



Understanding the Experiences of Self Represented Litigants in Nova Scotia

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NATIONAL SELF REPRESENTED LITIGANTS PROJECT EAST

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Dalhousie University and the Institute sit on the ancestral and unceded territory of the Mi'kmaq. We are all treaty people.

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Introduction

Nova Scotians who represent themselves in legal matters face many challenges. The legal system is difficult to navigate and is often inaccessible to laypeople. This report examines the experiences of persons who are representing themselves in court matters in Nova Scotia, often referred to as “self-represented litigants” (SRLs).

The income cut-off for Legal Aid assistance creates a large group of people in Canadian society who do not qualify for Legal Aid yet cannot afford legal services.¹ A study conducted in 2004 by the Nova Scotia Department of Justice found that 40% of self represented litigants surveyed did not need or want a lawyer, 34% could not afford one and 26% were denied Legal Aid.²

This report reviews 62 stories about self-represented litigation in order to understand the experiences of self represented litigants in the justice system. This is important for understanding what types of systems changes may need to occur in order to better support SRLs access justice. One such systems change that will be discussed in this report is a shift to a more trauma-informed approach in the justice system.

Methodology

Research Design

The study uses a mixed methods research design that triangulates the concurrent qualitative and quantitative data to validate the results.³ This approach maximizes the strengths and minimizes the weaknesses of the respective qualitative and quantitative methods.⁴

The quantitative section uncovers a recurring experience of trauma among the participants, whereas the qualitative section dives deeper into the actual experiences in the stories, interpreting the patterns contained within and across the stories.

¹ Trevor C W Farrow, “What is Access to Justice?” (2014) 51:3 Osgoode Hall Law J 957 at 965.

² Nova Scotia, Department of Justice, “Self Represented Litigants in Nova Scotia: Needs Assessment Study” (Halifax: Department of Justice, 2004), online:

<https://novascotia.ca/just/publications/docs/SRL%20Report%20March%202004.pdf> at vi.

³ Zoltán Dörnyei, *Research Methods in Applied Linguistics* (New York, NY: Oxford, 2007) at 172.

⁴ *Ibid* at 167.

Participants

The study includes the collected stories and quantitative data from 62 participants. At the beginning of the study, participants were asked to self-identify in several demographic categories (Table 1).

It is important to note that some participants identified with multiple equity-seeking groups. Other stories were submitted by third parties who did not disclose demographic information about the individual featured in the story. If third parties submitted their own demographic information, it was excluded from study results.

Gender			
Female 29 participants	Male 22 participants	Non-binary 2 participants	Not disclosed 9 participants
Equity-Seeking			
Yes 31 participants	No 17 participants	Not disclosed 14 participants	
Indigenous Groups			
Acadian First Nation 6 participants	Mi'kmaq First Nation 2 participants	Metis 1 participant	Not disclosed 5 participants
Other Equity-Seeking Groups			
African Nova Scotian/ Black community 4 participants	LGBTQ community 3 participants	Immigrant/Refugee 3 participants	Mental health or addiction concerns 3 participants

Table 1: Demographics submitted by study participants.

Data Collection

A software called SenseMaker was used to digitally collect stories and data for manual analysis. The data collection was cross sectional because all data was collected from participants at one time.

Data Analysis

The qualitative analysis of the stories occurred in three stages. First, the researcher classified excerpts from the stories according to mental processes, which are communications of feeling, cognition, or perception.⁵

The second classification was by rhetorical situations, meaning that there is an argumentative or persuasive element in the communication that takes place. For example, giving testimony or applying for Legal Aid are rhetorical situations. The recurrence of these situations is critical to them being considered rhetorical situations.⁶ Recognizing recurring types of rhetorical situations can reveal patterns and similarities across large samples of text. Miller explains the importance of classification to human action, in that “[i]t is through the process of typification that we create recurrence, analogies, similarities. What recurs is not a material situation (a real, objective, factual event) but our construal of a type”.⁷ Mental experiences and recurring rhetorical situations are important forms of human action and experience that help the researcher identify patterns in the text about what people were experiencing within the context of the justice system across the stories.

Reading carefully through the texts led to the emergence of patterns that were teased out through tables of coded text. Any clauses that matched emergent patterns were bolded and assigned numbers based on the pattern they matched with. The patterns were revised and transferred to a second digital table once several similar patterns were identified.

For the quantitative section, the researcher entered the raw data into Microsoft Excel and then used formulas to compile the aggregate data into table form. A large sample independent binomial populations test⁸ was conducted using calculations from the Excel document. All calculations were verified on paper with a calculator as well.

The next section of this paper explores the intersectionality of SRLs’ experiences. It takes a deeper dive into the experiences of SRLs through their stories, finding common threads that help explain some of the specific problems they face.

