legal services. This presentation is primarily focused on the general advantages associated with legal support staff and the opportunities available to legal support staff to advance their careers.

#### **2. Community Legal Education Ontario. “Don’t Smoke, Don’t be Poor, Read Before Signing: Linking Health Literacy and Legal Capability” Community Legal Education Ontario Centre for Research and Innovation, April, 2015**

Vulnerable individuals face barriers when attempting to obtain information on or assistance in relation to the health and justice sectors in Canada. However, the health sector has addressed the challenges these individuals face in accessing health information. The health sector has recognized the “social determinants of health”, or in other words, the social and economic conditions that influence a person’s ability to be health literate – the research indicates that this recognition has led to major improvements in the development and distribution of accessible health material in Ontario. In contrast, legal literacy (or legal capability) continues to be framed in general terms and there is no specific recognition of the economic and social barriers which may interfere with the ability of vulnerable individuals to access and use legal information. The CLEO recommends for the justice sector to take influence from the health sector by systematically addressing these economic and social barriers to improve access to legal information and ultimately to facilitate access to justice.

### **3. McHale, Jerry, and Thomson, Kathryn. “Exploring a British Columbia Justice Research Framework” University of Victoria, Faculty of Law Colloquium, May 13, 2016**

The purpose of this paper is to provide background information on the Colloquium that occurred on May 13, 2016, which was sponsored by the University of Victoria’s Access to Justice Center for Excellence. The ultimate goal of those involved in the Colloquium was to develop a research framework for access to justice research in British Columbia as they assert that the lack of research is a major impediment to enhancing access to justice. The following issues must be remedied to advance the reality of a common research framework in British Columbia: lack of data, narrow focus of existing data, lack of defined objectives, lack of an empirical research tradition, lack of systematic coordination, administrative challenges, and methodological challenges. The proposed research framework is to serve as a foundation for more and for better research on access to justice to ultimately inform policy development and management decision-making in relation to access to justice issues. The authors look towards the Australian research framework as a potential guide for British Columbia.

### **4. Provincial Court of British Columbia. “British Columbia Court Adopts Support Person Guidelines” Provincial Court of British Columbia News and Reports, April 11, 2017**

The British Columbia Provincial Court recognizes that many self-represented litigants find that having a trusted friend or family member with them to provide emotional support, take notes, and organize documents can be a big help. Self-represented litigants themselves have also identified that the ability to have someone attend court with them is an important aspect of access to justice. The British Columbia Provincial Court has adopted guidelines to make it easier for self-represented litigants to bring a support person to court. The purpose of the Guidelines is to provide self-represented litigants with a measure of certainty about when they will be permitted to bring a support person to court, and the scope of the assistance the support person can provide. The National Self-Represented Litigants Project has promoted the use of support persons in Canada as a significant aid to people struggling with all of the challenges of representing themselves. The National Self-Represented Litigants Project has advocated for a “clearer, more consistent, and more credible approach to McKenzie Friends or navigators to be implemented in Canadian Courts” – The British Columbia Provincial Court aims for these Guidelines to provide this type of clarity, consistency, and credibility.

### **5. Salyzyn Amy, Isaj Lori, Piva Brandon, and Burkell, Jennifer. “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice”**

Court form complexity is a major barrier to accessing justice for self-represented litigants. The authors use a “functional literacy” framework (analyzing the complexity of the tasks that an individual is able to complete) to evaluate court form complexity by asking what makes a court form complex for self-represented litigants. The study analyzes four different Ontario forms needed to initiate three different legal proceedings: Small Claims Court, Landlord and Tenant Board, and divorce proceedings. The study outlines that the type of information necessary to complete a form, the distracting language used in a form, and the technical nature of forms confused self-represented litigants, among other factors. The authors recommended for the

redesign of court forms, the integration of court forms and guides, and the promotion of innovative legal service delivery models (like unbundled services and coaching) to assist self-represented litigants with forms that require legal expertise.

