



The National Self-Represented Litigants Project

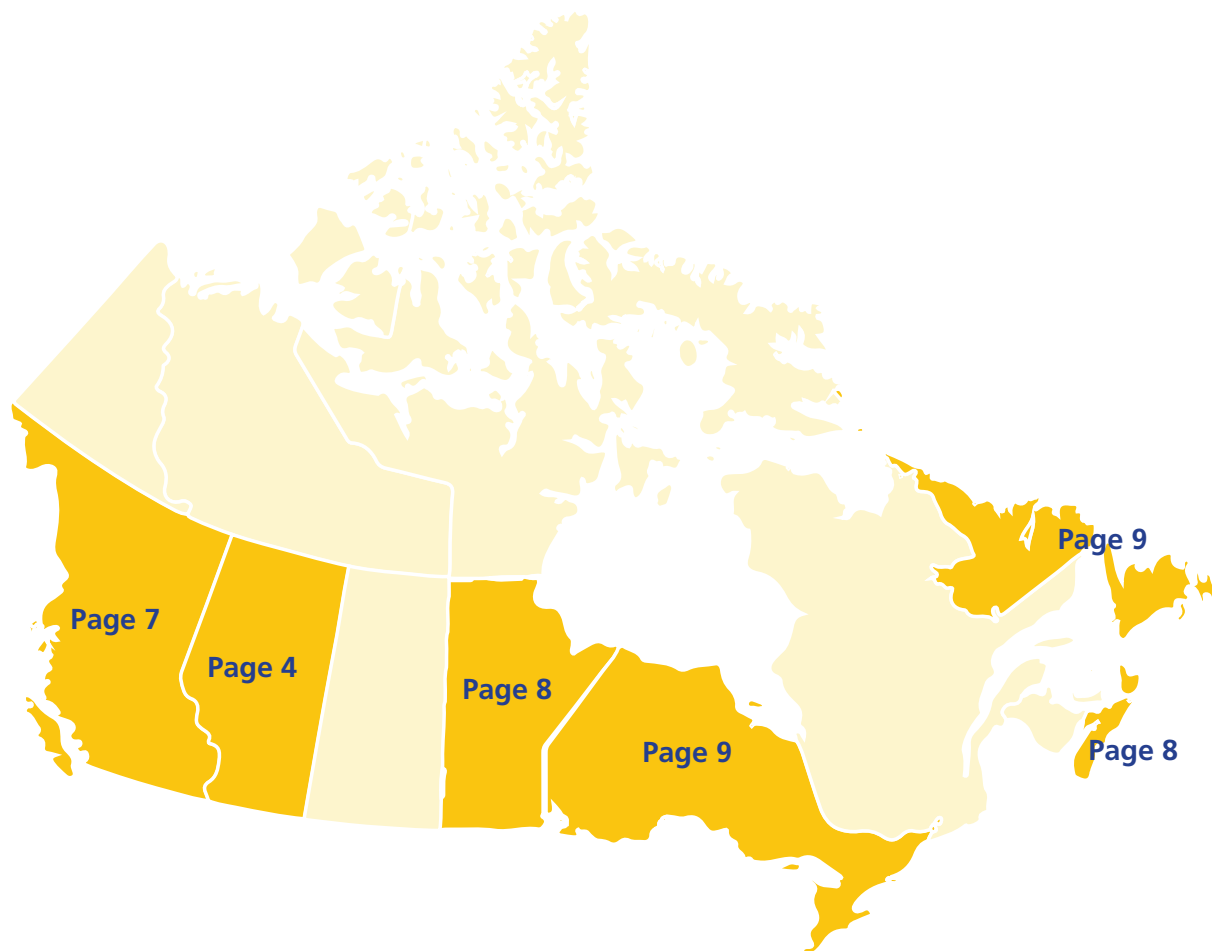
# **The McKenzie Friend**

Canadian cases and additional research



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# About this primer

We've created this primer to be used with ***The McKenzie Friend: Bringing a support person with you to court***. For details on what a McKenzie Friend is, and how to choose and present one, refer to that guide.

This primer includes three sections:

**Section 1: Canadian cases on McKenzie Friends** – these cases (updated in June, 2020) represent circumstances where McKenzie Friends have been either permitted or not permitted in Canadian courts;

**Section 2: Court restriction orders and McKenzie Friends;** and

**Section 3: Further reading and resources.**

We hope that this additional information assists you as you decide whether you want, choose, and successfully present your own court companion.

If you need information that is not included in this primer, we would like to hear from you. You can reach us at [representingyourself@gmail.com](mailto:representingyourself@gmail.com).

## Acknowledgements and thanks

Grateful appreciation to **Judith M DaSilva** and **Kelsey Buchmayer** for their research and input into this primer.



