

Tracking The Trends of The Self-Represented Litigant Phenomenon II

Data From the National Self-
Represented Litigants Project
East, 2021-2023



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May 2023

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The National Self-Represented Litigants Project East gratefully
acknowledges financial support from The Law Foundation of Ontario



Introduction

What is the National Self-Represented Litigants Project East report?

The National Self-Represented Litigants Project East (NSRLPE) was launched in 2020 in Nova Scotia. This NSRLPE report has the objective to investigate the needs and realities of self-represented litigants ("SRLs") in order to improve their access to justice. This research began in Ontario by Dr. Julie Macfarlane. She initiated the National Self-Represented Litigants Project (NSRLP) to investigate the obstacles of SRLs in Ontario, British Columbia, and Alberta. Her research report was released in 2013.¹

NSRLPE Data

The NSRLPE released its first report in 2022 based on data collected from 2015-2021. That report represented the experiences of 32 participants from Prince Edward Island, Nova Scotia, New Brunswick, and Newfoundland and Labrador.²

This second NSRLPE report reflects the experiences of 21 respondents from across Atlantic Canada based on data collected between 2021-2023. In Part 1, the questions address the demographics of SRLs in order to better understand what types of persons face barriers. In Part 2, the questions sought to identify the types of challenges SRLs face in order to directly address them. Part 3 explores qualitative data and highlights personal opinions of SRLs regarding their experiences and the changes they want to see in the justice system. The data has been compared to the latest NSRLPE report where applicable.³

Part 1: Who are the SRLs?

a. What is their age range?

The data collected showed that a minority (4.8%) of respondents were between 25-30 years old, 14.3% of respondents were between 30-40 years old and 23.8% were 60 years old or older. More than half of the respondents (57.1%) were between 40-60 years old.

This is similar to the NSRLPE's latest report where the majority of respondents (53%) were 50 years or older.

b. What level of education do they have?

Most of the respondents have post-secondary education. 25% of respondents indicated that they did have some college or professional training. Additionally, 75% of respondents had

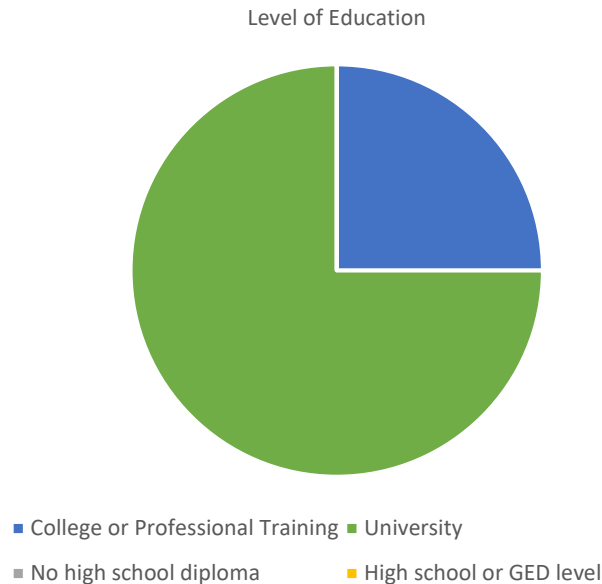
¹ Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report" (May 2013), online: National Self-Represented Litigants Project <<https://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf>>

² Emily Bowen, "The National Self-Represented Litigants Project: Data from the National Self- Represented Litigants Project East, 2016-2021" (February 2022) online: Tracking the Trends of the Self-Represented Litigant Phenomenon <https://nsrlpe.com/wp-content/uploads/2022/02/SRL-Project-Report_2016-2021-1.pdf> [<https://perma.cc/U295-LMDA>].

³ *Ibid.*

attended university. No respondents indicated that they did not have high-school diplomas or that they stopped their education at the high school or GED level.

This data is consistent with the latest NSRLPE report that reported high levels of education among SRLs. The data is also consistent with the NSRLP report (Canada/Ontario) that indicated high levels of educational attainment of SRLs.



c. What is their annual income?