⁵ Suzanne Eggins, *An Introduction to Systemic Functional Linguistics*, 2nd ed (London, UK: Bloomsbury, 2004) at 225.

⁶ Carolyn R Miller, “Genre as Social Action” (1984) 70:1 *Quarterly Journal of Speech* 151 at 156-157.

⁷ *Ibid* at 157.

⁸ William Mendenhall et al, *Introduction to Probability and Statistics*, 2nd ed (Toronto, ON: Nelson Education, 2011) at 343-345.

Emergent Patterns

Negative Emotional Experiences Self-Representing in Court

A common pattern across several of the stories was negative emotions related to self-representation in court. The following statements are examples of observed negative emotions.

“I have watched parents, who are very vulnerable, be made to feel small.”

“I remember being absolutely terrified going into the court.”

“I felt as if I was being set by to be put in jail.”

“I felt lost, scared.”

“My recent court experience (traffic ticket) in Halifax, NS has left me jaded.”

“The process and the procedure... frustrates people to the point where they can not present their case properly.”

“I only signed off on the complaint because I felt threatened...”

“I sincerely feel sorry for people who cannot afford a lawyer”

The SRLs in these stories paint the picture of a court process that is intimidating, belittling, and emotionally challenging. Some negative experiences provided greater insight into specific reasons for these feelings.

“I searched for women advocacy groups and there were none that I fit into, it really discouraged me to engage with the justice system.”

“Easy to get a biased judge right from the start only hearing 1 side of a story.”

“He clearly knows HOW to abuse the ‘system’ of justice...”

These excerpts exhibit lack of belonging, lack of confidence in the administration of justice, and legal actors taking advantage of others without anything being done to stop them.

The negative impact of the justice system on SRLs was consistent across most of the stories. The negative emotions observed, and the overall findings of the present study, are consistent with

those reported in other large scale self-represented litigants project and the independent follow-up conducted recently.⁹

SRLs Unable to Navigate the Legal System Alone

Most study participants reported difficulties navigating the legal system alone. The following statements are examples of SRLs experiences.

“Even now one year after my divorce my husband lawyer has with held documents and I am still having to navigate the legal system alone.”

“I was still unprepared for this task at my court date and for my filings of documents...”

“Filling out the court papers properly was a challenge.”

“She applied to a Justice of the Peace for an emergency protection order but was denied...she should have applied for a custody order.”

“I had no idea that I was signing for a peace [b]ond.”

“He had been completely overwhelmed by the process and not prepared properly for the hearing.”

“I was obviously being overwhelmed... and eventually lost the case...”

“I was then beaten up mentally by lawyers and judges.”

“I was not convinced that the Judge would understand, or even hear, my argument.”

“Judge charges Plaintiff for bringing a matter up in court without reason...”

“She was yelled at and belittled by the housing authority representative...”

“Everywhere I went, I was told you need a lawyer... without a lawyer I really can't help you.”

⁹ Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants” [2013] National Self-Represented Litigants Project 1; Brandon Fragomeni, Kaila Scarrow, & Julie Macfarlane, “Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2018/2019” [2020] National Self-Represented Litigants Project at 25-26. The data from this second report is a different and has a different sample group from the 2013 report.

These excerpts suggest multiple reasons why SRLs struggle with the legal system. Many are overwhelmed by the process, which can be detrimental to their case if they are unable to maintain their composure in court.

A general lack of confidence in the administration of justice was also evident. The stories reveal a legal culture where people who cannot afford a lawyer are continuously told to hire one. Many SRLs begin with counsel and then run out of funds to retain their lawyer for the hearing.¹⁰

As indicated above from the Nova Scotia Department of Justice study, 3 out of every 5 SRLs in Nova Scotia face financial constraints and are self-represent in court, yet some studies show that judges have reportedly blamed SRLs for not having a lawyer.¹¹ It is noteworthy that this is not true of all judges as the same study shows that some have approached SRLs with understanding, kindness, or have helped them in a specific way.¹²

Being Denied Legal Aid or Counsel

The qualitative data collected reflected the fact that SRLs self represent after being denied legal aid. Although some do not apply for Legal Aid due to likely financial ineligibility,¹³ many were also rejected for Legal Aid, as the following stories demonstrate.

“I do not qualify for legal financial assistance.”

“I couldn’t get any help.”

“She’s entitled to free legal representation however it does not include this area of law.”

“On that assessment he would not deserve state-funding counsel on his Appeal.”

“An individual who had been denied Social Assistance.”

“But you can’t get help except from a private practice which I can’t afford.”

“Denied by Legal AID for a lawyer...”

“I approached an immigration lawyer who could offer no help.”

¹⁰ Fragomeni, Scarrow, and Macfarlane, *supra* note 9 at 24.