## Section 1

# Canadian cases on McKenzie Friends

(Updated in June, 2020)


The cases that follow represent circumstances where McKenzie friends have been either permitted or not permitted for self-represented litigants (SRLs), in courts throughout Canada.

## How to use these cases

We've compiled cases from **Alberta, British Columbia, Manitoba, Nova Scotia, Newfoundland and Labrador, and Ontario**. The cases demonstrate how courts have permitted or not permitted an SRL to have a McKenzie Friend. They also show under what circumstances and within what parameters a McKenzie Friend could assist an SRL.




Read the cases, and pay attention to your particular jurisdiction. If any of the cases closely aligns with your case, use it to prepare your own presentation. Like all case law, it is always important to be aware of the jurisdiction, so you know if a judge in *your* jurisdiction would be bound by the decision, or if it would be merely persuasive.

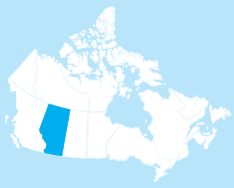
### If you want to search for more recent cases

-  As McKenzie Friends are fairly new to Canada, this is an area of case law that's changing all the time. If you wish to search for more recent cases in your jurisdiction, you can do so using CanLII (<https://www.canlii.org/en>), the free legal database.

In the first search box in CanLII that says "document text", type in "McKenzie friend" in quotation marks. This will show all results in which the term "McKenzie friend" has been used in documents available on CanLII. Further filter by cases, and by jurisdiction.

If you haven't learned how to use CanLII, refer to our three comprehensive primers:

-  **1. Doing Your Research Part 1:** Understanding precedent and navigating the CanLII legal database (available in English and French)
-  **2. Doing Your Research Part 2:** Accessing case reports, and using them to build your legal argument
-  **3. Reference guide:** Legal definitions, court abbreviations, and Canada's court systems at-a-glance



## 1. *Bretin v Ross*, 2019 ABQB 957

**Alberta Court of Queen's Bench**  
**2019 12 13**

Civil practice and procedure — Limitation of actions — Real property — Adverse possession — Miscellaneous

[...] 17. Mr. Bretin was self-represented in the trial. He requested leave to have his wife Patricia sit with him and act as his "**McKenzie Friend**". AltaLink consented to this request, notwithstanding that Mrs. Bretin was also a witness in the proceedings. Mrs. Bretin was of assistance to Mr. Bretin and the Court. [...]

## 2. *R v Stephan*, 2019 ABQB 611

**Alberta Court of Queen's Bench**  
**2019 08 08**

Judges and courts — Appointment, removal, disqualification and discipline of judges and other court officers — Disqualification for bias — Conduct

[...] 119. ... the Crown argues ... that Ms. Stephan has adequate skill and sophistication, including understanding and absorbing documents, to represent herself. She does not need to rely on others to appreciate the trial proceedings. I find that this is so, especially working jointly with, and relying on, Mr., her co-accused, and her brother-in-law and **McKenzie Friend**, Bradford Stephan. This has been her arrangement for over eight months, jointly with Mr., since the previous Counsel withdrew. Mr. is intending to continue to self-represent. While that support infrastructure does not make her a lawyer, or in itself give her legal/court process information, it does show that Ms. has demonstrated an ability to learn complex processes [...]

[...] 121. ... Mr. Stephan's brother, Bradford Stephan, has ably acted throughout as a **McKenzie Friend**. Nothing suggests that will end. [...]

## 3. *Vanmaele v Maryniak*, 2018 ABCA 179

**Alberta Court of Appeal**  
**2018 05 10**

Civil practice and procedure — Pleadings — Statement of claim — Striking out for absence of reasonable cause of action — General principles

[...] Counsel: **McKenzie friend** ... for Appellant [...]

## 4. *National Leasing Group Inc v Acme Enterprises Ltd*, 2015 ABQB 631

**Alberta Court of Queen's Bench**  
**2015 10 08**

Lease — Company — Separate legal personality — Corporate — Veil

[...] 3. ... prohibition in section 106 of the Legal Profession Act, RSA 2000, c. L-8 and the absence of any discretionary exemption in the Rules, other than for **McKenzie friends**. [...]

[...] [Footnote 3] Re O'Connell, Whelan and Watson [2005] EWCA Civ 759, for a thorough review of **McKenzie friends** and the duties of the Court in another context. [...]

