Continuing the Dialogue: Final Event Report 2018

Faculty of Law University of Windsor
October 11 – 13 2018

Rebecca Flynn, Julie Macfarlane, & Moya McAlister
# Table of Contents

**Introduction: Continuing the Dialogue** ............................................................................. 3  
**Openings** ....................................................................................................................... 4  
**5 Years of the NSRLP** ..................................................................................................... 5  
**Then & Now: From the 2013 Dialogue Event to Today** .................................................. 5  

**The Collaborative Working Groups** .................................................................................. 8  
- Working Group 1: Affordable Private Legal Services..................................................... 9  
- Working Group 3: In-court Assistance for SRLs and Court-based Programming ...................................................................................................................... 12  
- Working Group 4: Public Legal Services and Pro Bono Models............................... 13  
- Working Group 5: Interaction Between SRLs & Justice System Professionals......................................................................................................................... 15  

**Final Plenary Discussions** .................................................................................................. 16  

**Acknowledgements and Thanks** .................................................................................. 19  

**Appendix A – Attendee List** ............................................................................................ 20  

**Appendix B – Agenda** ..................................................................................................... 21  

**Appendix C – Then & Now: From the 2013 Dialogue Event to Today** ......................... 24
Introduction: Continuing the Dialogue

To celebrate the 5-year anniversary of the National Self-Represented Litigants Project (NSRLP), we decided to go back to where it all began.

The NSRLP was established following recommendations made at Opening the Dialogue: The SRL Phenomenon, an event following the release of Dr. Julie Macfarlane’s National Self-Represented Litigants (SRLs) Research Study. The 2013 event was a small, invitation-only stakeholder dialogue including self-represented litigants (SRLs), lawyers, policymakers, judges and academics, representing many different experiences within the legal system. “Continuing the Dialogue” – held October 11 – 13 2018 at Windsor Law – adopted the same format, 5 years on. Attendees were invited from almost every Canadian province.

Over the course of the event, 15 SRLs and 45 justice system representatives took part in facilitated plenary discussions, small working group discussions focused on specific issues related to SRLs and the justice system, listened to panels presented by both SRLs and justice system insiders, and attended small networking events. For the complete attendees list see Appendix A; for the event agenda see Appendix B.

An opening evening reception brought the attendees together for an initial meet-and-greet and a few hours of relaxation before getting down to work the following morning.
Openings

After a welcome by Dean Chris Waters, facilitators Bernie Mayer and Dayna Cornwall (NSRLP Project Coordinator) asked each participant to find two others from a different background to their own, and share their experiences of the justice system from their particular perspective. The whole group reassembled to hear some of the observations made. For example:

“I was shocked at having my personal integrity and credibility questioned by lawyers in cross-examination. I have been raised as a person for whom honesty is the highest virtue, and to be portrayed as a liar in the courtroom is a personal attack on my integrity that I still haven’t got over.” (SRL)

“We have a system which is designed to be fair and just but requires expertise to make it work, which can then lead to further power imbalances between people in dispute, and can then be an instrument of injustice.” (lawyer)

“Please, stop telling people to get a lawyer. The effect that it has on your focus and emotional state for the rest of the day is not helpful.” (SRL)

Next, Dayna presented well-wishes from judges who were unable to be present at the Dialogue Event, including the Chief Justices of British Columbia and Nova Scotia, and the Associate Chief Justice of Ontario, as well as judges from PEI and Nova Scotia. Justice Jim Williams’ message set a positive tone in acknowledging the importance of SRL participation:
“Continuing the Dialogue 2018 is a unique event – bringing Self Represented Litigants and Justice System professionals together to discuss our justice system. I would express a specific thank you to the SRLs. You will note that I said "our" justice system. It is your system as much as mine, or that of anyone else. Change should and will involve all stakeholders – sharing, listening, considering, learning. Your perspectives are unique. Your influence is important. Thank you for stepping up and being part of the future.”
(Justice Jim Williams, Supreme Court of Nova Scotia)

5 Years of the NSRLP

Julie Macfarlane, NSRLP Director, and Sherry MacLennan, Public Information Manager at the Legal Services Society BC and an NSRLP Board member, presented brief highlights for each of the 5 years that NSRLP has been in operation (see Appendix C).

Then & Now: From the 2013 Dialogue Event to Today

Three attendees who were also part of the first Dialogue Event in 2013 spoke about what has changed in the last five years, and what has not.