## **SECTION B: UNITED STATES**

1. Cabral, James E, et al. “Using Technology to Enhance Access to Justice” 26 *Harvard Journal of Law and Technology* 241, 2012.
2. Chambliss, Elizabeth. “Law School Training for Licensed Technicians – Implications for the Consumer Market” 65 *South Carolina Review* 579, 2013-2014.
3. Charne, Jeanne. “Celebrating the Null Finding: Evidence-Based Strategies for Improving Access to Legal Services” 122 *Yale Law Journal* 2209, 2013.
4. Crossland, Stephen R and Littlewood, Paula C. “The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession” 65 *South Carolina Law Review* 579, 2013-2014.
5. Greacen, John. “The Benefits and Costs of Programs to Assist Self-Represented Litigants” *Judicial Council of California Center for Families, Children, and the Courts*, 2009.
6. Greacen, John. “Serving Self-Represented Litigants Remotely: A Resource Guide” *Self-Represented Litigation Network*, July 1, 2016.
7. Jackson, Dan, and Davis, Martha F. “Gaming a System: Using Digital Games to Guide Self-Represented Litigants” *Northeastern University School of Law Working Paper No 252-2016*, 2016.
8. Lenahan, Meghan. “DIY Forms Programs: Helping Unrepresented Litigants Navigate the Court System in New York” 18 *American Association of Law Libraries Spectrum* 15, 2013-2014.
9. Mancini, Laura M. “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” 14 *Journal of Law and Society*, 65, 2013.
10. Mansfield, Marsha. “Litigants without Lawyers: Measuring Success in Family Court” 67 *Hastings Law Journal*, June, 2016.
11. Niemeyer, Paul. “Is Now the Time for Simplified Rules of Civil Procedure?” 46 *University of Michigan Journal of Law Reform* 2, 2013.
12. Painter, Richard W. “Pro Se Litigation in Times of Financial Hardship: A Legal Crisis and its Solutions” 45 *Family Law Quarterly* 45, 2011.
13. Tesler, Pauline. “Can This Relationship be Saved? The Legal Profession and Families in Transition” 55:1 *Family Court Review*, January, 2017.

### **1. Cabral, James E, et al. “Using Technology to Enhance Access to Justice” 26 *Harvard Journal of Law and Technology* 241, 2012**

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 SRL's needs to the best available services. The sixth considers financial, managerial, personal, and ethical issues with adopting automated legal services applications.

## **2. Chambliss, Elizabeth. "Law School Training for Licensed Technicians – Implications for the Consumer Market" 65 South Carolina Review 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.

## **3. Charne, Jeanne. "Celebrating the Null Finding: Evidence-Based Strategies for Improving Access to Legal Services" 122 Yale Law Journal 2209, 2013**

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 challenge 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 Massachusetts 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)

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.

**4. Crossland, Stephen R and Littlewood, Paula C. “The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession” 65 South Carolina Law Review 579, 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. Similar 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.

**5. Greacen, John. “The Benefits and Costs of Programs to Assist Self-Represented Litigants” 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 1/2 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.

**6. Greacen, John. “Serving Self-Represented Litigants Remotely: A Resource Guide” Self-Represented Litigation Network, July 1, 2016**

The purpose of this Resource Guide is to provide information on technology-based options for the courts, and other organizations interested in providing services to self-represented litigants using electronic means. This is a response to the need to develop and expand remote services. Greacen outlines the various benefits, values, limitations, obstacles, and challenges associated with the delivery of remote services by reviewing the available literature and studies on remote services. This study concludes that the delivery of services through the use of the internet and telephones constituted an effective means of providing information and assistance to self-represented litigants, to the degree that it should be a part of the service delivery strategy of

every organization interacting with self-represented litigants. Examples of the various types of remote services that organizations can offer to self-represented litigants is also provided.

**7. Jackson, Dan, and Davis, Martha F. “Gaming a System: Using Digital Games to Guide Self-Represented Litigants” Northeastern University School of Law Working Paper No 252-2016, 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”.

**8. Lenahan, Meghan. “DIY Forms Programs: Helping Unrepresented Litigants Navigate the Court System in New York” 18 American Association of Law Libraries 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 filling 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.

**9. Mancini, Laura M. “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” 14 Journal of Law and Society 65, 2013**

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.