## 5. *Landmass Dirtworx Ltd v Prairie Mountain Construction (2010) Inc*, 2015 ABQB 362

Alberta Court of Queen's Bench  
2015 06 04

Person — Affidavit — Defence — Corporation — Lawyer

[...] 4. New Rule 2.23 allows any person to provide only silent and passive support in court, provided those activities are restricted to a **"McKenzie Friend"** role; and ... any assistance by a non-lawyer cannot contravene the Legal Profession Act and assistance is essentially limited (if permitted at all) to those provided by a so-called McKenzie friend. [...]

## 6. *908077 Alberta Ltd v 1313608 Alberta Ltd*, 2015 ABQB 108

Alberta Court of Queen's Bench  
2015 02 13

Represent — Inherent jurisdiction — Non-lawyer — Litigant — Corporation

[...] 20. ... Rather, the Alberta Rules of Court, Alta Reg 124/2010 permits individual self-representation and assistance by a **"McKenzie Friend"** (from *McKenzie v. McKenzie* (1970), [1971] P. 33, [1970] 3 All E.R. 1034 (Eng. C.A.)):

2.22 Individuals may represent themselves in an action unless these rules otherwise provide.

2.23

(1) The Court may permit a person to assist a party before the Court in any manner and on any terms and conditions the Court considers appropriate.

(2) Without limiting subrule (1), assistance may take the form of

- (a) quiet suggestions,
- (b) note-taking,
- (c) support, or
- (d) addressing the particular needs of a party.

(3) Despite subrule (1), no assistance may be permitted

- (a) that would contravene section 106(1) of the Legal Profession Act,
- (b) if the assistance would or might be disruptive, or
- (c) if the assistance would not meet the purpose and intention of these rules.

21. *Lameman v. Alberta*, 2012 ABCA 59 (Alta. C.A.), at para 8, (2012), 348 D.L.R. (4th) 45 (Alta. C.A.) interprets these provisions to mean that in-court non-lawyer representation is restricted to the support functions provided by a **"McKenzie Friend"**. A **McKenzie Friend** may be anyone and may assist anyone properly before the court by providing passive in-court support. The proposed roles for Lussaint and Huggins far exceed what is provided for in *Rule 2.23*. [...]

## 7. *R v Simpson*, 2014 ABCA 301

Alberta Court of Appeal  
2014 09 16

Will — Rescheduled — Alacrity — Heard — Single

[...] The Applicant Scott Collier Simpson with **McKenzie Friend** Mr. Prefontaine [...]

## 8. *Lameman v Alberta*, 2012 ABCA 59

**Alberta Court of Appeal**  
2012 03 01

Overseas barristers — Lawyers — Advocate — Unqualified — Lawsuit

[...] 8. Subrule (2) of R 2.23 is about a “**McKenzie friend**” who helps the party silently, but cannot speak: *McKenzie v McKenzie* [1971] P 33, [1970] 3 All ER 1034 ... So the appellant does not claim to have the overseas barristers come in as **McKenzie friends**, and he admits that R 2.23(2) is only indirectly relevant. [...]

## 9. *DWH v DJR*, 2011 ABQB 608

**Alberta Court of Queen’s Bench**  
2011 10 12

Child — Parentage — Birth — Gay — Male

[...] 150. In so ordering I am mindful that the Applicant is a self-represented party who was provided assistance through his **McKenzie friend**. [...]

## 10. *Lameman v Alberta*, 2011 ABQB 396

**Alberta Court of Queen’s Bench**  
2011 06 24

Barristers — Lawyers — Self-represented litigants — Inherent jurisdiction — Practise

[...] 29. The Law Society explains that New Rules r. 2.23(1) codifies the decision of the English Court of Appeal in *McKenzie v. McKenzie*, [1970] 3 All E.R. 1034 (Eng. C.A.) and cites the Alberta Law Reform Institute’s *Consultation Memorandum* No. 12.18 entitled “Self-Represented Litigants” (“CM 12.18”). The Alberta Law Reform Institute considered whether the *New Rules* should allow litigants to be assisted by a “**McKenzie friend**” adopting the definition of a **McKenzie friend** as being a person whom the court allows to assist a self-represented litigant in a hearing so that the self-represented litigant may better present their case (CM 12.18 at 39). The **McKenzie friend’s** support may range from a role similar to a legal expert (prompting the litigant to make useful points and representations, and examination of witnesses and giving advice) to the role of sympathetic supporter (who may help by taking notes, or offering comfort or moral support). However, such a person does not take on the role of a lawyer.

30. The assistance referred to in New Rules r. 2.23 mirrors that suggested in *McKenzie*: a person may attend as a friend of either party, take notes, quietly make suggestions, and give advice. *New Rules* r. 2.23(3)(a) expressly states that the assistance cannot contravene LPA s. 106, i.e. it cannot be in the nature of acting as a barrister or solicitor. The rationale for allowing a **McKenzie friend** is fairness to self-represented litigants: *R. v. Leicester City Justices*, [1991] 3 All E.R. 935 (Eng. C.A.), cited in CM 12.18 at 40.