Jennifer Muller, an SRL and NSRLP Board member, recalled the palpable feeling of tension at the first event, as justice system insiders and SRLs talked to one another for the first time. For her, it was the first time she spoke publicly about her miserable experience of self-representation, after she ran out of funds...
to pay for a lawyer in her custody case. Since that time, Jennifer has become a well-known advocate for A2J.

What has changed? Jennifer highlighted the growing acknowledgement by lawyers and judges that there are increasing numbers of SRLs to whom the system must respond. Some of those responses include efforts by most provinces to respond to Justice Tom Cromwell’s National Action Committee Report on A2J, more online resources for SRLs that focus on user experience, the wider availability of unbundled and limited scope retainers, and the beginnings of an energized consumer A2J movement.

What has not? Middle income earners still cannot afford legal services. The legal profession continues to often oppose reforms that would allow for alternative legal services (such as paralegals), and there is still insufficient acknowledgement of power imbalances in court. It remains hard to find a lawyer who will offer different billing models (for example fixed fees vs billable hours). Many Canadians have not yet recognized that there is a serious problem with A2J in this country.

Rob Harvie, a family lawyer from Lethbridge Alberta and the Chair of the NSRLP Advisory Board, went next. He reflected that for a long time, lawyers and judges looked at self-representation as a phenomenon that was annoying and troublesome, but would pass. In 2013, Rob recalls Julie telling him, “no, this isn’t going away and it’s going to get worse.” He now realizes that SRLs are like canaries in the coal mine of the justice system, showing us how much change is needed.

What has changed? There has been an expansion of digital technology (online resources, e-filing) within the legal system, which offer many advantages for SRLs. Many judges have gone from seeing SRLs as a problem to accepting them as a reality that is here to stay – but there is still limited comfort with that reality.

What has not? There are still marked differences in how courts treat “members of the club” (lawyers) and “non-members”. It is not enough to get SRL issues – perhaps with pro bono representation at appeal levels – before
the courts, it is also necessary to break down the sense of insider / outsider that polarizes the discussion.

**Julie Mathews**, Executive Director of Community Legal Education Ontario (CLEO), was the final panelist.

**What has changed?** Julie sees some signs of progress since 2013. Like Rob, Julie highlighted new technologies that allow information to be more customized through apps and calculators, providing users with information that is more responsive to their particular situations. She also gave a shout-out to the NSRLP Guides and Primers. Julie also pointed to improvements in early-intervention programs designed to de-escalate conflict.

**What has not?** There are problems with information overload (multiple sources and no clear guide for SRLs as to what is reliable information, and what is not), and problems with internet access. While recent online resources like CLEO’s *Steps to Justice* are being widely used, we do not yet have good evaluation data on how much this is helping people, or what their outcomes are. There is a need for more access to unbundling and legal coaching, and a focus on clarifying the legal advice / legal information distinction. There is a need for A2J organizations to work together more efficiently.

The conclusion of all three panelists was that while it is possible to point to signs of progress in individual projects across the country, real systemic change has not happened. The “rules of the game” for SRLs are relatively unchanged.

Bernie and Dayna asked attendees to go back into the small groups they formed at the beginning of the day and discuss:

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**What will it take to bring deeper change that will significantly improve Access to Justice for Canadians?**
Themes arising from these discussions:

- There is a need to create greater public awareness of the A2J crisis and engage the public in lobbying on this issue.
- A major cultural shift in the justice system is required, toward greater inclusivity, educating youth, and alternative legal services provided by those other than lawyers. This may mean the profession ceding control to provincial attorneys-general so that they, and not the profession, regulate who can offer services.
- Accepting the SRL explosion means providing a single reliable source of information and proactively equipping them with orientation and information before their courthouse experience.
- There needs to be movement away from the adversarial nature of the system, especially for family cases. This means not focusing on court, and offering mediation and other services as viable options to help families going through divorce with the range of challenges (legal and other) that they face.
- There needs to be more action on offering affordable legal services.
- Maybe we should “blow up the system” and start again. This will require real leadership at both a provincial and federal level.