¹¹ Nova Scotia, *supra* note 2; Macfarlane, *supra* note 9 at 104.

¹² *Ibid* at 105.

¹³ *Ibid* at 42.

“I will never receive any actual assistance.”

These stories reflect the reality that many may not qualify for legal aid. For example, a 2003 report indicated that only 23% of families in Nova Scotia would qualify for Legal Aid and 13,000 low-income families would not qualify.¹⁴

Nationally Legal Aid has become increasingly difficult to obtain, leaving many low-income families without assistance.¹⁵ Despite poor economic conditions leading to rising wages and inflation, the income threshold for Legal Aid eligibility remained unchanged in Nova Scotia between 1998 to 2015.¹⁶ Also, Legal Aid only covers a narrow scope of issues.¹⁷ One SLR could not find any representation:

“He cannot find anyone to represent him in court.”

The above individual has Post Traumatic Stress Disorder that prevents him from keeping his voice down while discussing his case. He cannot help but get visibly agitated when discussing case details which is why he cannot find representation. Trauma causes maladaptive coping mechanisms that can make someone unable to tolerate stress-inducing events.¹⁸ Mental health concerns remain a barrier to accessing justice in many contexts.¹⁹

Negative SRL Experiences with Representation

Even when SRLs are being represented, the representation can be inadequate. Some respondents indicated dissatisfaction with their lawyers or having received little benefit for the money they paid led them to represent themselves.

¹⁴ Canada, Department of Justice, *Legal Aid Eligibility and Coverage in Canada*, by Spyridoula Tsoukalas & Paul Roberts (Ottawa: Canadian Council on Social Development, 2002) at 69.

¹⁵ Fragomeni, Scarrow, and Macfarlane, *supra* note 9 at 11.

¹⁶ Department of Justice, *supra* note 14 at 79; Canada, Department of Justice, “Legal Aid Eligibility and Coverage in Canada: Inventory of Legal Aid Plans in Canada (Continued): Nova Scotia” (January 7, 2015), online: *Reports and Publications: Canada’s System of Justice* <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_la5-rr03_aj5/p012.html>.

¹⁷ Canadian Bar Association, “The Hard Truth About Legal Aid” (November 19, 2019), online: *CBA National* <<https://www.nationalmagazine.ca/en-ca/articles/law/access-to-justice/2019/the-hard-truth-about-legal-aid>>.

¹⁸ Nicole C McKenna & Kristy Holtfreter, “Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness” (2020) 30:4 *J Aggress Maltreatment Trauma* 450 at 453.

¹⁹ Fragomeni, Scarrow, and Macfarlane, *supra* note 11 at 24; Janine Benedet & Isabel Grant, “Taking the Stand: Access to Justice for Witnesses with Mental Disabilities in Sexual Assault Cases” (2012) 50:1 *Osgoode Hall L J* 1 at 2-3; Ruby Dhand, “Access to Justice for Ethno-Racial Psychiatric Consumer/Survivors in Ontario” (2011) 29:1 *Windsor YB Access Just* 127.

“I recently went through a divorce... The lawyers involved were ambiguous, parasitic, and opportunistic. I eventually fired my lawyer and represented myself at trial.”

“3 lawyers later I had to represent myself...”

Mosten, a former litigator and mediation pioneer, states that the perception of family lawyers as “evil parasites feeding on family trouble” is relatively common.²⁰ Stories collected through the study aligned with this sentiment. For example, one participant stated:

“My wife hired the lawyer to process the agreed upon custody order. ...the lawyer actually antagonized me with accusation.”

Other SRLs spoke about the difficulties with Legal Aid representation.

“I qualified for legal aid, but have been repeatedly stalled and switched lawyers over the course of years...”

“I go to the free legal walk-in clinic and they tell me one thing, I do it and then when I go to file the court says its wrong...”

These excerpts suggest a disconnect between Legal Aid services and proper representation. Clients generally expect a lawyer to provide the correct information and limit stalling practices where possible. One Indigenous man indicated that his lawyer instructed him to lie to his doctor:

“I was instructed to lie by my lawyers to my doctor...”

Another SRL indicated that he was ‘told’ to plead guilty despite being innocent:

“I been charged for things that where false because of the lawyer I had and told me to plead guilty in order to close the case ???”

These experiences illustrate how dissatisfaction with lawyer performance, or the limited benefits of legal services compared to the cost causes many individuals to represent themselves.

²⁰ Forrest S Mosten, “Unbundled Legal Services Today-and Predictions for the Future” (2012) 35:2 Fam Advoc 14 at 15.

Legal Process Producing Unjust Outcomes

Negative experiences with the justice system may be related to the outcomes that the justice system produces. Consider the following outcomes for SLRs who filed complaints or were victim of a crime:

“My concerns about physical violence were taken seriously by police but when I had to contact the police about harassment my concerns were not taken seriously.”