## 11. *Milne v Milne*, 2009 ABQB 361

**Alberta Court of Queen’s Bench**  
2009 06 15

Property — Sheep — Marriage — Spouse — Farm

[...] 2. ... However, I did allow Ms. Reynolds a “**McKenzie friend**” to assist her throughout the course of the trial. [...]

## 12. *Schmidt-Paborn v Lucas*, 2005 ABQB 495

**Alberta Court of Queen's Bench**  
**2005 06 30**

Family law — Maintenance and support — Child support — Support guidelines — Calculation or attribution of income — Enforcement of orders — Arrears of maintenance — Reduction or rescission of arrears — Variation or termination

[...] 21. Mr. Schmidt-Paborn's parents attended at the application with him. Although I explained to Mr. Schmidt-Paborn that because he had attended high school, and appeared not to be mentally or physically handicapped, he should present his own application, although he could ask his father to help him find material; in legal terms, I authorized Mr. Schmidt-Paborn to use his father as a **McKenzie friend**. Although his parents presumably heard this advice and the reasons therefor, on many occasions, off and on during the course of the hearing, they insisted on speaking for their son. [...]

## 13. *R v JWS*, 2004 ABQB 407

**Alberta Court of Queen's Bench**  
**2004 03 23**

Criminal law — Offences — Property offences — Possession of breaking instruments — Possession of stolen goods — Procedure — Trial judge's duties — Where accused unrepresented — Trials — Adjournment

[...] 37. The Defendant advised me yesterday that he was going to be assisted or had been assisted in the past, including in front of Justice Sanderman, by a person he called a "friend of the court", by which the defendant apparently meant someone other than a lawyer who would be participating to assist him.

38. This view, perhaps, resembled the notion of a "[**McKenzie**] **Friend**" which is discussed in English jurisprudence, or the concept of *amicus curiae* as known in Canada. [...]



# British Columbia

## 1. *Hansra v Hansra*, 2015 BCSC 1254

**British Columbia Supreme Court**  
**2015 08 07**

Business — Debt — Valuation — Buyout — Credit

[...] **McKenzie friend** for the Respondent: [...]





# Manitoba

## 1. *The Law Society of Manitoba v Pollock*, 2007 MBQB 51

**Manitoba Court of Queen's Bench**  
**2007 03 08**

Summary conviction — Injunction — Agent — Self-represented litigant — Provisions

[...] 121. Styled in a Notice of Constitutional Question, but also raised during his argument, Mr. Pollock wishes the Court to consider his ability to act as a “McKenzie Friend” notwithstanding the provisions of the Act. A “**McKenzie Friend**” refers to a practice developed in England arising from a case entitled *McKenzie v. McKenzie* (1970), [1971] P. 33 (Eng. C.A.). The Court, referring to a self-represented litigant, acknowledged the ability of such a litigant to have with him a “friend” who could take notes, make suggestions and give advice. In a later case this was explained as being for the purposes of allowing the self-represented litigant to better “himself” present his case.

122. It should be noted, however, that the **McKenzie Friend** doctrine was used in England primarily for proceedings in Family Court, not in criminal or civil matters. Secondly, the role of the **McKenzie Friend** was limited to assisting the litigant and giving advice to the litigant, not advancing argument, cross-examining or performing any other functions that counsel usually do. The ability to have a **McKenzie Friend** appointed is left to the discretion of the Court on a case by case basis. Finally, my understanding of the **McKenzie Friend** doctrine is that fees are not involved.

123. It would not be my view that the appointment of Mr. Pollock as a **McKenzie Friend** on occasion would constitute the practice of law. However, if he held himself out to be available as a **McKenzie Friend** to all and sundry, or proposed to charge a fee for his services, then I believe different considerations would apply. If, on an occasional basis, Mr. Pollock was to seek the permission of the Court to assist an individual as a **McKenzie Friend**, this may not constitute the unauthorized practice of law. [...]



# Nova Scotia

## 1. *R v Hillman*, 2015 NSSC 359

**Nova Scotia Supreme Court**  
**2015 07 22**

Lay representation — Indictable — Forbid — Non-legally trained lay — Summary

[...] 13. I have also considered Mr. Hillman’s arguments with respect to the *Interpretation Act* and also to the issue of ‘**McKenzie Friend**’ representation as this applies in U.K. family law cases. I find that the *Interpretation Act* does not apply in the way Mr. Hillman would urge. I also conclude that **McKenzie Friends**, do not have a role here in our jurisdiction given the wording and operation of our *Criminal Code*. [...]



