CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

SELF-REPRESENTED LITIGANTS IN FAMILY LAW DISPUTES: VIEWS OF THE JUDGES OF THE ALBERTA COURT OF QUEEN'S BENCH

Prepared by:

John-Paul E. Boyd, M.A., LL.B.
Lorne D. Bertrand, Ph.D.
Joanne J. Paetsch, B.A.

April 2014

TABLE OF CONTENTS

Page

LIST OF TABLES AND FIGURES

ACKNOWLEDGEMENTS

The authors gratefully acknowledge the assistance and support of a number of people in making this project possible. Thanks are firstly due to Justices Sheilah Martin and Colleen Kenny of the Alberta Court of Queen's Bench for providing the Institute with the opportunity to survey the members of their court, and to the members of the Court of Queen's Bench who took the time to complete that survey.

Thanks are also due to Lorne Bertrand, Joanne Paetsch, Nicholas Bala and Rachel Birnbaum, the authors of the Institute's 2012 report "Self-Represented Litigants in Family Law Disputes: Views of Alberta Lawyers," whose survey of lawyers was drawn on in preparing the survey administered to the Court of Queen's Bench.

Finally, the authors wish to acknowledge the ongoing financial support of the Institute by the Alberta Law Foundation, without which this project would not be possible.

1.0 INTRODUCTION

The issue of access to justice for individuals involved in family law disputes has received growing attention in recent years nationally and internationally. Related to this is the rise in the number of self-represented individuals involved in family courts proceedings,* and a concern that these litigants are not receiving the type of legal services and advice they need, potentially affecting the outcome of their cases. Some governments and agencies have attempted to address this problem by increasing the availability of information and the number of services designed to assist self-represented individuals (Gray, 2013; Hilbert, 2009; Malcolmson & Reid, 2006; MacRae *et al.*, 2009; Zorza, 2002). While self-representation may be a viable option for some individuals engaged in relatively straightforward, low-conflict matters, cases involving disputes about the care of children, relocation or allegations of domestic violence are difficult to manage without the assistance of legal counsel.

Very little empirical research has been conducted in Canada on the effects of an increase in self-representation on lawyers, litigants and the justice system in general. Two recent studies in this area (Birnbaum & Bala, 2012; Birnbaum, Bala & Bertrand, 2013) examined the views of judges, lawyers and litigants in Ontario regarding self-representation in family law cases. Highlights of the findings of this study included:

- The majority of judges and lawyers surveyed reported that there has been an increase in the number of self-represented litigants in family law matters over the preceding five years.

- More than half of family law cases involve one or more parties who do not have a lawyer.

- The judges surveyed reported that if one or both parties is self-represented, the length of time required to resolve or manage the case is substantially lengthened.

- The most common reasons for self-representation are inability to afford a lawyer and ineligibility for legal aid.

- Litigants with higher incomes are more likely to have lawyers, and also have a greater belief in the value of legal representation.

- Almost one-half of the judges surveyed believe that self-represented litigants achieve worse outcomes with regards to their children than individuals with

* It has been suggested that a distinction should be made between "unrepresented" and "self-represented" parties (Law Society of Upper Canada, 2008), with unrepresened litigants being those who do not have legal representation because they have no choice, usually due to financial reasons, and self-represented litigants being those who do not have legal counsel by choice. It is often difficult to distinguish between these two groups (Birnbaum, Bala, & Bertrand, 2013), and in this report the term "self-represented" is used to describe litigants who do not have a lawyer for any reason.

representation and almost two-thirds believe that self-represented parties have worse outcomes with respect to economic matters.

- Litigants generally believe that they will have better outcomes if they have legal representation.

- Although most unrepresented litigants would prefer to have a lawyer, a significant portion of unrepresented litigants does not expect a worse outcome because they do not have a lawyer.

A recent survey of superior court judges in British Columbia (Gray, 2013) found that at least one self-represented party was involved in almost 40% of the court time spent on hearings in family law matters, and in almost 30% of the time spent on family law trials. The study also concluded that the involvement of at least one self-represented party in a matter impacted the efficiency of court processes by lengthening the time required for hearings and increasing the reading time of the court and the opposing party, resulting in frequent adjournments.

A survey of family law lawyers in Alberta (Bertrand, Paetsch, Bala & Birnbaum, 2012) found that lawyers considered settlement without trial to be substantially less likely when a party is self-represented, and that outcomes regarding plans for children and economic issues are worse for self-represented parties than for individuals with counsel. The authors recommended that:

- Further research is needed to determine the extent to which these perceptions are shared by others in the justice system.

- Further research is needed on means of addressing the challenges posed by the increasing number of self-represented litigants.

- Any further research should examine these challenges from the perspective of all groups involved in the justice system, including lawyers, judges, and the litigants themselves.