The Collaborative Working Groups

Attendees then broke into 5 working groups, each including representatives from the various sectors (SRLs, lawyers, judges, policymakers, government, academics, and others). Attendees had previously opted to work on one of the following topics:

1. Affordable private legal services
2. Creating new spaces for A2J: online technologies, libraries, “trusted intermediaries"
3. In-court assistance for SRLs and court-based programming
4. Public legal services and pro bono models
5. Interaction between SRLs and justice system professionals

(From L to R) Bernie Mayer, Dayna Cornwall, NSRLP Research Assistant Ali Tejani, Event Coordinator Sue Rice, & Podcast Intern Braunta Petric
Each group worked through Friday afternoon and Saturday morning and was charged with two tasks:

1. **Identifying best practices and failed programs / flawed assumptions in relation to their topic.**

2. **Identifying concrete, achievable, and (if possible) measurable goals for progress in this area over the next 2 years.**

The results of these discussions were presented to the full plenary on Saturday morning (question (1)) and Saturday afternoon (question (2)). The following summaries have been curated from extensive notes taken in each of the small working group sessions.

**Working Group 1: Affordable Private Legal Services**

*(facilitated by Noel Semple and Georgette Makhoul)*

**Best practices:**
- Educating consumers and raising awareness of A2J and how to “shop” for legal services
- Complete and transparent explanation of fees
- New billing arrangements including fixed fees, or a combination of flat-rate and potential additional required costs
- Dramatically reducing costs by reducing business costs (e.g. three lawyers working from a loft, meeting clients at Starbucks)
- Legal coaching, which gives the client control and helps them to go forward
- New models of practice delivery include delivering services remotely
- Diversifying providers of legal services – paralegals could be key providers of discounted services (paralegal family law licenses, and partnerships between paralegals and lawyers are key options)
- For the client, the most effective model is a “one-stop-shop”
- Incentivizing lawyers to be more efficient – for example, offering reduced rates gives an incentive to be more efficient and get the work done in less time
Failed programs / flawed assumptions:
- Lawyers have taught the world that they are the only competent people to represent a matter successfully. This has resulted in some arrogance amongst legal professionals
- The billable hours model is very problematic: even unbundled services are often unaffordable when using a billable hours model

Goals for progress in the next 2 years:
- Empirical data on legal costs needed; using files to look at costs at each step of the legal procedure (where to trim the fat)
- Challenge lawyers to think about day-to-day practice and cost reductions
- Encourage audits inside law firms overseen by regulators – firms could receive certification (for use in marketing) to show they have done an audit
- Develop a business model that incorporates legal coaching
- Develop monetary incentives for reducing legal costs (e.g. reduction in professional development (CPD) fees)
- Mandatory CPD class on improving efficiencies and reducing costs
- Encourage greater use of technology to increase efficiencies and reduce fees
- Encourage and promote early intervention solutions including mediation and early neutral evaluation to reduce costs
- Expand the use of unbundling via local “champions” of unbundling or legal coaching
- Articling could include a mandatory pro bono aspect working with SRLs
- Provide more public information and transparency on costs, fees, and early resolution
(facilitated by Andrew Pilliar)

Best practices:
- Online support groups for SRLs
- Online platforms for dispute resolution (for example the Civil Resolution Tribunal in British Columbia)
- Accessibility of digital forms
- Public access to law libraries
- Constant (ongoing) user testing for new programs and online resources
- Training intermediaries to conduct “Legal Health Check Ups”, to identify legal issues before they “catch up” to the litigant – for example possible eviction
- Co-location of trusted intermediaries in “legal spaces” – for example a sexual assault health clinic, family counselling clinic, legal aid offices (one-stop shopping)
- Telephone assistance
- Face-to-face assistance: self-represented litigants appreciate speaking with and listening to a “real person”
- Trusted intermediaries should receive empathy training / emotional and cultural awareness training

Failed programs / flawed assumptions:
- Programming sometimes based on insufficient research to establish demand (including new technologies)
- Difficult to find SRLs to run support groups: can be emotionally draining and hard to find physical space to manage the volume of people
- Technological illiteracy of some SRLs:
  - Marginalized communities often do not have access to the Internet
  - Some programs (e.g. trusted intermediaries) underestimate the amount of time needed to help individual SRLs
- Insufficient / inadequate training for trusted intermediaries to deal with the vast array of issues SRLs face (legal, emotional, health)
Goals for progress in the next 2 years:
- A2J advocates and lawyers need to work more closely with public legal education organizations
- Build up public libraries:
  - Training for library staff
  - More access to legal materials
- Training for “Trusted Intermediaries”
- More online forms
- Spaces for SRLs / SRL support networks
- Greater access to “navigator” programs in courthouses (e.g. Nova Scotia model)
- Court staff should be aware of support systems for SRLs (e.g. buddy systems) and be able to refer SRLs to these (e.g. a “National Directory of SRL Navigators”)

