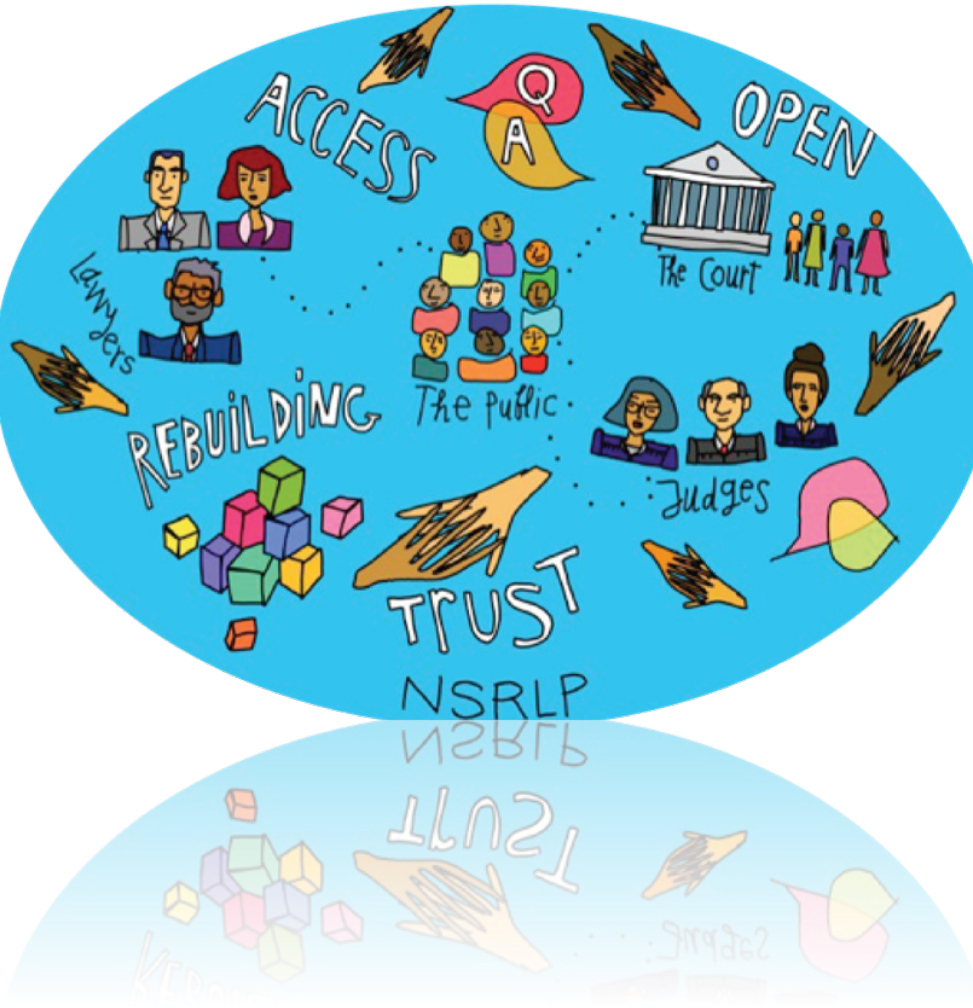




PWcD and Court Accommodations

Dr. Julie Macfarlane, Director,
NSRLP

Presentation to the Ontario
Courts Accessibility Committee



NSRLP Mandates

Research

Resources

Collaboration + Dialogue

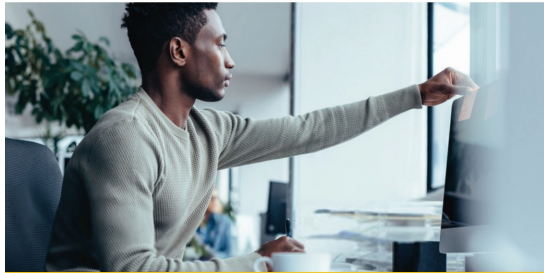
Advocacy & Public Awareness



The National Self-Represented Litigants Project

Settlement smarts

Tips on effectively using negotiation, mediation and judge-led settlement processes



representyourselfcanada.com



The National Self-Represented Litigants Project

The McKenzie Friend

Bringing a support person with you to court



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The National Self-Represented Litigants Project