# Newfoundland and Labrador

## 1. *Steele v Rendell*, 2016 NLCA 70

**Newfoundland and Labrador Court of Appeal**  
**2016 12 19**

Civil practice and procedure — Parties — Representation by solicitor

APPLICATION by respondent in appeal to be permitted to be represented on hearing of appeal by son, who was retired lawyer.

[...] 19. Rule 22(2) also recognizes two other circumstances whereby a litigant, outside of self-representation and legal representation, may appear in Court. The first is the case of the so-called “**McKenzie friend**” (named after the English case of *McKenzie v. McKenzie*, [1971] P. 33 (Eng. C.A.) and first recognized by this Court in *Fiander v. Mills*, 2015 NLCA 31, 368 Nfld. & P.E.I.R. 80 (N.L. C.A.) at paragraph 9) who may, in the words of rule 22(2)(b), “sit with a party in the Court for the purpose of providing assistance, advice and support during the proceeding”. This provision has no application in this case because the respondent is seeking to have her representative appear and fully argue her case on her behalf, not merely sit with and assist her. [...]

## 2. *Fiander v Mills*, 2015 NLCA 31

**Newfoundland and Labrador Court of Appeal**  
**2015 06 24**

Abuse of process — Applications — Vexatious — Fishery officer — Strike

[...] 9. The registry of this Court has confirmed that Mr. Pearce is not a member of the bar of this province. Nor is there any indication that he is a member of the bar of any other jurisdiction in Canada. Accordingly, he had no authority to represent the appellant in these proceedings except perhaps as a **McKenzie friend**. A person who was identified by one of the counsel as Mr. Pearce appeared with the appellant in Court, but, while conferring with the appellant and passing him papers, he did not speak. The appellant read from a prepared text. His manner of delivery indicated that he was not familiar with the words he was reading. It may well be, therefore, that it had been prepared by Mr. Pearce or someone else. [...]



# Ontario

## 1. *B2B Bank v Hails*, 2018 ONCA 366

**Ontario Court of Appeal**  
**2018 04 12**

Civil practice and procedure — Parties — Miscellaneous

MOTION by mortgagor to appoint **McKenzie friend** and for order directing payment of surplus available from sale of property and accounting in connection with sale.

[...] 11. Mr. Hails, who is self-represented, has filed three further motions in connection with his appeal to this court. He seeks an order:

- i. appointing “Michael Joseph Albert, Gaboury” as a **McKenzie friend**;
- ii. adjourning the hearing of the appeal to permit the **McKenzie friend** time to prepare; and [...]

[...] The **McKenzie Friend** Motion

13. In support of his motion to have “Michael Joseph Albert, Gaboury” appointed as a **McKenzie friend**, Mr. Hails relies upon his own affidavit and an affidavit from the proposed **McKenzie friend**.

14. For all practical purposes, the supportive affidavits are in identical terms. Each asserts the complexity of the proceedings and the difficulty Mr. Hails has in “keeping up” and organizing his documents as the basis for his request for the appointment of a **McKenzie friend**. The balance of both affidavits is occupied by descriptions of the qualifications of “Michael Joseph Albert, Gaboury” for his proposed role as **McKenzie friend** and his prior experience of serving in that capacity.

15. The proposed **McKenzie friend**, “Michael Joseph Albert, Gaboury” is a party to what is described as a “pure trust” agreement with Mr. Hails, as grantor, with respect to the mortgaged property. [...]

16. A further connection between the proposed **McKenzie friend** and Mr. Hails appears on examination of the address for service Mr. Hails has provided in his materials. [...]

17. As I will briefly explain, I am not persuaded that this is a case in which a **McKenzie friend** should be appointed.

18. Appointment of a **McKenzie friend** appears to have originated in a practice developed in England primarily for family law proceedings. In accordance with this practice, self-represented litigants are permitted to have with them in the court room a “friend” who can take notes, make suggestions and give advice. In this way, the self-represented litigant is better able to present their case to the court.

19. The role of the **McKenzie friend** does not extend to the functions usually discharged by counsel. Cross-examining witnesses. Advancing argument. The appointment of a **McKenzie friend** is left to the sound discretion of the court to which the application is made, with each case falling to be decided on its own facts. Even where such an appointment is made, the nature and extent of the assistance authorized must be closely circumscribed, lest the mandate provided to the friend amount to the functional equivalent of that performed by counsel. See, *Law Society (Manitoba) v. Pollock*, 2007 MBQB 51 (Man. Q.B.), at paras. 121-122.

20. In this case, the record is barren of any credible evidence that Mr. Hails is in need of a **McKenzie friend**. [...]