“[I] made a complaint against street crime unit... asked if was investigated was told no then yelled at called paranoid, idiot, and other terrible things.”

“No one piece of my evidence was mentioned in the investigative report.”

“Survivors who currently feel pressured to place themselves and most importantly their children at further risk by ‘just getting along’ with their abuser as suggested within the PIP program.”

“At no time was I contacted by the Prosecution so I might deliver a Survivor (Victim) Impact Statement to the court. I wanted to exercise that right under law.”

These excerpts demonstrate several unjust outcomes, such as the inadequate protection of survivors from abusers. Also, police not taking harassment complaints seriously in intimate partner violence cases is not uncommon. For example, a recent study interviewed 30 Canadian intimate partner abuse survivors and revealed a consensus that the police did not adequately handle situations of verbal violence.²¹ Female survivors of violence also had concerns when they wished to deliver an impact statement but were not able to do so.²²

Perceptions of injustice continue with in-court experiences were also uncovered in this study, as evidenced in the following statements:

“The crown prosecutor wouldn’t allow me to speak with my elder.”

“[I] was actually abused through the court process.”

²¹ Catherine Carolyn Stewart, Debra Langan & Stacey Hannem, “Victim Experiences and Perspectives on Police Responses to Verbal Violence in Domestic Settings” (2013) 8:4 Fem Criminol 269.

²² While some feminist scholars have critiqued impact statements in whether they benefit people who give them, especially those who are from racialized groups, this does not justify the courts simply ignoring a victim and preventing her from giving an Impact Statement; see Rakhi Ruparelia, “All that Glitters is not Gold: The False Promise of Victim Impact Statements” in Elizabeth Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* (Ottawa, ON: University of Ottawa Press, 2012) 665.

“Judge ruled a person incompetent without any doctors confirmation.”

“I was given wrong information by the court itself about I how was to be assessed.”

“The case was dismissed without my knowledge.”

“At no point was it ever mentioned that I should watch what I say.”

“The mental health assessment man at the court is telling me to lie to the doctors.”

“The courts... give rulings while not giving the opportunity to those in court to speak!”

“And the crown had told this woman’s rapist about her appearance.”

Each of these experiences are symptoms of a larger problem. The justice system is not addressing the needs of SRLs. For example, the fact that an Indigenous person was prevented from speaking to his or her elder reveals an insensitivity to the guidance that an elder provides to their community²³ and consideration of an Indigenous perspective.²⁴

McMillan, a legal anthropologist, has previously discussed how Nova Scotian courts have forced the engagement of Mi’kmaw people in justice system processes that frequently denies them culturally relevant remedies.²⁵

Many of the outcomes shown above suggest inadequate consideration for SRLs, predominantly with people from marginalized groups.

The Impact of the Legal System on SRLs

Many SRLs who participated in this study spoke of tragic outcomes following their legal proceedings, particularly regarding their mental health. The following statements provide examples of the outcomes of legal proceedings:

“The justice system has left me bitter and untrusting.”

“I felt traumatized, from this scared and intimidated have not gotten over it.”

²³ Sonny Lee Hodgin, “Elder Wisdom: Adopting Canadian and Australian Approaches to Prosecuting Indigenous Offenders” (2012) 46:3 Val U L Rev 939 at 941.

²⁴ Rupert Ross, “Victims and Criminal Justice: Exploring the Disconnect” (2002) 46:3-4 Crim LQ 483 at 484.

²⁵ L Jane McMillan, “Living Legal Traditions: Mi’kmaw Justice in Nova Scotia” (2016) 67 UNBLJ 187 at 197.

“This Justice System has threatened me, bullied me, used me to coerce my husband into bending to their will. The Justice System has let me down, persecuted me, took a toll on my physical and mental health. I have major trust issues now.”

“...along with the ongoing emotional toll I am still dealing with.”

“It was degrading.”

“Family court through divorce...worst experience of my life.”

“I paid the fines, but am very, very saddened by this ongoing problem.”

The negative impacts recorded in these statements are consistent with findings from the National Self-Represented Litigants Project, which reported personal health issues, financial implications, social isolation, and a loss of faith in the justice system.²⁶

Based on statements submitted by participants in this study, the researcher identified a feeling of hopelessness as SLRs exit the legal system. The following statements are examples of the negative impacts of interactions with the justice system:

“My justice was denied.”

“My life has been destroyed.”

“I lost everything and still have to pay her.”

“I personally have had my own kids alienated against me by my ex.”

“My family and I are ostracized.”

The tragic circumstances described above reveal a pattern of SRLs leaving legal proceedings with additional problematic situations that must be addressed.

²⁶ Macfarlane, *supra* note 9 at 108-112.