The annual income reported by the respondents varied. 14.3% of respondents who participated had an annual income greater than \$100,000. Equally, 14.3% of respondents had an annual income between \$75,000-\$100,000. And 19% of the respondents reported \$20,000-\$50,000 per year. 23.8% of respondents reported annual income under \$20,000 per year. Most respondents indicated the middle range and earned between \$50,000-\$75,000 annually (28.6%).

This data differs to the latest NSRLPE report that showed the majority of respondents earned below \$50,000. Further, that report only indicated that a minority (10%) of respondents earned an annual income greater than \$100,000, whereas this report indicates that has increased.

d. What is their first language?

Nearly all respondents reported that their first language was English (95.2%). Only 4.8% (one respondent) identified French as their first language.

This is consistent with the latest NSRLPE report that indicated the majority of respondents' first language was English.

e. What group do they identify as belonging to?

Respondents self-identified as belonging to a variety of groups. A significant portion of respondents identified themselves as persons with disabilities (26.1%). Some respondents

identified as belonging to Indigenous groups (13%). Others identified as members of other visible minorities (4.3%) and members of the 2SLGBTQIA+ community (4.3%). Approximately half of respondents identified as women (52.2%).

This data may differ from the latest NSRLP report which indicated that most respondents identified as male (56%).

f. What is their party status?

More than half of the respondents indicated that they were the plaintiff in their case (52.4%). 28.6% indicated that they were the respondent. Others indicated that they were the defendants (9.5%) and applicants (9.5%) in their case.

This is relatively similar to the latest NSRLPE report where 69% were the plaintiff or petitioner and 31% were the defendant or respondent in their case.

g. Was the other side represented?

Almost all of the respondents' opposing party had a lawyer (84.2%). Very few of them were also self-represented litigants (15.8%).

This is consistent with the latest NSRLPE report where 97% of opposing parties were represented.

h. Which court system are their matters in?

The majority of respondents appeared in the family court system (54.2%). Matters that appeared in the Small Claims (16.7%) and Civil court (12.5%) were also identified. Matters appeared equally in the Criminal court system (8.3%) and Administrative Tribunal (8.2%).

This data differs from the latest NSRLPE report where less respondents appeared in family matters (35%) and Small Claims court (8%), and more respondents appeared in civil matters (65%).

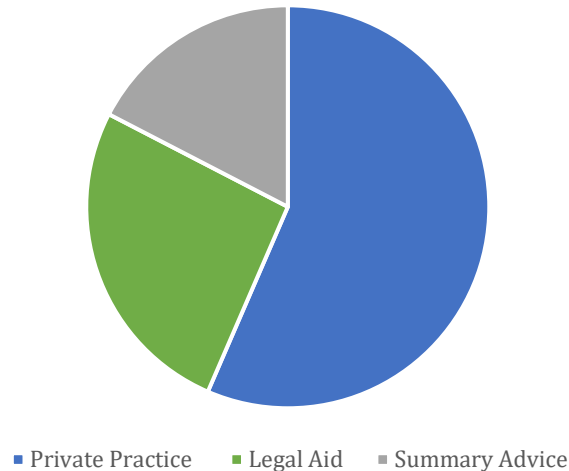
Part 2: What kind of help do the SRLs seek?

a. Have they been represented by a lawyer and what type of representation was that?

85.7% of respondents were represented by a lawyer at some point in their proceeding. Of those who responded to having been represented by a lawyer, more than half had privately retained their lawyer (56.5%). The remaining respondents had either used Legal Aid (26.1%) or Summary Advice services (17.4%).

These results are consistent with the latest NSRLPE report that indicated that most of the SRLs privately retained their lawyer (76%). This could be because overall the incomes of respondents may be too high to qualify for legal aid.

Type of representation - when SRLs had been represented at some point in their proceeding



b. If they had a lawyer, at what stage did they lose their lawyer?

Of the respondents who had worked with a lawyer before, most lost their lawyer at the stage where the lawyer was advising them of their rights (15.6%) and advising or explaining legal procedures and how to proceed (15.6%). 12.5% of the respondents lost their lawyer during the preparation of a specific event in their proceeding, such as a settlement conference.