[...] 22. It is difficult to tease out of this factual matrix any support for the claim of complexity Mr. Hails advances as the lynchpin of his claim for appointment of a **McKenzie friend**. Any complexity is of Mr. Hails’ own making.

23. The few authorities to which I have been referred do not assist Mr. Hails. For the most part, appointment of a **McKenzie friend** occurs in family law proceedings, not in enforcement proceedings for default under a mortgage. And the range of assistance provided, according to those authorities, such as helping the litigant find the courtroom; organize and locate court documents; take notes; talk to the litigant during submissions; offer suggestions during court recesses; and quietly indicate to the litigant whether all points have been covered during submissions seem not to be what Mr. Hails has in mind for “Michael Joseph Albert, Gaboury” who may be one and the same as “Lord Michael Joseph Albert Gaboury”, a director of G.E. Holdings Canada Limited and a party to a “pure trust” agreement in connection with the property.

24. The motion to appoint a **McKenzie friend** fails and is dismissed. [...]

## 2. *Blanks v Roberts*, 2018 ONSC 7699

**Ontario Superior Court of Justice**  
**2018 12 21**

[Real property — Sale of land — Agreement of purchase and sale — Formation of contract — Legality of agreement — Miscellaneous](#)

[...] 12. In a note I received from court staff on Monday, October 29, 2018, I was advised that Ms. Roberts was seeking a series of accommodations in court. Those accommodations were as follows:

The accommodation I am seeking are as follows:

1. Non-aggressive approach to communication (trigger response sensitivity).
2. Permission to record proceedings on personal recording device in order that I may replay the recording for clarification and remembering.
3. Court and parties to refrain from cross-talking or over talking and interrupting while communicating (as best as is possible).
4. Clear questions with time provided to respond without pressure.
5. Breaks as necessary in order to regroup, collect thoughts, and focus
6. Permission to bring a **[Mckenzie] Friend** (*MacKenzie v. MacKenzie*) courtroom companion to sit beside me, to take notes, pass paperwork, and provide emotional support.
13. Ms. Roberts took the position that she was entitled to these accommodations. In support of her position, she provided a medical note that stated as follows:

I am a Fellow of the College of Family Physicians of Canada and a certified MD-Psychotherapist licensed to practice medicine in Ontario since 1986.

Ms. Roberts has been a patient of mine since December 6, 2012. Her symptoms related to her disability worsen when she is under stress.

Ms. Roberts requires the following accommodations to meet with her disabilities:

1. A **"McKenzie" friend** to help her go to court, offer emotional support, assist in note-taking and organize paperwork.
2. Extra time to process paperwork and put material together.
3. Closure of the legal matters in a proper, timely, equitable, fair and cooperative manner with appropriate financial remuneration to Ms. Roberts.

Thank you for your assistance in this matter.

14. This medical note does not disclose anything about Ms. Roberts' underlying medical condition, such as what her restrictions were. When I asked her about this condition at the outset of the hearing, she advised me that this information was covered by privacy law and she did not have to disclose it. I disagreed, but allowed the following accommodations:

- a) In terms of non-aggressive communications, I reminded the parties that communication in the courtroom is done through me, and not directly to the other party. As a result, I was of the view that this was sufficient to address this accommodation.
- b) Permission to record proceedings on a personal recording device. I granted permission on the condition that the recording was not to be used for any purpose other than remembering what had happened, and that the recording must be destroyed in court at the end of the proceeding.
- c) With regards to cross-talking, talking over each other, clear questions, and breaks, these are matters for me to manage as the judge. As with the concern about aggressive communications, this was sufficient to address the accommodation requests.
- d) On the request for a **[Mckenzie] friend**, I noted that the case-law suggests that this is normally restricted to the most complex cases, but I was not going to object to it in this case. [...]

### 3. ***Galati v Aviva Canada Inc*, 2011 OFSCD 5, 2011 CarswellOnt 1082**

**Financial Services Commission of Ontario (Appeal Decision)  
2011 01 05**

Insurance — Automobile insurance — No-fault benefits — Medical and rehabilitation benefits  
— General principles

[...] 28. I also noted that Mr. Di Prima's role in this proceeding was still uncertain. I referenced specific cases regarding counsel being appointed a "friend of the court" or as a "**McKenzie Friend**," and asked for Mr. Di Prima's submissions, including possible entitlement or liability for legal expenses.

29. My February 9, 2010 letter indicated that Mr. Di Prima's February 5, 2010 letter, stating only that he would be assisting the Appellant but not formally appearing on the record, did not respond to the specifics of my letter. As Mr. Di Prima had no standing as representative, "friend of the court" or a "**McKenzie Friend**," on February 8, 2009 the Appeals Administrator had contacted the Respondent's counsel and the Appellant directly to set a new appeal hearing date. [...]