Female Survivors of Violence Retraumatized

Female SRLS reported concerns for the privacy and safety. The following stories demonstrate these concerns:

“The wife understood that her application and the hearing would be confidential, but the same week details of her case appeared in local media.”

“A woman who is currently incarcerated went to court for a pretrial... the crown had told this woman's rapist about her appearance and he showed up in court... it was triggering for her to be there with him looking at her.”

The media released information about a woman’s sensitive personal matters to the public. In doing so, she was deprived of her privacy in a highly sensitive matter. The second excerpt suggests that a convicted woman had to sit through her pre-trial with the man who raped her sitting in the audience and staring at her.

The tendency of law enforcement to consider claims of sexual assault unfounded more than any other type of crime²⁷ could make a survivor of sexual violence more vulnerable by enabling the perpetrator to continue their behaviour unobstructed.²⁸ When a women brings a claim of sexual violence to the police that is recorded as ‘unfounded’, it puts her at a great disadvantage if she needs to make a similar claim at a later time.²⁹

Other survivors reported feeling retraumatized because of the length the legal process.

“First, I had to wait over a year after he assaulted me to get to court - enough time for my ex to bully and scare me back into silence.”

Men bullying their partners or former partners into silence is a recurring issue.³⁰ Engagement with the legal system is not always by choice. One female domestic abuse survivor did not want to engage with the legal system but was forced into it by lack of knowledge about the process.

²⁷ Amy Conroy & Teresa Scassa, “Balancing Transparency and Accountability with Privacy in Improving the Police Handling of Sexual Assaults” (2016) 28:2 CJWL 342 at 348; Canada, Department of Justice, *Police Classification of Sexual Assault Cases as Unfounded: An Exploratory Study*, by Linda Light & Gisela Ruebsaat, (Ottawa: Department of Justice, 2006); Holly Johnson, “Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault”, in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* (Ottawa: University of Ottawa Press, 2012) 613 at 630.

²⁸ See e.g., *Jane Doe v Metropolitan Toronto (Municipality) Commissioners of Police*, [1990] 72 DLR (4th) 580, 74 OR (2d) 225 (Div Ct) at para 25.

²⁹ Conroy & Scassa, *supra* note 27 at 353; Status of Women Canada, *Issue Brief: Sexual Violence against Women in Canada*, by Cecilia Benoit et al (Ottawa: Status of Women Canada, 2015).

³⁰ Heather Douglas, “Sexual Violence, Domestic Abuse and the Feminist Judge” (2016) 3:2 J Int’l & Comp L 317 at 322.

“I called the police and gave a statement not realizing I would have to appear in court to testify to it. I called the police for my immediate safety and not to be further engaged with the justice system... but recent domestic violence laws force women to be traumatized by continuing to engage with the justice system afterwards.”

This intimate partner violence survivor demonstrates legal problems related to domestic violence, such as requiring the woman to leave the home if she feels at risk and to participate in the trial if the accused pleads not guilty.³¹ The survivor found this forced engagement traumatizing, which appears to be the cost of seeking protection from an abuser in Canada.

Adverse Implications for Children

Children who survive sexual abuse and are self-represented may be retraumatized by the absence of sensitive approaches in the justice system.

“She was adopted into a family where she was sexually abused by the father...it was a man who interviewed her.”

“A 3-year-old disclosed sexual abuse by father...now the 4-year-old has to sit in a public courtroom and testify with only a screen protecting her from her father. Child was traumatized.”

“My story was about the domestic violence I experienced as a child... I entered the court and was met by two police officers who wanted my personal belongings to look through I felt very violated and then triggered.”

There are numerous studies confirming that testifying in a sexual assault trial is both harmful and traumatizing.³² In many cases, children must recount traumatic experience to someone of the same gender as abusers or near abusers themselves. This situation exacerbates the harm and trauma of the experience, especially if the abuser is a parent figure.

Other SRLs reported additional implications for their children following a legal proceeding.

³¹ Canada, Department of Justice, “Family Violence Laws” (December 2019), online: *Department of Justice* <<https://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html>>.

³² Karen Bellehumeur, “A Former Crown’s Vision for Empowering Survivors of Sexual Violence” (2020) 47:1 Windsor YB Access Just 1 at 4; Elaine Craig, *Putting Trials on Trial, Sexual Assault and the Failure of the Legal Profession* (Montreal & Kingston: McGill-Queens University Press, 2018) at 9.

“The courts are supposed to protect the children from a psychotic and destructive parent but have repeated failed in my case.”

“The HRSB does not have protections in place to stop the violent offender from picking his/her children up from school.”

