

Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self- Represented Litigants Project East, 2016-2021

Emily Bowen

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Introduction

What is the National Self-Represented Litigants Project & East Chapter?

The National Self-Represented Litigants Project (NSRLP) was started by Dr. Julie Macfarlane. She studied the experiences of self-represented litigants (“SRLs”) navigating the justice system in Ontario, British Columbia, and Alberta. After the first publication of her research report in 2013¹ the project was started. The National Self-Represented Litigants Project – East began in 2021 in Nova Scotia and is working to outreach across Atlantic Canada.

This is the first report from the Atlantic region.

Our Data

The NSRLP research team developed an Intake Form using SurveyMonkey to continue collecting information from self-represented litigants from across Canada after Dr. Macfarlane’s initial report was published. The questionnaire tracks self-represented litigants’ demographics using some of the same variables as Dr. Macfarlane’s initial research, such as income, education level, and legal party status. It also asks questions about the litigant’s experience with prior legal services, mediation services, and bringing a support person to court.

The Intake Form provides a window into the personal experiences of SRLs. Each time the NSRLP publishes a report on the data, the research team adds one or more short questions to the survey going forward to reflect new trends and themes. In this way, we continue to build on a solid base and to explore new ideas and responses to the self-represented litigant phenomenon.

The data reviewed in this report was collected from 32 respondents across Prince Edward Island, Nova Scotia, New Brunswick, Newfoundland and Labrador from 2016-2021.

¹ Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report” (May 2013), online: National Self-Represented Litigants Project <<https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>>

Highlights and Lessons Learned

Most respondents to the survey represented themselves in Supreme Court Civil cases (Queen's Bench in New Brunswick). These can be complex cases, worth over \$20,000-\$25,000 in value, where people must follow complicated Civil Procedure Rules. What may have made these cases more complicated was the fact that in most of these cases (97%), these SRLs found themselves facing lawyers.

The survey results showed that 52% of respondents had worked with a lawyer at some point in their current case, with the majority privately retaining their lawyer. It is important to note that legal aid is not available for civil cases in Supreme Court, regardless of income.

Approximately 22% of respondents shared that they attempted to seek out unbundled services without success.

Most SRLs had higher levels of education – 45% had attended university or had some other professional qualification. The majority reported an income under \$50,000. 37% of respondents indicated they had incomes below \$30,000 while 30% had incomes between \$30,000-\$50,000. This may indicate that persons living on \$50,000 a year and under find it difficult to hire a lawyer for the entirety of their matter.

In terms of Alternative Dispute Resolution, data collected indicated that Atlantic Canadian respondents were not being offered mediation services as often as those outside of Atlantic Canada. Similarly, only a minority of respondents (18%) indicated that they used mediation. This is significantly below national numbers. In recent national data from the NSRLP, 41.2% of respondents indicated that they had used mediations services at some point.

In terms of non-lawyer assistance, data collected indicates that many SRLs do not bring support persons to court (63%). Of those who did bring a support person, only 10% referred to this person as a McKenzie Friend.

Finally, SRLs in Atlantic Canada who responded were largely in favour of virtual or remote legal services. About 83% indicated that they would be in favour of virtual or remote services.

Lessons learned from this report are the following:

- More services should be directed at SRLs in Supreme Court (Court of Queen’s Bench in New Brunswick) including using the Civil Procedure Rules
- More services should be aimed at promoting alternative dispute resolution such as mediation
- Courts should continue to explore the possibilities of remote and virtual courts especially for SRLs
- Use of a non-lawyer assistant in the form of a McKenzie Friend should be promoted for those that desire such assistance
- Stakeholders and policymakers should continue to investigate how to provide low-cost legal services to SRLs, including promoting access to unbundled legal services.

Part 1: Who are the SRLs?

The data collected represents 32 respondents from Atlantic Canada from intake forms submitted between February 18, 2016, and June 22, 2021. This data has been compared to that within the most recent report from the NSRLP.²

a. What is their gender and age?

The data collected showed that 13% of respondents were between 30-40 years old, 34% of respondents were between 40-50 years old, and the majority, at 53%, were 50 years or older.