The present project attempts to address some of these recommendations by examining the issue of self-represented litigants from the perspective of the judges of the Alberta Court of Queen's Bench, the province's superior trial court.

1.1 The Present Study

The current study modified the instrument used in the survey of Alberta lawyers by Bertrand *et al*. (2012) to obtain the views of Alberta judges. The survey on Self-represented Litigants in Family Law Matters was conducted with judges attending the Alberta Court of Queen's Bench Education Seminar held in Calgary, Alberta from 29 to 31 January 2014. The survey was distributed at the beginning of the seminar to 64 participants who were asked to complete it at some point during the conference and drop it off in a box provided in the conference room. A total of 32 completed surveys were returned, resulting in a response rate of 50%.

The survey asked questions regarding respondents' experience with family law in general and their perceptions of and experiences with self-represented litigants in family law disputes. In addition, participants were asked for their views on alternatives to the traditional model of legal representation in family law matters and on the potential utility of various measures intended to improve self-represented litigants' use of the court system.

The results of this survey should not be taken as representative of the views of all judges of the Alberta Court of Queen's Bench.

2.0 SURVEY FINDINGS

This chapter presents the findings from the survey on Self-represented Litigants in Family Law Matters. The findings concern participants' experiences with and perceptions of self-represented litigants, their views of self-represented litigants' difficulties with the court system and the case outcomes for self-represented litigants, as well as their views on a number of different means by which the challenges posed by self-represented litigants might be addressed. The findings are supplemented by the participants' write-in comments elaborating upon the survey subjects.

2.1 Background Information

A total of 32 surveys were received. Approximately equal numbers of respondents were female (n = 16; 51.6%) and male (n = 15; 48.4%); one respondent did not specify his or her gender. Participants had served as a judge for an average of 10.2 years (range = 0.3 to 23 years). Judges were asked what their primary area of practice was prior to their appointment to the bench:

Table 2.1

Judges' Primary Areas of Practice Before Their Appointment to the Bench

Area of Practice	n	%
Civil litigation	*17*	53.1
Commercial litigation	*7*	21.9
Administrative law	*5*	15.6
Criminal law	*3*	9.4
Family law	*2*	6.3
Corporate law	*1*	3.1
Labour law	*1*	3.1
Medical litigation	*1*	3.1
Real estate financing	*1*	3.1
First victim legal issues	*1*	3.1
Municipal law	*1*	3.1
Aboriginal issues	*1*	3.1
Bankruptcy	*1*	3.1
Competition	*1*	3.1
Securities	*1*	3.1

Total N=32
Multiple response data

Just over one-half of respondents indicated that their primary area of legal practice had been general civil litigation (53.1%), followed by commercial litigation (21.9%), administrative law (15.6%), and criminal law (9.4%). Family law was the primary area of practice for 6.3% of participants. When asked what proportion of their files in the past year had been family law matters, responses ranged from 20% to 70% (mean = 39.6%).

2.2 Experiences with Self-represented Litigants

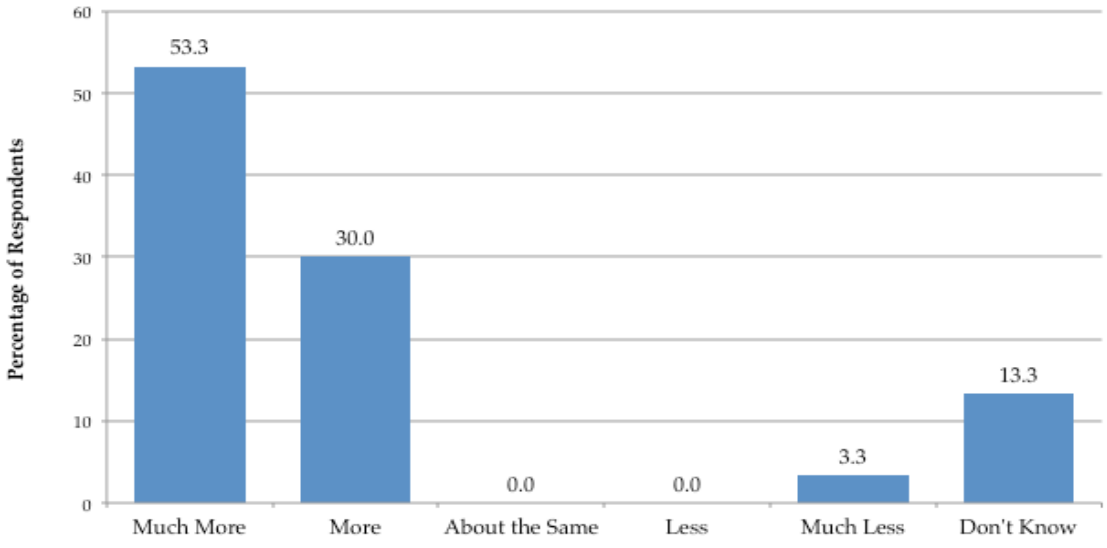
On average, almost half of respondents' family law files in the past year (47.5%) involved at least one self-represented litigant for part of the litigation process, with responses ranging from 15% to 75%. About a third of respondents' family law files (34.8%) involved at least one self-represented litigant for all of the litigation process, with responses ranging from 10% to 60% (mean = 34.8%) of respondents' files.