Both stories suggest significant problems with a parent and the court demonstrating reluctance to intervene in destructive and violent behaviours. These situations create no-win situations or traps encountered by women leaving violent relationships.³³ For example, if a woman chooses not to leave the relationships, she may be accused with failing to protect her children, whereas leaving may result in being labelled as an alienator.³⁴

Quantifying Experiences of Trauma

Most of the stories used to develop the themes in the section above are negative in tone. Thirty-six participants (58%) identified the tone of their story as strongly negative, 13 (21%) as negative, 5 (8%) as neutral, 3 (5%) as positive, and 4 (6%) as strongly positive.

As well, personal trauma was the most common theme indicated among participants. Twenty-five participants (47%) indicated personal trauma as a main theme in their story.

As such, while this was largely a qualitative research project, we decided to quantify participants’ experiences of trauma in order to understand whether the negativity in the stories might be explained by participants’ experiences of personal trauma in their legal proceedings.

Our analysis revealed that of the group of twenty-five participants who indicated that they experienced personal trauma as a main theme in their story, 14 (56%) self-identified as belonging to an equity-seeking group, 6 (24%) self-identified as not belonging to an equity-seeking group, and 5 (20%) did not provide demographic information.

Only 35% of participants who did not identify with an equity-seeking group experienced personal trauma as a theme, whereas 54% of Indigenous participants experienced personal trauma as a theme of their experience. A large-sample statistical test was conducted comparing the proportion of trauma themes experienced by Indigenous versus non-equity-seeking participant groups.³⁵ The population of these two groups were independent and large enough for

³³ Daniel G Saunders & Katherine H Oglesby, “No Way to Turn, Traps Encountered by Many Battered Women with Negative Child Custody Experiences” (2016) 13:2-3 J Child Custody 154.

³⁴ *Ibid* at 157.

³⁵ *Ibid*.

approximating a normal distribution. The test shows that Indigenous persons are more likely to experience personal trauma as a theme of their legal proceedings than persons who self-identified as not belonging to any equity-seeking group ($Z = 1.005$, $\alpha = 0.2$).³⁶

Most instances of a personal trauma theme coalesced with a second theme. For example, 7 participants selected the role of law enforcement and personal trauma as their themes, 6 participants selected the role of lawyers and personal trauma, and 4 participants selected family law and personal trauma. This means that 17 participants (68%) who selected personal trauma as a theme also selected law enforcement, lawyers, or family law as themes linked to their personal trauma. Only 4 participants (16%) selected the personal trauma theme alone. The remaining 4 participants (16%) selected personal trauma alongside addictions and mental health.

The intersection of a personal trauma theme alongside other themes is a starting point for understanding what areas or actors in the legal system produce personal trauma for self-represented litigants.

A Trauma-Informed Approach

The Problem

The SRL stories collected in this study indicate that individuals have been mistreated, mishandled, and retraumatized by the justice system. The process is too complicated for SRLs to navigate alone, and they do not receive required assistance inside or outside of the court room. The same can be said for court staff, who reportedly lack the resources and educational support required to know what information they can provide to SRLs.³⁷

A trauma-informed approach, including attentiveness to intergenerational trauma, systemic racism and other cultural, historical and gender issues may therefore be needed in order to address these experiences. Typically, a trauma-informed approach is guided by the principles articulated in the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) Model.³⁸

³⁶ This result is statistically significant at an 80% level of confidence.

³⁷ Macfarlane, *supra* note 9 at 117-118.

³⁸ McKenna & Holtfreter, *supra* note 18 at 458-461.

Outlining the Substance Abuse and Mental Health Services Model (SAMHSA)

The SAMHSA Model sets out six principles of trauma-informed practices that are person-centered and culturally competent.³⁹ We have included an outline drawing upon the SAMHSA principles, created by criminal justice scholars McKenna and Holtfreter which focuses on the criminal justice system in order to show how these principles may be contextualized within the justice system:

1. Safety as the primary goal of the justice system involves three facets: “community protection, safety of crime victims, and safety of offenders”.⁴⁰
2. Trust and transparency require “promoting fairness and equity” in legal proceedings by “[d]emystifying the procedures and being transparent about the process and potential outcomes”.⁴¹
3. Peer support emphasizes a supportive environment for those working in and/or involved with the justice system.
4. Collaboration and integration of “gender-responsive treatment and therapeutic jurisprudence” into the work of social workers and victim advocates to prevent experiences of trauma that may otherwise occur.⁴²
5. Empowerment and choices provide people in the justice system the opportunity to “voice their experience and participate in the decision-making process”.⁴³
6. Cultural, historical, and gender issues recognize an individual’s background as “comprised of racial, ethnic, gender, and cultural identities, all of which may shape opinions on court processes and views on fairness”.⁴⁴

The following section of this paper will address broader applications of the SAMHSA model, particularly for SRLs.

³⁹ *Ibid* at 9.

⁴⁰ *Ibid*.