This was consistent with the NSRLP’s latest report where majority of respondents were over 50 years of age (51.5%) and 19.2% were younger than 40 years of age.

More respondents identified as male (56%). 40% of respondents identified as female, and the remaining 4% identified as non-binary.

² Charlotte Sullivan and Julie Macfarlane, “Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self- Represented Litigants Project, 2019-2021” (October 2021), online: National Self Represented Litigants Project <<https://representingyourselfcanada.com/wp-content/uploads/2021/10/Intake-Report-2021-FINAL.pdf>>

Respondents to the latest NSRLP report identified as female (48.9%) slightly more than male (46.9%).

b. What is their party status?

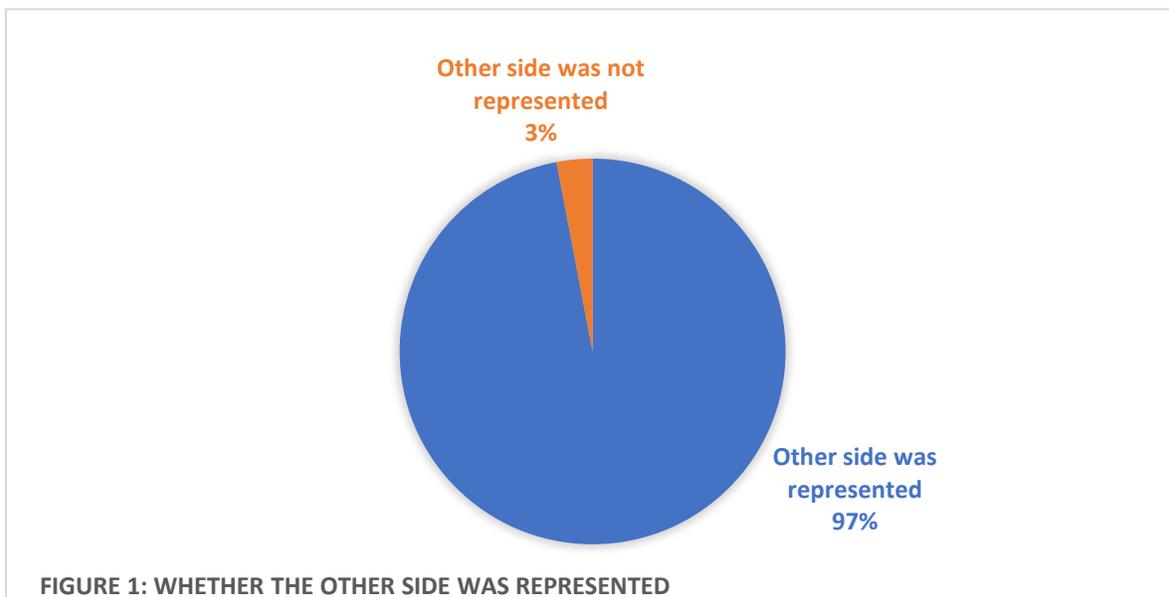
Around two-thirds of the respondents indicated that they were the plaintiff, or petitioner in their case (69%). The remaining one-third indicated that they were the defendant, or respondent in their case (31%).

This was consistent with the latest NSRLP report where 63.4% of respondents were the plaintiff and 36.6% of respondents indicated they were the defendant.

c. Was the other side represented?