Coping with the courtroom

A primer to help you navigate the written (and unwritten) rules of the courtroom



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The National Self-Represented Litigants Project

So you're representing yourself

A primer to help you get ready to represent yourself in family or civil court



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Our Primers



The National Self-Represented Litigants Project

A guide for SRLs with disabilities

Understanding your rights and requesting the assistance you need



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SRLs with disabilities: List of organizations and services who can help



Table of contents

List of organizations and services who can help	1
Accommodations and accessibility services by province and territory	1
Disability and not-for-profit organizations	9
Human rights and disability offices by province and territory	10
A list of the primers we offer	12

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Letter of Accommodation request

FAX TO: Accessibility Services Coordinator

Location where proceeding is being held		
Date (dd/mm/yyyy)	Fax number	Home phone
Case name		Court file number
Name (level) of court		
Proceeding and date		

Dear: _____

I am requesting confidential accessibility services in accordance with:

- | | |
|---|--|
| 1. <i>United Nation Convention on the Rights of Persons with Disabilities</i> , Article 13, Access to Justice | 5. <i>Canadian Charter of Rights and Freedoms</i> , in particular Section 15 |
| 2. <i>Canadian Human Rights Act</i> (RSC, 1985, c H-6) | 6. <i>Freedom of Information and Protection of Privacy Act</i> , RSO 1990, c F:31, PART III – Protection of Individual Privacy |
| 3. <i>Pintea v Johns</i> , 2017 SCC 23 | 7. _____ |
| 4. CJC Statement of Principles for Self-Represented Litigants and Accused Persons | |

I am requesting confidential accessibility services in accordance with:

What I'm requesting	Benefits of this accommodation
Non-aggressive approach to communication (trigger response sensitivity)	Provides a less threatening and more respectful environment for all parties
Limiting cross-talk, over-talk, or interruptions between the court and parties (as much as possible)	Helps me to focus and will save time overall, not requiring others to repeat
Clear questions with sufficient time to respond without pressure	Assists me to remain clear, avoiding errors due to misunderstandings or overwhelm
Receiving clearly stated procedural steps, broken down into tasks and deadlines	Assists me to more clearly understand complex procedures, lessening the chance of errors
Flexibility and extensions of time, as needed, regarding procedures	Gives me time to clarify procedures, get assistance or advice, potentially reducing errors and lengthy and costly proceedings to correct them
Breaks as necessary	Provides all parties with the same benefit, to collect thoughts and focus
Permission to use a laptop	Assists me to quickly reference and search documents saving time
Permission to record proceedings on a personal recording device	Allows me to replay the recording to clarify and remind myself of statements and procedures, reducing errors
Permission to bring a McKenzie Friend or courtroom companion to sit beside me	Helps me take notes, pass paperwork, and provides emotional support.

(Continued on next p

The SRL Case Law Database : civil and family cases from 2013 - present

4 parameters :

- * vexatiousness
- * procedural fairness
- * costs (for/ against)
- * accommodations

7 Research Reports to date and regular Can LII comments

Currently at 1200 identified and analyzed cases

Funding by SSHRC, Law Foundation of Ontario, BC Legal Research Fund



COVID-19 Resources

- Court closure updates
- Procedures for making affidavits, POA and wills
- Bringing an urgent case application (also webinar)
- Making an agreement on co-parenting protocols (also webinar, sample clauses)
- Tenants and the eviction moratoriums
- COVID-19 Infographics Series (in partnership with Windsor Law COVID Advocacy Working Group)