⁴¹ *Ibid* at 10.

⁴² *Ibid*.

⁴³ *Ibid*.

⁴⁴ *Ibid* at 12; see Kate Lowenstein, “Shutting Down the Trauma to Prison Pipeline Early: Appropriate Care for Child-Welfare Involved Youth” [2018] Citizens for Juvenile Justice.

Applying the SAMHSA Model to SRLs

The first priority within the SAMHSA model is the safety of people in the justice system.⁴⁵ This is especially relevant for self-represented survivors of violence who must testify in court. For example, a trauma-informed approach requires that violent individuals who refuse to be accountable should be prevented from having access to former partners to prevent further violence, bullying and intimidation.

A trauma-informed approach sees that privacy protections are necessary.⁴⁶ Safeguarding privacy is an essential counterbalance to transparency and accountability measures, particularly in cases of sexual assault.⁴⁷ Although the courts have made progress in this area, distinctive rules for sexual assault crimes are necessary to remedy the tendency of viewing survivors of sexual assault with suspicion and distrust.⁴⁸ At minimum, comprehensive trauma-informed policies to protect privacy interests need to be in balance with practical transparency and accountability measures.

A trauma-informed approach means that trust and transparency enable SRLs to work within the justice system without feeling negative and hopeless. Lawyers, judges, and court staff can facilitate trust and transparency by “[d]emystifying the procedures and being transparent about the process and potential outcomes”, which helps those who may have been traumatized.⁴⁹

Peer support is also a trauma-informed practice that may benefit both SRLs and court staff. For example, court staff reportedly lack the resources to serve clients.⁵⁰ This inhibits their ability to assist SRLs in the legal process. McKenna & Holtfreter suggest that court staff need available support surrounding plausible experiences of vicarious trauma and other mental health concerns.⁵¹ Better training and educational opportunities include compensation and recognition of efforts towards adoption of trauma-informed practices and procedural expertise. For those pioneering new solutions, Wheatley and Frieze suggest it is crucial to work as a community, encouraging one another in facing the risks and trials that arise when one system is replaced by

⁴⁵ McKenna & Holtfreter, *supra* note 18 at 459.

⁴⁶ *Ibid.*

⁴⁷ Conroy and Scassa, *supra* note 27 at 347; It is noteworthy that protecting privacy is a much more complicated issue than it sounds, as many have written about. For example, in the #MeToo movement, many have argued for restricting the use of non-disclosure agreements, which can silence survivors from speaking about their experiences; see e.g. Alexander Gay, “#MeToo and Restricting the Use of Non Disclosure Agreements in Canada” (March 28, 2019), online: *Canadian Bar Association: CBA National* <<https://nationalmagazine.ca/en-ca/articles/law/opinion/2019/metoo-and-restricting-the-use-of-non-disclosure-ag>>.

⁴⁸ Canada, Policy Centre for Victims Issues, *Victim Privacy and the Open Court Principle*, by Jamie Cameron, (Ottawa: Commissioned Reports, Studies and Public Policy Documents, paper 167, 2013) at 30-39.

⁴⁹ McKenna & Holtfreter, *supra* note 18 at 459.

⁵⁰ Macfarlane, *supra* note 9 at 117-118.

⁵¹ McKenna & Holtfreter, *supra* note 18 at 459.

another.⁵² They point out that “[o]ur resilience as a community depends upon our capacity to look forward, to look backward and to look honestly at our situation today”.⁵³

Good practices of collaboration and mutuality require empathy and respect to empower other to act on decisions that they must make.⁵⁴ Collaboration and mutuality is particularly useful in a social work context. In some stories, the SRLs received assistance from social work organizations, but the information was considered incorrect by the courts. McKenna and Holtfreter point out that “the law does not operate in a vacuum as many agencies and systems can be working adjacently”.⁵⁵ Different organizations perform different functions. Working together effectively is critical to helping SRLs navigate the legal system effectively.

Empowerment, voice, and choice are values that reinforce a relationship of trust between legal actors and SRLs. As mentioned above, effective collaboration means empowering people to act for themselves and involving them in all aspects of decision-making processes. When parties participate in the decision-making process, they tend to perceive legal actors as fair.⁵⁶ There is a continued need for SRLs to voice their experiences and participate in the process of decision-making.