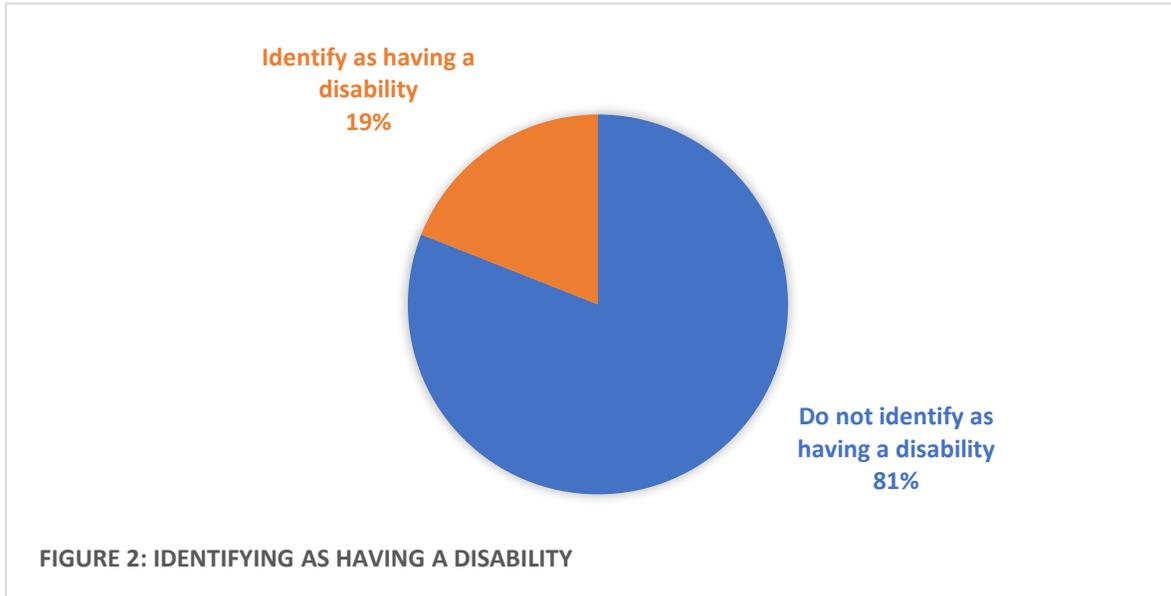
Only 3% of respondents shared that the other side was not represented by counsel in their case. The remaining respondents indicated that the other side was represented by counsel (97%).

This was relatively consistent with the latest NSRLP report where 91% of respondents said the other side was represented by counsel.



d. Do they identify as having a disability?

While most respondents did not identify as having a disability (81%), some respondents identified as being individuals with disabilities (19%).



e. What is their first language?

Most respondents reported that their first language was English (88%). Few respondents identified French as their first language (12%).

This data is relatively consistent with the NSRLP’s latest report where 77% of respondents indicated English as their first language. However, the remaining respondents spoke various first languages, not exclusively French.

f. What level of education do they have?

Most of the respondents had high levels of education. Only 10% of respondents indicated that they did not have a high school diploma. 13% of respondents indicated that their highest level of education was high school. Further, 16% of respondents had attended college, and 45% had attended university or received another sort of professional qualification. The remaining 16% of respondents indicated “other” as a different type of education.

This data is consistent with the latest NSRLP report that demonstrates high levels of educational attainment of SRLs. Few respondents identified high school as their highest level of education and few respondents never completed high school.

This data is also consistent with data specific to Nova Scotia SRL's.³

g. What is their annual income?

Only 10% of respondents who participated had an income greater than \$100,000 per year. Below that, 6% of respondents indicated an income between \$75,000-\$100,000 and 17% indicated an income between \$50,000-\$75,000 annually.

The majority of respondents had an annual income below \$50,000. 30% of respondents had an annual income between \$30,000-\$50,000 and the largest group (37%) had an income below \$30,000 per year.

This data is consistent with the latest NSRLP report that indicates majority of respondents having incomes under \$30,000 per year and very few having incomes greater than \$75,000 annually.

The incomes from our data are higher than 2004 incomes of SRLs in Nova Scotia, even when adjusting for inflation. After adjusting, the 2004 data would have had 60% of respondents with incomes below \$40,000⁴.

³ Department of Justice Court Services Halifax, Nova Scotia, "Self-Represented Litigants in Nova Scotia Needs Assessment Study" (2004), online:
<<https://novascotia.ca/just/publications/docs/SRL%20Report%20March%202004.pdf>>

⁴ *Ibid.*



h. What is their ethnicity?

Most of our respondents identified their ethnic background as Caucasian (91%). The remaining 9% of respondents identified as an ethnicity other than white.