Our concerns : historical

- We have seen significant anecdotal evidence since 2013 suggesting that knowledge of how to request a court accommodation is very limited among SRLs (this led to the creation and then the updating and expansion of the *PWD Primer*)
- This issue appears to be further exacerbated for individuals with cognitive disabilities due to their difficulty with obtaining information, and sometimes their perception that these disabilities will neither be recognized nor understood by the court
- The 2013 Study included many stories of the difficulties faced by SRLs with cognitive disabilities in explaining their needs to the court

Fiona was owed almost \$300,000 in support arrears. After suffering a brain injury in an accident, she was no longer able to work and began an action to try to collect her support. Fiona was represented by counsel for two years, but ran out of money.

Fiona asked for a settlement conference, but nervous about her ability to manage an appearance. As a person with a brain injury, she needed to take notes for her future recall, but the judge would not let her and told her, “Put your pen down.” Fiona explained why she needed to take notes and asked if someone else might sit with her and take notes on her behalf. The judge refused this request. “You must respect the court and you should not take notes when I am talking.”

Fiona tried one more time to explain that she had a brain injury. “You look pretty good to me” said the judge. “Sit down”.

What are we seeing in the SRL Case Law Database? Two scenarios

Sae-Bin Im v BMO Investorline Inc. 2017 ONSC 95

The applicant's capacity to engage in the legal process is considered by the judge. No request for accommodation appears to have been made. However, *the judge considers this **lack of formal request as representative of the need for accommodation** and takes supplementary steps to help the applicant to understand the process.*

Kim v City of Toronto and Esplanade 75 Inc, 2013 ONSC 6831

The tenants made extensive submissions setting out the reasons why they needed an adjournment to obtain legal assistance. The request for accommodation was denied *because the judge believed that that granting their request would **not change the outcome of the trial***

Our concerns : contemporary

- In the past 15 months NSRLP has heard from many SRLs who have been trying to obtain accommodations since onset of the pandemic (these also represent the majority of our interview sample, below)
- These SRLs seem largely unaware of the accommodations process and complain about the cost and stress of bringing a motion to ask for an accommodation
- We know from experience that many of those representing themselves (and especially those who are PWcD) prefer to go in-person to the courthouse and try to obtain information from friendly counter and registry staff
- We are concerned that since the pandemic, lack of access to the courthouses may have further aggravated the problem of lack of awareness of how to go about requesting an accommodation

Data collected for this presentation

- NSRLP research assistants Silvia Battaglia and Shannon Meikle conducted 11 interviews (n=in person, n=by email) with Ontario PWcD who were representing themselves.
- Respondents were asked 5 questions
 - When did you request accommodations?
 - How did you request accommodations for your disability?
 - Did you face any challenges while requesting accommodations? If so, please describe those challenges.
 - What resources did you use to help you navigate your request for accommodations?
 - Please describe any efforts the courthouse made to ensure that you knew how to properly submit an accommodations request

How did you go about requesting accommodation?



I only knew of accommodation process from reading the NSRLP Primer



1 only found out about accommodations after 4 years in the system, but then it was “a smooth process”



1 “read in caselaw” about accommodations requests (and assumed that they should be made to a judge)