Understanding cultural, historical, and gender issues is critical for a trauma-informed approach to SRL services. A person’s experience of the justice system is situated in his or her cultural, racial, gender, and ethnic identity.⁵⁷ A starting point and a tenet of trauma-informed practice is gender-responsive treatment, which seeks “to understand and properly respond to the influences of gender, relationships, environment, access and quality of services, socioeconomic status, and community on trauma manifestation”.⁵⁸ This includes understanding substance abuse as a coping mechanism rather than some criminal act of defiance against the state.⁵⁹

The voices of the African Nova Scotian community and Indigenous peoples are needed to create a trauma informed and human-centered approach to justice. Professor Williams explains how a culturally specific approach to restorative justice would “embody an African Nova Scotian concept of justice and, therefore, be part of a larger movement to redress the legacy of centuries

⁵² Margaret Wheatley & Deborah Frieze, *Walk Out Walk On: A Learning Journey into Communities Daring to Live the Future Now* (San Francisco, CA: Barrett-Kohler Publishers, 2011) eBook at 39.

⁵³ *Ibid* at 244.

⁵⁴ Compass Refugee Centre, “Our Values” (2021), online: *Compass Refugee* <<https://compassrefugee.ca/why-compass/our-values/>>.

⁵⁵ McKenna & Holtfreter, *supra* note 18 at 459.

⁵⁶ Logan J Somers & Kristy Holtfreter, “Gender and Mental Health: An Examination of Procedural Justice in a Specialized Court Context” (2018) 36:1 Behav Sci & L 98 at 103; McKenna & Holtfreter, *supra* note 21 at 462.

⁵⁷ McKenna & Holtfreter, *supra* note 18 at 462.

⁵⁸ *Ibid* at 6.

⁵⁹ *Ibid*.

of structural racial and intersecting forms of oppression”.⁶⁰ The Truth and Reconciliation Commission’s report calls for a similar kind of Aboriginal justice:

*Redress to the racist and colonial views that inspired the [residential] schools, and effective and long-term solutions to the crime problems that plague too many Aboriginal communities, call for increased use of Aboriginal justice, based on Aboriginal laws and healing practices.*⁶¹

Given the disproportionate impact of the criminal justice system on Indigenous peoples, McMillan explains how implementing Indigenous legal traditions would facilitate reconciliation in the criminal justice process.⁶² Towards that reconciliation, Professor Hewitt identifies an integral piece for an Indigenous-based restorative justice model:

*Indigenous-based restorative justice programs, on the other hand, are community initiated and bear little resemblance to the criminal justice system itself. They produce results focused on healing individual and community harm – including the underlying harms of ongoing colonization.*⁶³

These words are compatible with Professor Llewellyn’s articulation of a relational theory of justice in a restorative justice context:

Justice understood relationally is concerned with the nature of the connections between and among people, groups, communities, and even nations. Justice aims at realizing the conditions of relationship required for well-being and flourishing. It identifies as wrong those acts or circumstances that prevent or harm such conditions. With respect to this relational understanding, the goal of justice – either in response to the specific wrongful acts or existing states of injustice – is the establishment of relationships that enable and promote the well-being and flourishing of the parties involved. Justice conceived relationally seeks... ‘equality of relationship.’⁶⁴

Both Indigenous and African Nova Scotian voices are needed to proceed with a restorative justice approach. The common denominator between these perspectives is an emphasis on

⁶⁰ Michelle Y Williams, “African Nova Scotian Restorative Justice: A Change Has Gotta Come” (2013) 36:2 Dal LJ 419 at 457.

⁶¹ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: TRC, 2015) (Chair: Calvin Murray Sinclair) at 164.

⁶² McMillan, *supra* note 28.

⁶³ Jeffery G Hewitt, “Indigenous Restorative Justice: Approaches, Meaning & Possibility” (2016) 67 UNBLJ 313 at 319.

⁶⁴ Jennifer J Llewellyn, “Restorative Justice: Thinking Relationally about Justice” in Jocelyn Downie & Jennifer J Llewellyn, eds, *Being Relational: Reflections on Relational Theory and Health Law* (Toronto: UBC Press, 2011) 89 at 97; as cited in Williams, *supra* note 60 at 441.

healing, well-being, flourishing, and a rejection of circumstances that stand in the way.

Conclusion

SRLs experience practical difficulties that create feeling of distress and compromise their well-being. Many SRLs reported varying degrees of mental distress following court and legal proceedings. The experiences of the participants in this study were largely negative and are linked to the inability to navigate the justice system. For example, female survivors of violence encountered problematic outcomes and were retraumatized by the legal process. Children and other vulnerable individuals were retraumatized by the practices of the justice system as well. As noted by the quantitative analysis, the recurrent theme of personal trauma is experienced more frequently by Indigenous peoples than individuals who self-identified as not belonging to an equity seeking group.

In response to these issues, researchers and advocates should explore how the courts and justice system could incorporate trauma-informed and human-centered practices instead of the current emphasis on system-centered justice. In other words, how the justice system can prioritize safety – including a recognition of possibility of systems harm, relationships of trust and transparency, peer support measures, collaboration, and mutuality, empowering people and giving them voice and choice, and facilitating a better understanding of cultural, historical, and gender issues behind people’s engagements with the system is needed.

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