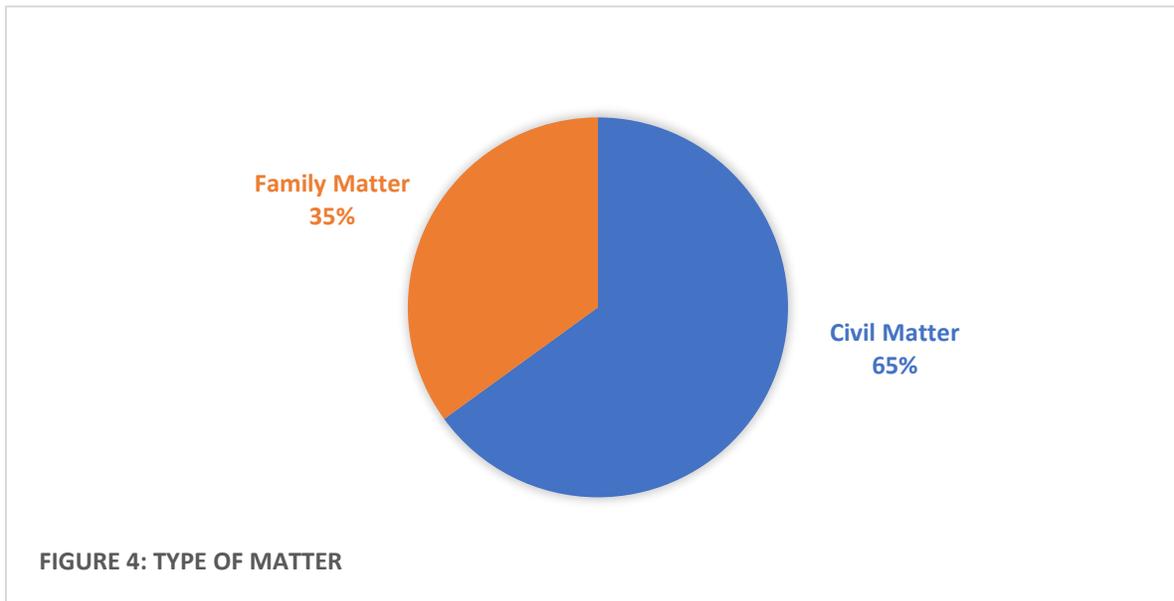
This data differs slightly from the latest NSRLP report which indicates that 65.3% of respondents identified as Caucasian.

Part 2: Where are the SRLs appearing?

a. Were they Civil or Family litigants?

The majority of respondents appeared in civil matters (65%), however, family matters were also commonly identified (35%).

This data is somewhat similar to the latest NSRLP report where 57.8% of respondents were involved in a civil matter and 42.2% were involved in a family matter.



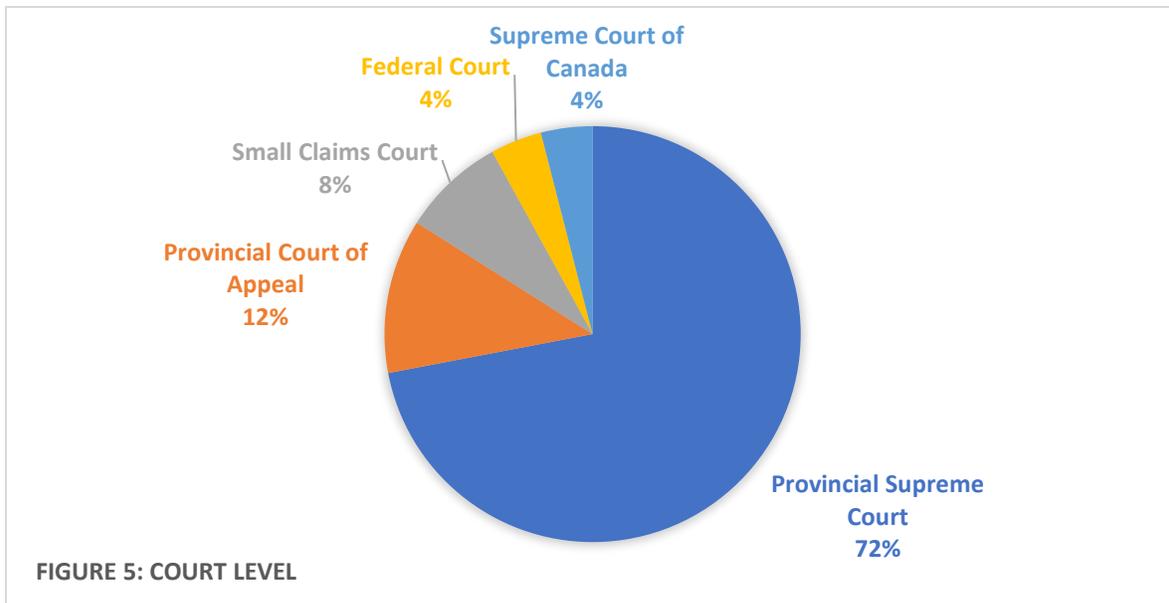
b. What was their Provincial jurisdiction?