Working Group 3: In-court Assistance for SRLs and Court-based Programming
(facilitated by Kate Kehoe)

Best practices:
- In-court programs including in-person help and free legal assistance that allow people to deal with forms more easily
- Online small claims processes
- Amended rules of procedure (for example)
  - Newfoundland & Labrador Notice of Appeal form no longer requires legal grounds for appeal
  - BC Supreme Court rule expressly permits McKenzie friends (usually discretionary)

Failed programs / flawed assumptions:
- Case management to move cases along is not universal in Canadian courts
- Settlement conferencing and referrals to mediation not used enough
- Reluctance among many judges to provide assistance to SRLs
- Judicial education on working with SRLs is not mandatory
- Lack of standardized processes between courthouses
Goals for progress in the next 2 years:

- Create a list of courts and jurisdictions that offer all their forms online
- Assistance with information that judges are looking for on court forms, for example:
  - Sample affidavits
  - Sample notice of motion
  - Precedents on Clicklaw
- In-court, in-person assistance:
  - Train SRLs to be McKenzie Friends / courthouse navigators
  - Encourage judges to use the National Judicial Institute Benchbook on dealing with SRLs
  - Educating judges to be clear in speaking to SRLs
- Legal innovation:
  - Encourage entrepreneurs to create apps and programs (via more collaboration with Ryerson’s Legal Innovation Zone)
  - Ensure individual privacy online
  - Law schools offer mandatory clinics for law students on the SRL phenomenon
  - Use law students to assist SRLs (e.g. coaching)
  - Form an “Intervention Committee” at NSRLP actively seeking out cases to intervene on; expand / explain the Pintea decision
- Increasing the Small Claims Limit (there are variations across Canada)

Court rules:

- Develop a set of principles for litigant-centered rules
- Advocate for clearer court rules re unbundling
- Form a sub-committee / chapter of the NSRLP in each province

Small Group 4: Public Legal Services and Pro Bono Models

(facilitated by Sherry McLennan)

Best practices:

- Detailed longitudinal evaluation data from clients using surveys and focus groups
- Group legal advice models
  - Serves multiple clients at the same time
  - Group model can facilitate further peer support
Legal / other professional partnerships to tackle problems holistically, for example:
- Legal / medical (e.g. pairing medical appointments with legal intakes in Alberta and Saskatchewan)
- Social work / legal services
- One-stop-shopping that groups assistance for legal issues, medical, housing, finance, and other supports in one place
- Mandatory pro bono work for members of provincial law societies
- Incentives for lawyers (e.g. debt-forgiveness, reducing law society fees) for lawyers doing pro bono / public interest work
- Movement toward deregulation / re-regulation (for example, Denmark, England and Wales)

**Failed programs / flawed assumptions:**
- Belief that A2J crisis will be solved by more pro bono work by lawyers
  - Legal Aid excludes many people and only the poorest of the poor are eligible
  - This has resulted in a growing mistrust of the justice system
- Large firms sometimes exploit pro bono work as a marketing opportunity

**Goals for progress in the next 2 years:**
- Greater access to customized legal memos and/or standardized factums
- Greater access to standard form examples
- Partnering with public libraries – greater access to Westlaw
- Greater access to qualified interpreters
- Loan forgiveness programs for lawyers who work with SRLs
- More in-court referrals – unbundled service providers list
- Strategic partnerships between non-profits
- Law schools should offer more marketing and information re legal aid and social justice work as a viable career path
- Curriculum development in law schools to address SRLs, public interest practice, and related issues; more “soft” skills training in law schools (e.g. empathy, counselling)
- Law student programming to assist SRLs (e.g. Pro Bono Students Canada) and filling gaps in locations without law schools
Small Group 5: Interaction Between SRLs 
and Justice System Professionals
(*facilitated by John Manwaring*)

Best practices:
- Best practices in this area are still at a very early stage. They include: triage in courthouses (for example, the Navigator Program in Nova Scotia and other programs offering early identification of problems); in-court workshops offered to SRLs by judges and others)