## 4. **Decision No 1565/08I, 2008 ONWSIAT 2055**

**Ontario Workplace Safety and Insurance Appeals Tribunal**  
**2008 07 25**

Facilitator — Legal services — Worker's representative — Exempt — Friend

[...] 12. The materials that had been forwarded to the Tribunal in advance of the hearing on behalf of the worker included documents related to the legal concept of a "**McKenzie Friend**". There was some suggestion that Ms. Champagne might be appearing as a "**McKenzie Friend**." Ms. Shaw referred the Panel to a decision of the Manitoba Court of Queen's Bench, *Law Society (Manitoba) v. Pollock*, [2007] M.J. No. 67 (Man. Q.B.). In that decision, the Judge discussed the role of a **McKenzie Friend**:

A "**McKenzie Friend**" refers to a practice developed in England arising from a case entitled *McKenzie v. McKenzie* [1971] P. 33. The Court, referring to a self-represented litigant, acknowledged the ability of such a litigant to have with him a "friend" who could take notes, make suggestions and give advice. In a later case this was explained as being for the purposes of allowing the self-represented litigant to better "himself" present his case.

It should be noted, however, that the **McKenzie Friend** doctrine was used in England primarily for proceedings in Family Court, not in criminal or civil matters. Secondly the role of the **McKenzie Friend** was limited to assisting the litigant and giving advice to the litigant, not advancing argument, cross-examining or performing any other functions that counsel usually do. The ability to have a **McKenzie Friend** appointed is left to the discretion of the Court on a case by case basis. Finally, my understanding of the **McKenzie Friend** doctrine is that fees are not involved.

13. After some discussion, Ms. Champagne advised the Panel that she was not seeking to be a "**McKenzie Friend**" in this case. She indicated that she was not sure who had forwarded the documents that pertained to this. As discussed below, she eventually advised the Panel that she wished to proceed as the worker's representative and that she was exempt from the requirement to be registered with the Law Society because she is the worker's friend. [...]

## 5. **DF v Wawanesa Mutual Insurance Co, 2008 OFSCD 56, 2008 CarswellOnt 2858**

**Ontario Financial Services Commission**  
**2008 04 15**

[...] 22. ... Ms. F submits that the arbitrator's reference to the lawyer who assisted her at the expense hearing as a "**McKenzie friend**" was insulting and a reflection of his attitude towards her. [...]

23. ... I see the reference to the "**McKenzie friend**" as [the arbitrator's] attempt to describe the role of counsel who assisted Ms. F without representing her. [...]

## 6. *Logtenberg v ING Insurance Co*, 2008 OJ 3394

Ontario Superior Court of Justice  
2008 03 28

### Civil Practice and Procedure

[...] 4. ... The Defendants/Responding parties consent to the Plaintiff making use of a high back chair during the proceedings and to the aforementioned items 1 to 7. These will be permitted as follows:

1. The **McKenzie Friend** ("M.F.") can assist the Plaintiff in locating the courtroom;
2. The "M.F." can assist the Plaintiff in organizing and locating court documents;
3. The "M.F." can assist the Plaintiff in the task of note taking during the proceeding;
4. The "M.F." can quietly prompt the Plaintiff during her submissions and/or quietly signal to the Plaintiff that she should conclude her submissions;
5. The "M.F." can make his/her own notes during the proceedings;
6. The "M.F." can offer suggestions to the Plaintiff during any court recess;
7. The "M.F." can quietly indicate to the Plaintiff that all points to have been covered in her submissions have/ have not been communicated to the court. [...]

## 7. *DF v Wawanesa Mutual Insurance Co*, 2006 OFSCD 201, 2006 CarswellOnt 8427

Ontario Financial Services Commission  
2006 12 22

### Self-represented litigant — Proceeding vexatious due to self-rep — Arbitration order

[...] 16. I am not privy to why D.F. did not have legal representation in this arbitration. I do know from the evidence at the hearing that she does have legal representation on at least two other matters which are in litigation. D.F. also claims in her request for arbitration expenses that she should be compensated by Wawanesa for 32 hours of "advice" related to this arbitration which she claims she owes to unnamed lawyers. She also had Mr. Gillen assisting her in the expense hearing, although he stated that he was not on the record but only helping D.F. out for the day. Effectively, he was acting in the capacity of a "**McKenzie friend**", as noted above.

17. I find that it is important to make a distinction between a unrepresented applicant who cannot, for whatever reason, find a lawyer or paralegal to represent her in a hearing and decides to fend for herself, and a person who acts without legal representation but clearly is getting advice from lawyers in "off the record" sorts of ways. The latter is in effect an example of "unbundling" legal services, a process that is becoming increasingly common. I find that if a person picks and chooses which legal services they will engage a representative for, then they have to accept the responsibility that goes along with that choice. [...]