Most of the respondents from our sample came from Nova Scotia (59%). The remaining litigants came from Newfoundland and Labrador (25%), New Brunswick (9%), and Prince Edward Island (6%)

c. What was their court level?

Respondents identified a range of courts they participated in. The most frequently identified was the Supreme Court of Nova Scotia (48%) and the Supreme Court of Newfoundland and Labrador (24%). Some litigants also were participating at the court of appeal (12%), as well as small claims court (8%). A small number of litigants identified that they were within the federal court level (4%), and even the Supreme Court of Canada (4%).

This data is consistent with the latest NSRLP report that the majority of cases were within Provincial superior courts, and few were at Courts of Appeal and Small Claims Courts. The lowest numbers were within the Supreme Court of Canada and Federal Courts, which is also consistent with our data.



Part 3: What kind of help do the SRLs seek?

a. Have they worked with a lawyer at any stage in the case they are self-representing?

Of those who responded, there was a near split in those who had worked with a lawyer at some point during their case (52%), and those who had never worked with a lawyer (48%).

The data from the latest NSRLP report indicates higher numbers of respondents that have worked with a lawyer at some stage during their case at 68.9%.

b. In what capacity was the lawyer retained if they had worked with one?

Of those who responded yes to having worked with a lawyer at some point during their case, the majority had privately retained their lawyer (76%). The remaining respondents had either used Pro-Bono services (12%), or Legal Aid services (12%).

This data is consistent with the NSRLP’s latest report that indicates 75.5% of respondents privately retained their lawyer and that 16.2% used legal aid, while 8.4% used Pro Bono services.

c. If they had previously worked with a lawyer, how satisfied were they with the services they received?

Most respondents who had previously worked with a lawyer on their case were not satisfied with the services they received. 62% of respondents rated the services that they received as “poor” and 31% of respondents rated their services as “moderate”. The remaining 7% of respondents were “well satisfied” with the services they had received when working with a lawyer during their case.

This data is consistent with the latest NSRLP report where the majority (58.7%) of respondents were not satisfied with the service they received and only 10.6% were well satisfied with the services they received.

d. Were they offered unbundled services by their lawyer?

Most respondents who had worked with a lawyer at some point during their case were not offered unbundled services (75%). Only a quarter of respondents who worked with a lawyer were offered unbundled services (25%).

This data is consistent with the latest NSRLP report where 72.8% of respondents were not offered unbundled legal services and 27.2% were offered unbundled legal services.

e. If they were offered unbundled services, how satisfied were they with these?

Of the respondents who used unbundled services, one-third were “well satisfied” with these services, one-third rated them as “poor”, and the remaining third were “moderately” satisfied with their unbundled services.

This data is slightly inconsistent with the NSRLP’s latest report where majority of respondents (53.6%) stated they had a poor experience, 28.6% shared they had a moderate experience and 17.9% said they were well satisfied.

f. Have they tried to seek unbundled legal services without success?

Approximately 22% of respondents shared that they attempted to seek out unbundled services without success.

g. Have they ever been offered mediation services?