**10. Mansfield, Marsha. "Litigants Without Lawyers: Measuring Success in Family Court" 67 Hastings Law Journal, June, 2016**

The author sought to measure the success of litigants who utilized courthouse clinics versus self-represented litigants who did not rely on legal assistance. A survey of the users of the University of Wisconsin's Law School Family Court Clinic ("FCC") was undertaken to determine whether the services enabled self-represented litigants to successfully complete the legal task for which they sought assistance. Ninety percent of survey respondents believed that the services provided by the FCC students made a positive difference in the outcome of their case and eighty-eight percent of respondents were satisfied. One hundred percent of the respondents felt the FCC provided them with the understanding needed to undertake the next legal steps. Mansfield asserts that the survey supports the conclusion that unbundled legal clinics provide support to self-represented litigants and reveals that most self-represented litigants are able to complete the legal action they are involved in with assistance from such legal clinics. The clinic setting ultimately delivers a level of understanding that allows self-represented litigants to complete the task while feeling satisfied with the process.

**11. Niemeyer, Paul. "Is Now the Time for Simplified Rules of Civil Procedure?" 46 University of Michigan Journal of Law Reform 2, 2013**

The time has come for a systematic review of the civil process in the United States. A genuine openness is necessary to simplify the Federal Rules of Civil Procedure. Discovery disputes have become the prime source of cost and delay. Niemeyer outlines the history of the development of discovery disputes. He argues that the reform efforts by Congress, the Civil Rules Committee, and the Supreme Court have not addressed the larger structural problems arising from the discovery dispute process. Niemeyer suggests a Simplified Rules Project to simplify the process of discovery disputes in an attempt to mitigate against the time-consuming and costly nature of the federal civil process.

**12. Painter, Richard W. "Pro Se Litigation in Times of Financial Hardship: A Legal Crisis and its Solutions" 45 Family Law Quarterly 45, 2011**

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-lawyers and transferring of court documents to the online format similar to the TurboTax model and the H&R block model. As well, Painter discusses suggestions for further regulating discounted legal services by adopting specific rules for law firm procedures.

**13. Tesler, Pauline. "Can This Relationship be Saved? The Legal Profession and Families in Transition" 55:1 Family Court Review, January, 2017**

The author acknowledges the pressing issue of a lack of affordable access to justice. She asserts that using paralegals, in the place of lawyers, for particular legal services is a means of providing clients with cost-savings in fees, and that it also has the added benefit of freeing up the lawyer's time to perform more complex legal services. She advocates for lawyers to recognize and utilize the distinct skills of their legal support staff as a way to provide the most effective and cost-efficient delivery of legal services. This presentation is primarily focused on the general advantages associated with legal support staff and the opportunities available to legal support staff to advance their careers.

## **SECTION C: OTHER JURISDICTIONS**

1. "Access to Justice" Helvetas Swiss Inter-Cooperation, Tajikistan, February 7, 2014.
2. Kuria, W. "Justice Sector to Set up Electronic Case Management System in Rwanda" Humanpio, September 13, 2013.
3. Linton, L. "Intensified Efforts to Improve Access to Justice" Productivity: Pathway to Prosperity – Jamaica Information Service, January 10, 2014.
4. "Taylor Review Recommends Radical Reform to Scottish Civil Litigation Funding" Pinsent Masons, September 13, 2013.

### **1. "Access to Justice" Helvetas Swiss Inter-Cooperation, Tajistan, February 7, 2014**

In cooperation 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.

### **2. Kuria, W. "Justice Sector to Set up Electronic Case Management System in Rwanda" Humanpio, September 13, 2013**

The system is designed to digitize 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 \$7 million within the first first-years, with the first two years as pilot. The main objective of the JRLS is to strengthen the rule of law and ensure accountable governance and a culture of peace.

### **3. Linton, L. "Intensified Efforts to Improve Access to Justice" Productivity: Pathway to Prosperity – Jamaica Information Service, 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.

#### **4. “Taylor Review Recommends Radical Reform to Scottish Civil Litigation Funding” 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 percentage 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.