9.4% of the respondents each had either lost their lawyer during the review of court forms or other documents before filing, the assistance about rules of evidence (9.4%), the assistance with a hearing (9.4%) or the assistance with trial (9.4%). The remaining respondents had either lost their lawyer during assistance with forms (6.25%), assistance with writing petitions (6.25%), or assistance at the mediation stage (6.25%).

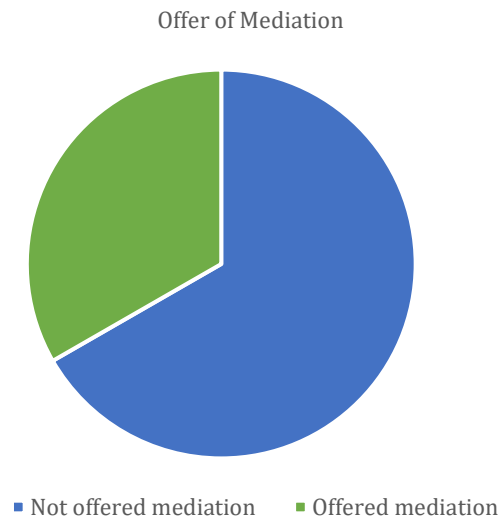
c. If they did not have a lawyer, what was the reason?

Of the respondents who did not have a lawyer, almost half of them had run out of funds (44.5%). Some respondents were unhappy with the service (22.2%) or had a lawyer who quit (11.1%). 22.2% of respondents indicated none of the above.

d. Was mediation offered to them?

The majority of respondents were not offered mediation during their proceeding (66.7%). 33.3% of the respondents were offered mediation.

This is consistent with the latest NSRLPE report where 73% of SRLs had never been offered mediation services during their case.



e. Did they decide to use mediation?

Almost all of the respondents who were offered mediation decided to use mediation (75%). However, overall, most of the survey respondents did not use mediation (61.9%). 38.1% of total respondents decided to use mediation.

f. Which steps of the proceeding were the most challenging?

The respondents found certain steps more challenging than others. Drafting a legal document was selected as the most challenging among respondents (13.6%).

The survey showed that the respondents found that dealing with the lawyer of opposite parties (11.4%), negotiating a dispute with the other side (11.4%), understanding the written laws applicable to their case (11.4%) and understanding aspects of court procedure were also challenging factors (11.4%).

Approximately 9% of respondents found that keeping up with court timelines and deadlines was the most challenging. Other respondents identified understanding the written communication from the court (2.3%), or understanding the language used by judges and court staff (6.8%), understanding the rules of evidence (4.5%), examining or cross-examining witnesses (6.8%), or understanding how to enforce a judgement or order (6.8%). None of the respondents indicated that using digital resources for online hearing was the most challenges.

g. What type of information would have made their experience less challenging?

Some respondents shared that information on filling out forms would have made their experience less challenging (16.7%). There were some respondents who identified that information on the interpretation of laws would have helped their experience (16.7%).

Other respondents indicated information on presenting a case in court (25%), court process (25%), court fees and costs (5.5%), and out-of-court settlement options (11.1%).

h. Do they think that an SRL orientation program would be helpful?

Of those who responded, 100% of them identified that an orientation program would be helpful.

Part 3: What resources do SRLs have access to?

a. What legal resources did they have access to?

Of the respondents who accessed legal resources, some accessed free legal information from either court staff (23%) or from a service provider, such as Public Legal Information, Community Legal Information or Legal Information Society of Nova Scotia (18.7%). Other respondents accessed free legal advice either at the court such as from a free legal clinic (16.6%) or from a service provider such as legal aid (6.3%).

Some respondents accessed free assistance with filling out forms (8.3%) or duty counsel (10.4%). 6.3% accessed none of the above. Few respondents accessed other legal resources, such as Canlii or unbundled services (10.4%)

b. Have they sought help or support from any non-legal resources?