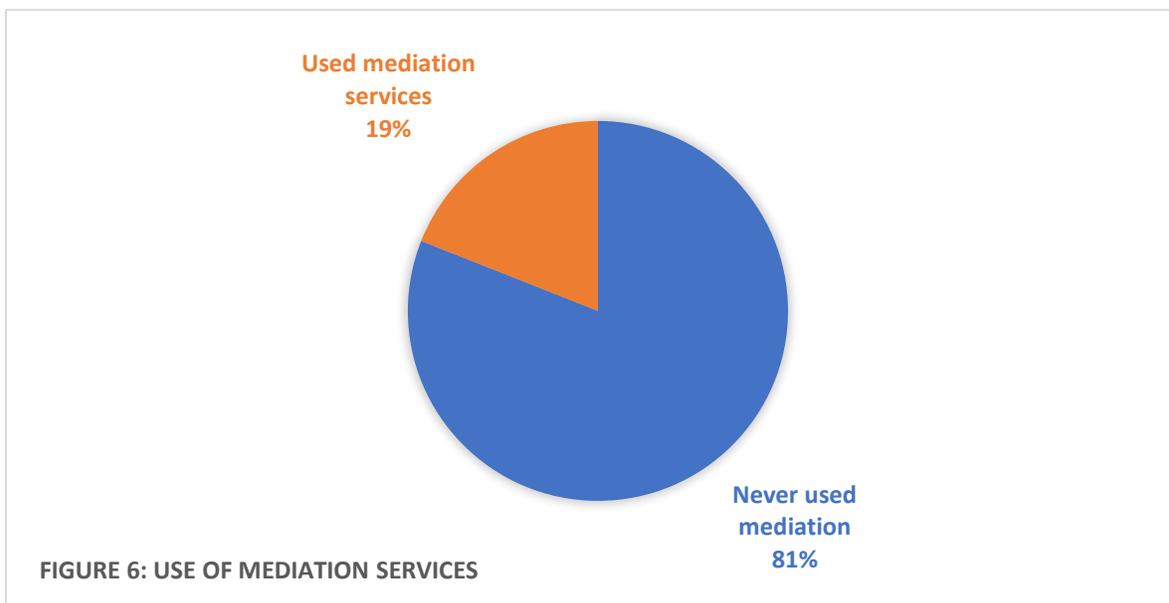
Most of the respondents shared that they had never been offered mediation services during their case (73%). There were some who identified that they had been offered mediation services (27%).

This is slightly different results than the latest NSRLP report where 39% of respondents indicated that they had been offered mediation services.

h. Have they ever used mediation services?

The majority of respondents shared that they had never used mediation services (81%). The remaining 19% of respondents used mediation services at some point.

Our result is slightly different than the latest NSRLP report where 41.2% of respondents indicated that they had used mediation services at some point.



i. If they had used mediation services, what was the outcome?

Of those who used mediation services, most respondents stated that they did not settle (86%). Only 14% of respondents who used mediation services stated that they settled in part.

This data is relatively consistent with the latest NSRLP report where 76.3% of respondents that used mediation services did not settle.

j. How often do they bring a support person to court?

The majority of respondents stated that they never bring a support person to court (63%). The remaining respondents were those who brought a support person to court sometimes (17%) or most of the time (20%).

This data is consistent with the NSRLP's latest report where majority of respondents have never brought a support person to court (57.7%)

k. Do they introduce their support person as a McKenzie Friend?

Of those who do bring a support person to court, only 10% introduced this person as a McKenzie friend. A substantial amount of those who brought a support person to court did not introduce this person as a McKenzie friend (90%).

This data is consistent with the latest NSRLP report where only 12.5% of respondents who brought a support person to court introduced them as a McKenzie friend.