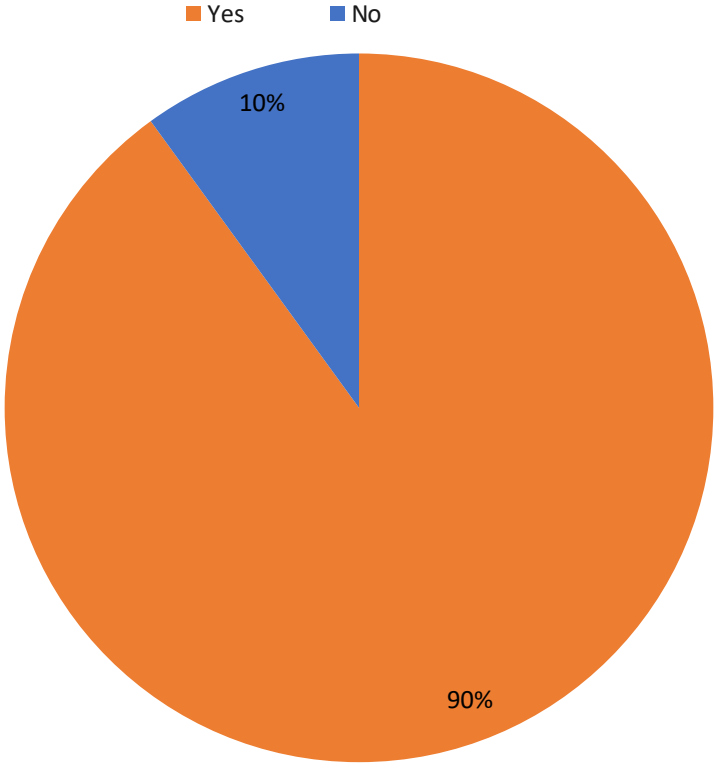


9 of 11 respondents made a request for accommodations in court to a judge (including paying to bring a motion, submitting affidavits in the usual way)

“Judge Judy taught me. She would ask a litigant if they had mental problems if that person was struggling. She taught me that the court has a role. I just took it from there and keep asking for accommodation.”



Did you face any challenges while requesting accommodations?

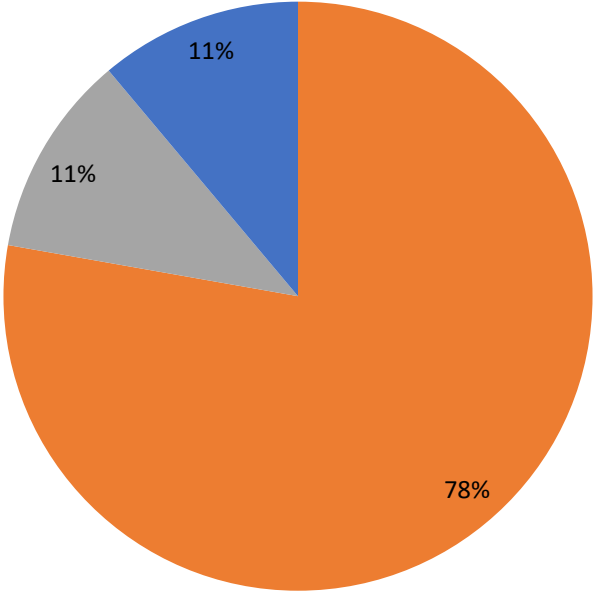


“I never got to the point of asking for accommodation because I felt it an overwhelming task to even submit the brief for my case. I just felt incapable of navigating the protocols for how to properly submit with documents when, how to write them up... I thought the only accommodation I could have was to have an advocate with me; but I didn't have an advocate”.

The “double whammy” of
self-representing &
managing cognitive disabilities

Please describe any efforts the courthouse made to ensure that you knew how to properly submit an accommodations request

None Minimal Help Lots of Help





"I wish there would be better education within the legal system or justice system... I also wish there was some kind of support... There was nothing, no support, no resources. No matter who I phoned."

Some complain that the Accessibility Co-ordinator has limited knowledge of cognitive disabilities and their impact on those coming without counsel

(This respondent) found a confusion between 'lack of capacity' and cognitive disability. "I'm actually scared [to submit another accommodations request]." "I want to be heard. I don't want that chance taken away from me."

Solutions & ideas?

Clarification of the judicial
role re accommodations

Clear messaging and
information from the
Accessibility Co-ordinator

More information on
Ontario courts website

Training for court services
staff on directing
individuals to the
Accessibility Co-ordinator

Judicial and court services
education on cognitive
disabilities and their
impact (and prevalence
among civil litigants)

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