Failed programs / flawed assumptions:
- No framework for addressing “sharp practice”: lawyers taking advantage of SRLs
- Judges are sometimes curt and discourteous towards SRLs
- Complaints systems need review
- Lawyers are under pressure as well with the influx of SRLs, and they often resist change

Goals for progress in the next 2 years:
- Ensuring registry counters staffed by skilled senior staff who can respond to SRLs
- Create an Ombudsman position under provincial jurisdiction who can be responsible for dealing with complaints from SRLs
- Include SRLs in court and legal professional committees (e.g. the Rules Committee), and incorporate more SRL input into new resources, websites etc.
- Encourage development of training for SRLs by community colleges (low-cost training programs)
- Provide guidance for lawyers and judges about “sharp practices” by lawyers against SRLs
- Create a system of peer support workers who can assist SRLs
- Work to change the judicial culture, especially among those who are reluctant to work with SRLs, via new mandatory judicial training
- Use social media as a platform for raising awareness and dialogue
- Develop and enhance remote delivery of services
Final Plenary Discussions
(facilitated by Bernie Mayer)

Saturday morning

The whole group reconvened on Saturday morning.

Bernie identified three overarching themes coming out of the working group sessions on **best practices and failed assumptions** completed the day before. The following is a summary of the ensuing discussion.

1. **De-regulation or re-regulation of the legal profession?**

   “Who are we as lawyers to regulate everything to do with the legal profession?” (lawyer)

   - Regulation is based on the premise that both sides in a dispute have legal representation, and this is no longer the case
   - Re-regulation would not tear down the existing system but make it more user-friendly and consumer-focused
   - We need some regulation and assurance of quality to ensure that someone who is hiring an expert is protected
   - A different view is that we should let legal professionals (such as paralegals) compete in an open market
   - Are law societies in a conflict of interest when it comes to protecting the public / protecting themselves?

2. **Legal costs**

   “The elephant in the room is lawyers' fees” (SRL)

   - Affordable legal services are a priority: should we simply let individuals who can provide more affordable services to do so?
It is important to recognize the disproportionality between the amount of costs recovered by successful litigants, and the fees payable to lawyers.

It is not enough for lawyers to state the price point (hourly fee) and not offer an assessment of how much it will cost to resolve a legal problem.

More assistance is needed for SRLs raising issues of state action.

“The problem is that lawyers practice in a capitalist economy, with multiple fees, insurance and so on, payable to set up a practice” (lawyer)

3. Cultural change

It is critical to bring awareness of unseen disabilities to the court process (mental health issues, wellness issues, and invisible injuries).

There is a need for further development of case law that places different expectations on SRLs less familiar with the legal system than lawyers.

There is a great need for diversity, not simply more diverse judges and lawyers, but more diverse court clerks, and other court staff.

“There is an invisible barrier between the energy at this event, and the reception many SRLs receive from the legal profession” (SRL)

“Everyone here should ask themselves: what am I not doing that I could do?” (lawyer)
Saturday afternoon

Following the presentation of the small group goals for the next 2 years, Bernie facilitated a final discussion that set the tone for the conclusion of the event, and touched on many issues that attendees saw as critical to responding to the SRL phenomenon:

- SRLs want to be treated as reasonable and intelligent people
- Law schools need to do more to educate students about working with SRLs
- “Sharp practice” by lawyers against SRLs is a common experience for self-represented litigants – there is a need for clear guidelines for lawyers to adhere to

“The key to change is expanding public awareness of the A2J crisis – if it has not affected you yet, it may very soon!” (SRL)

- Lawyers and judges need to be more accountable via improved complaints processes
- It is important to find ways to empower SRLs through support groups

The final words of Continuing the Dialogue came from NSRLP Director Julie Macfarlane:

“Everyone in this room is an A2J activist now. Go forth and multiply!”

NSRLP Research Assistant Joanna Pawlowski and Julie Macfarlane
Acknowledgements and thanks

We want to say a special thank you to our student volunteers and NSRLP research assistants: Rebecca Flynn, Ashley Haines, Ali Tejani, Joanna Pawlowski, Braunte Petric, Jennifer Presad, and Somya Grover, and to Kaila Scarrow and Antonia Hrastivic who also served as SRL “Ambassadors”. Thank you to our pro bono facilitator Bernie Mayer for his skills in steering our discussions. Sue Rice, our first NSRLP Project Co-ordinator, was our Event Co-ordinator, and her organizational skills, enthusiasm and commitment were critical to the 2nd Dialogue Event, just as they were to the 1st!