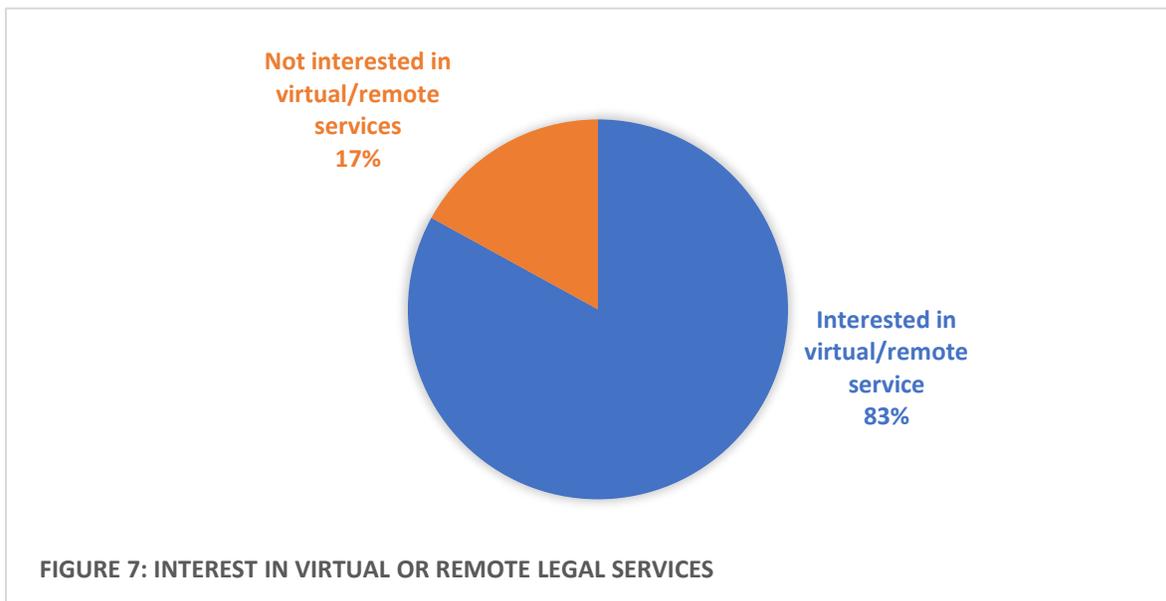
l. Have they ever participated in a virtual court hearing?

Half of the respondents indicated they had experienced a virtual court hearing, and half had not (50% for both).

m. Would they be interested in virtual or remote legal services?

Most respondents identified that they would be interested in virtual or remote legal services (83%). However, some respondents shared that they would not be interested in these services (17%).

This data is consistent with the NSRLP's latest report where 89.9% of respondents indicated an interest in remote or virtual services.



Part 5: Qualitative Data – Stories from SRLs

At the end of the intake form, there was space for SRLs to provide any personal testimony they had about their experience. The respondents were able to explain some of their responses, experiences, and the potential hardships to self-representing. In addition, many offer pieces of advice to others that they have learned from their own experience.

a. General Experiences

Some respondents shared ideas about self-representing and how they have learned from it:

“In my view, the issue is not the rule or the procedure, rather the issue is the party is in court for a reason - they want to be heard. More often than not, the rules and procedures trump substantive issues raised in chambers by one or the other party. My experience in chambers has qualified me as a mountaineer.”

“The biggest thing I have learned, probably the most important thing to date, is that SRLs need the Rules of Court right from the start.”

b. Positive Experiences

Despite the negative experiences of some, there were others who shared positive outcomes of their experiences as an SRL:

“Everyone treated me with exceptional courtesy, and I was successful.”

One individual even shared the benefit they had by utilizing resources from the National Self-Represented Litigants Project:

“Stay calm ... litigate on!” I've been forced to self-litigate 5 times in 40 years. It's getting much easier now because of the fabulous resources and supports such as this way-cool organization.”

c. Negative Experiences

Many individuals share that they are dissatisfied with their experience as an SRL and are not confident in being treated equally to those who are represented in the litigation process:

“It's quite apparent the there is an "old boys" network in play. Lawyers are able to bend the Civil Procedure Rules or as least given some leeway whereas SRL's are held to a more strict line.”

In addition, one respondent noted the impact that the SRL experience had on their mental health and economic well-being:

“For most Self-Represented Litigants, like myself, we are not treated fairly nor do we as a group have equality when we go to court. The action SRLs take in going to court alone is self-defeating and deeply demoralizing. It renders the SRL psychological battered, ultimately financially impoverished and economically injured for the rest of their life.”

d. Advice for other SRLs

Although there were some negative experiences, a large majority of respondents were eager to share their advice to others who are in the same situation and want to help in any way they can:

“I found judges very open to receiving lots of information as long as the submissions were well-written, as concise as possible, well-organized, evidence-based and devoid of ad hominem attacks or unsubstantiated, subjective assertions.”