Of the respondents who sought help from non-legal resources, almost half used the internet (47.2%). Some respondents sought help at the local library (28.8%) or from family and friends (25%).

c. Did they have access to any of the following at their home?

Surprisingly, only 30% of the respondents indicated they had access to internet connection and a laptop or desktop computer at home. Only 23.3% of the respondents had access to a printer and 16.7% had access to a photocopier.

Part 4: Qualitative Data – Stories from SRLs

At the end of the survey, there were questions that asked for the personal opinions of the respondents. The respondents were able to share their surprises and disappointments as well as improvements they would like to see in an orientation program for SRLs and the justice system more broadly.

a. What was the biggest surprise and disappointment they experienced when self-representing?

Some respondents felt that the court proceeding favoured counsel over SRLs in a way that promoted bias. Others were surprised at the lack of help they received from summary advice counsel and legal aid.

b. What community services or resources would they find helpful for future issues?

Half of the respondents identified that they would like to see free legal information. The other half of respondents identified that implementing free assistance with filling out forms would be equally helpful with legal issues in the future.

c. What types of information would be most helpful to provide at an orientation program?

Most respondents would like an orientation program to be broad and to cover most steps of a court proceeding. Some respondents stated they would like it to cover everything. Their shared ideas include:

“Explanation of legal language/terms, how to organise and write legal documents, how to use Rules of Court (including requesting exceptions), how to read and apply legislation, case law, academic resources, and make counter-arguments to same.”

“Guides to researching law/case law, information on Canada's common law system, research in/public access to law libraries, courtroom etiquette and formalities, and references to relevant rules.”

“My fantasy is an education and advocacy group run by women who will be there for women who are dealing with family law issues. A completely grassroots organization with backup from feminist lawyers and mental health professionals.”

These responses are similar to some feedback from the latest NSRLPE report:

“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.”

Takeaways

a. More mediation is needed

Based on the responses, SRLs may benefit from being offered more mediation services. The latest NSRLPE report showed that 73% of SRLs had never been offered mediation services during their case. This report was consistent with prior reports showing that most respondents were not offered mediation. However, almost all respondents who were offered mediation decided to use it. This shows that offering mediation may influence a SRLs decision to use the service. In turn, this may encourage settlement before trial.

It may be useful to increase offering other forms of alternative dispute resolution that may encourage settlement. This could help SRLs avoid the more complex court rules and procedure that must be followed throughout a trial, as well as avoid the time commitment and cost that comes with trial.

b. Additional services may be necessary, including an orientation program

New services may need to be implemented to help SRLs navigate their proceeding, such as an orientation program. The SRLs who responded were all in favour of an orientation program.

Based on two questions in the survey, it may be beneficial for an orientation program to specifically address drafting and information on basic law, such as the elements of negligence, the elements of a contract, and common defences. This is because many of the respondents indicated that their biggest challenge was drafting a legal document and understanding laws. Correspondingly, many respondents indicated that assistance with filling out forms and interpreting laws would have eased their challenges.

c. More access to legal and non-legal resources

More legal and non-legal resources should be accessible to SRLs. Allowing access to more legal and non-legal resources would help alleviate barriers to understanding complex court rules and procedure. In terms of legal resources, only a few SRLs indicated they had access to free legal information from court staff or a service provider. Even fewer SRLs had access to free legal advice. In terms of non-legal resources, surprisingly few reported having internet connections and a laptop at home. Further, only a few went to their local library for additional support.

d. Stakeholders and policymakers should continue to investigate how to provide low-cost legal services to all SRLs

The results demonstrate that approximately half of the SRLs self-identified as women. We also received responses from those identifying as Indigenous, persons with disabilities and members of the 2SLGBTQIA+ community.

The demographics of this report show that SRLs encompass a broad range of individuals. Most SRLs who responded to this survey have some post-secondary education and earn at least a modest income.

This diversity in demographics emphasizes that stakeholders and policymakers must be mindful to respond to these demographics when implementing improvements and be cognizant of intersecting identities. Additionally, it remains important to continue to investigate how to provide low-cost and accessible legal services to all SRLs.