# Postscript: Court restriction orders and McKenzie Friends

The last few years have seen some courts (the Federal Court and the Alberta Court of Queen's Bench) using "court access restriction orders" aimed at designating individuals as "vexatious". Some of these "court restriction orders" have included a prohibition on these same persons appearing as McKenzie Friends.



However, this expansive approach to restricting court access, including prohibiting a person from acting as a McKenzie Friend, has been changed with the recent Alberta Court of Appeal decision of *Jonsson v Lymer*, 2020 ABCA 167. This case narrowed the overly broad scope of the court's jurisdiction in declaring litigants "vexatious." (see our primer ***Critical Decisions for Self-Represented Litigants*** for more information on this).

While, unfortunately, anyone who was designated as a vexatious litigant in Alberta before *Lymer* remains under the given restrictions (which may include not appearing as a McKenzie Friend), the Alberta Court of Appeal decision in *Lymer* makes it much less likely that this will happen in the future. *Lymer* states that only minimally necessary restrictions on vexatious litigants should be included, because of the unique challenges of SRLs, and concerns over access to justice.

So, we advise you to check in with your potential McKenzie Friend to make sure that they have not been subject to an Alberta court restriction order and restricted from acting as a McKenzie Friend, but this is now mostly only a theoretical possibility, and we hope to see this approach used very little in the future.

# Further reading and resources

If you want to go deeper, here are further reading options and resources to assist you.



**David Mossop “Bring a Friend to Court: A Guide”**

[http://d3n8a8pro7vhm.cloudfront.net/clastest/pages/79/attachments/original/1401251986/Bring\\_a\\_Friend\\_to\\_Court\\_Guide.pdf?1401251986](http://d3n8a8pro7vhm.cloudfront.net/clastest/pages/79/attachments/original/1401251986/Bring_a_Friend_to_Court_Guide.pdf?1401251986)



**U.K. McKenzie Friends Association**

<http://www.mckenzie-friend.org.uk>



**McKenzie Friends practice guidance published by the England and Wales Courts and Tribunals Judiciary, July 2010**

<https://www.judiciary.gov.uk/wpcontent/uploads/JCO/Documents/Guidance/mckenzie-friend>



**Australian McKenzie Friends Club**

<http://www.mckenziefriends.com.au/guide-to-a-mckenzie-friend.pdf>



**“McKenzie Friends” article by Robert Spon-Smith**

<http://www.familylawweek.co.uk/site.aspx?i=ed1568>



**Law Society of England and Wales, Litigants in Persons, Guidelines for Lawyers (June 2015)**

<http://www.lawsociety.org.uk/support-services/advice/articles/litigants-in-person-new-guidelines-for-lawyers-june-2015>





# A list of the primers we offer

## Here are the primers we currently offer


 They're free for you to download here: <https://representingyourselfcanada.com/our-srl-resources/>

### Step 1: Getting ready and starting the legal process





-  **So you're representing yourself:** A primer to help you get ready to represent yourself in family or civil court
-  **A guide for SRLs with disabilities:** Understanding your rights and requesting the assistance you need
-  **A Courtroom Companion (McKenzie Friend)**
-  **The McKenzie Friend:** Bringing a support person with you to court
-  **Considering Mindfulness:** How you can use Mindfulness to increase your focus and relieve the stress of representing yourself

### Step 2: Doing your research and preparing your arguments

#### Doing Your Research

-  **Part 1:** Understanding precedent and navigating the CanLII legal database (available in English and French)
-  **Part 2:** Assessing CanLII case reports, and using them to build your legal argument
-  **Reference Guide:** Legal definitions, court abbreviations and Canada's court systems at-a-glance
-  **Critical Judicial Decisions for Self-Represented Litigants:** Using important case law that establishes rights for self-represented litigants and how the justice system should protect you from bias
-  **Settlement Smarts** Tips on effectively using negotiation, mediation and Judge-led settlement processes
-  **What you need to know about affidavits**

### Step 3: Presenting your case in court

-  **Coping with the courtroom:** A primer to help you navigate the written (and unwritten rules) of the courtroom
-  **How to order a court transcript**
-  **Working with opposing counsel:** Building constructive working relationships between self-represented litigants and opposing counsel
-  **Tips from the bench:** Advice for SRLs, and the judges who work with them

To keep up with what's happening at the National Self-Represented Litigants Project (NSRLP), visit **RepresentingYourselfCanada.com**.

If you have comments for us, or suggestions for ways to improve our primers, let us know at [representingyourself@gmail.com](mailto:representingyourself@gmail.com).