To our sponsors – the Faculty of Law, University of Windsor, the Alberta Law Foundation, CanLii, Miller Canfield LLP, the Law Society of British Columbia, Ryerson Legal Innovations Zone, the Law Society of Ontario and private donors - we are extremely grateful for your support of Continuing the Dialogue and of the NSRLP.
## Appendix A - Attendees

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<td>Becky Robinet</td>
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<td>Kate Kehoe</td>
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<td>Justice Derek Green</td>
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<td>Jana Saracevic</td>
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<td>Chloe Hill</td>
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<td>Mary Anne Docherty</td>
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<td>Sally Rudolf</td>
<td>Jeff Rose-Martland</td>
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<td>Sherry MacLennan</td>
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Appendix B - Agenda

Thursday October 11, 2018

3-6.30pm Attendees arrive and settle into the hotel

6.30-8pm Welcome Reception at Holiday Inn Express Waterfront Hotel, meeting fellow attendees (appetizers and cocktails) (sponsored by Miller Canfield LLP)

Friday October 12, 2018

Complimentary breakfast at hotel

8.30am Transportation to Law School (coffee/tea available upon arrival)

9.00am Introductions, welcome from Dean Waters, agenda review, ice-breaker

5 Years of A2J Change & the NSRLP (Julie Macfarlane, NSRLP Director & Sherry MacLennan, BCLSS & NSRLP Board Member)

10.15am Refreshment break

Then & Now: the 2013 Dialogue Event Recommendations
We hear from 2013 attendees Jennifer Muller, Rob Harvie and Julie Mathews; evaluate what has changed, what has not changed, and what questions remain unanswered (moderator: Julie Macfarlane)

Small groups: What it will take to bring about deeper change that will significantly improve access to justice for Canadians?

Plenary discussion: Small group conclusions
12.30 – 1.30pm  Lunch

**Collaborative Working Groups Phase 1**
Identifying “best practices”, identifying pitfalls/failures/flawed assumptions

*Coffee and other refreshments will be available*

3.30-3.45pm  Break

**Great Ideas from Other Jurisdictions**
Showcasing some of our favourite initiatives and ideas from outside Canada

**Plenary discussion: Phase 1 reports, Day 1 reflections, goals for Day 2**

4.45-6.00pm  Wellness and Wine’d Down

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**Saturday October 13, 2013**

Complimentary breakfast at hotel

8.30am  Transportation to Law School (coffee/tea available upon arrival)

9.00am  Welcome & Agenda review

**Day 1 Working Group Outputs**
Discussion of central/recurring themes: what it will take to bring about change; barriers and opportunities; where do we want to focus today

**Collaborative Working Groups Phase 2**
Achievable goals within 2 years with specific recommendations
Continuing the Dialogue: Final Event Report 2018

Coffee and other refreshments will be available – take a break as needed

11.30am   **Plenary Review of Working Group Recommendations**  
Presentations from working groups

12.00 – 1.00pm   Lunch

**Plenary Review of Working Group Recommendations cont./**
Priorities and collaborations  
Dialogue Event Report  
Next steps: hopes, visions and commitments

**Thanks and Final Thoughts**

2.45pm   Depart for Windsor Airport
Appendix C – 5 Years of the NSRLP

5 Years of A2J Change & the NSRLP
Julie Macfarlane & Sherry MacLennan

2013

The SRL Study
Opening the Dialogue: the first Dialogue Event

2014

SRL for a Day
SRL Speaker’s Bureau
First NSRLP Primers

2015

Summary Judgement Research Report
Growing attention of media to SRL issue
(eg CBC The National)
Bring an SRL to School Day, law student coaching
2016

National Database of Professionals Assisting SRLs
“Unbundling: the Video”
“Cases Without Counsel” IAALS
SRL “Certificate program”

2017

Promoting Legal Coaching
The SRL Case Law Database
*Pintea v Johns*
Bonkalo and the paralegal petition

2018

Family Law in the Library
SRL Primers upgrade
Continuing to act @ intervenor
Continuing the Dialogue: the 2nd Dialogue Event