“Tips: Go out of your way to be polite, respectful, courteous, self-effacing, and even charming with court staff. These folks are the court's front lines. They deal with all sorts of characters, many of them not particularly nice. A little investment in pleasantries can pay big dividends when you need them to cut you some slack. Treat everyone in the court process—lawyers for the other side, judges, witnesses, etc.—with the same courtesy and respect you would like to be treated with. Just because you disagree, you don't have to be disagreeable. Everyone involved can make your project easier or harder. Don't give them an excuse to treat you poorly. You are likely to be emotionally wrapped up in your case. The other participants likely are not. Try to keep the emotion out of your presentations. After you have written something for the court, go through it and delete adjectives and adverbs, and especially qualifying words like "very," "extremely," etc. Emotions will not win the day. Good facts and solid legal arguments may.”

“Do your research. Meet with every resource. Be open minded. Know the law. Know the facts. Know when to cut your losses. At the same time, don't automatically believe everything a lawyer tells you. Lawyers make mistakes too. Know the Civil Procedure Rules in and out. Be aware that the law is abstract, and the same standard will not apply to you as it would a lawyer so there is wiggle room. But a self-represented litigant cannot afford to not know the Civil Procedure Rules. There is no amount of research that should satisfy a self-represented litigant that they understand the rules or the nature of proceedings”

“You have to prioritize your case, but you have to live your life too. Dedicate time to your case and time to your life. Just as a lawyer would. It will overwhelm you; it will stress you. You must be passionate, but almost possess a level of numbness. Believe in yourself. Don't at any time think you've won until you've received a verdict. Read case law to friends and ask you they think should win and why, then read and discuss the verdict. It'll open your perspective. You have to be ready for anything.”

Conclusion

a. More services needed for self-represented litigants

Most respondents to the survey represented themselves in Supreme Court Civil cases. These can be complex cases, worth over \$20,000-\$25,000 in value, where people must follow complicated Civil Procedure Rules. What may have made these cases more complicated was the fact that in most of these cases (97%), these SRLs found themselves facing lawyers.

Based on the findings in both the qualitative and quantitative sections of this report there are many instances where respondents felt at a disadvantage to those with counsel representing them. Given this, there is a need for increased services and further research directed to requirements that those without a legal education use complicated civil procedure rules.

There appears to be a lack of alternative dispute resolution options available for SRLs. More resources should be aimed at promoting alternative dispute resolution services for SRLs

b. Alternative ways to conduct court remote/virtually

SRLs in Atlantic Canada who responded were largely in favour of virtual or remote legal services. About 83% indicated that they would be in favour of virtual or remote services.

The majority of respondents indicated their willingness to use remote and virtual court services. Many who have used these services had positive experiences and found it an easier way for them to conduct themselves as a

SRL, while balancing life outside of their case. These ways of conducting court services should continue to be promoted and available, especially for SRLs.

c. Promotion of a non-lawyer assistant in the form of a McKenzie Friend should be promoted for those that desire such assistance

In terms of non-lawyer assistance, data collected indicates that many persons do not bring support persons to court (63%). Of those who did bring a support person, only 10% referred to this person as a McKenzie Friend.

Many of the respondents indicated they had not used a McKenzie Friend as a non-lawyer support person in court at any point in time during their case. While many SRLs can benefit from their use, McKenzie Friends should be promoted as an option for those that desire assistance.

d. Stakeholders and policymakers should continue to investigate how to provide low-cost legal services to SRLs, including promoting access to unbundled legal services

The survey results showed that 52% of respondents had worked with a lawyer in their current case, with the majority privately retaining their lawyer. It is important to note that legal aid is not available for civil cases in Supreme Court regardless of income.

Approximately 22% of respondents shared that they attempted to seek out unbundled services without success. There is a clear need for easier access to unbundled services. This would also help alleviate barriers to understanding complex civil procedure rules. Many SRLs would benefit from unbundled services to gain valuable advice and direction regarding their case.