On average, all parties were self-represented for part of the litigation process in about a quarter of respondents' family law files in the past year (27.1%), with responses ranging from 10% to 70%. On average, all parties were self-represented for all of the litigation process in about a fifth of respondent's family law files (21.2%), with responses ranging from 5% to 50%.

Judges were asked if they thought that there has been a change in the number of self-represented litigants at present as compared to six years ago; their responses are presented in Figure 2.1.

Figure 2.1

Judges' Opinions on Whether There Has Been a Change in the Number of Self-represented Litigants Now as Compared to Six Years Ago



N=32; Missing cases=2

Respondents strongly believed that the number of self-represented litigants has increased, with 83.3% indicating that they think there are either more or much more self-represented litigants now. Only 3.3% believed that there are much fewer self-represented litigants now, and 13.3% of respondents said that they don't know.

The survey also assessed participants' impressions about why some family law litigants are self-represented; their responses are presented in Table 2.2. Almost all respondents said that they thought litigants are self-represented because they initially had a lawyer but could no longer afford legal representation (93.8%) or that they could not afford a lawyer and are not eligible for legal aid (90.6%). Over two-thirds of judges thought that self-represented litigants believe they know enough family law to do it as well or better themselves (68.8%), while one-half thought that self-represented litigants believe that the involvement of lawyers will increase the time and cost required to resolve their dispute (50%).

Table 2.2

Judges' Opinions on Why Family Law Litigants Are Self-represented

Reasons for Self-representation	n	%
They initially had a lawyer but could no longer afford legal representation	*30*	93.8
They cannot afford a lawyer and are not eligible for legal aid	*29*	90.6
They think they know enough family law to do it as well or better themselves	*22*	68.8
They think lawyers will increase the time and cost of resolving the dispute	*16*	50.0
They think they know enough about court processes to do it as well or better themselves	*9*	28.1
They want to directly confront their former spouse or partner	*9*	28.1
They think lawyers will increase the adversarial nature or complexity of the court process	*7*	21.9
They think the judge will favour a party who is self-represented	*4*	12.5
They think their knowledge of their spouse or partner gives them an advantage	*4*	12.5
Another reason	*8*	25.0

Total N=32
Multiple response data

When asked if men and women decide to self-represent for different reasons, almost two-thirds of the judges who responded to this question said that men and women do not decide to self-represent for different reasons (n = 17; 63%). Ten respondents (37%) answered this question in the affirmative, and when asked why, 7 said that men are more likely to think they can do as well as a lawyer, while half of the respondents thought women self-represent more for financial reasons. As one respondent put it, "*Most women have more limited incomes than their spouse (or the lack of ability to get to joint assets that are only in the husband's name).*"

Other reasons suggested to explain why some litigants are self-represented included: they do not want to follow their lawyers' advice; they have personality disorders; they had a lawyer but were disappointed with the progress; and, they learned from the Internet how to represent themselves.

2.3 Judges' Perceptions of Self-represented Litigants

Participants were asked if, in their opinion, certain mental health issues are more common among self-represented litigants than litigants represented by counsel; their responses are presented in Table 2.3:

- More than three-quarters of respondents (79.3%) thought that personality disorders were either *much more common* or *more common* among self-represented litigants than other litigants. No judges thought that these disorders were *less common* among self-represented litigants, and 17.2% said that they do not know.

- 62.1% of respondents thought that anxiety disorders are either *much more common* or *more common* among self-represented litigants; no respondents thought that they were *less common*, and 24.1% said that they do not know.

- When asked about other mental health issues, 58.6% of judges thought that they were either *much more common* or *more common* among self-represented litigants. One respondent each thought that they were *less common* or *much less common*, and 20.7% of respondents did not know.

Table 2.3

Judges' Opinions on the Frequency of Mental Health Issues Among Self-represented Litigants Compared to Other Litigants

Mental Health Issue	Much More Common		More Common		About the Same		Less Common		Much Less Common		Don't Know	
	n	%	n	%	n	%	n	%	n	%	n	%
Personality Disorders (such as paranoia or antisocial, borderline or narcissistic personality disorders)	*12*	**41.4**	*11*	37.9	*1*	3.4	*0*	0.0	*0*	0.0	*5*	17.2
Anxiety Disorders (such as obsessive-compulsive, posttraumatic stress or panic disorders)	*6*	20.7	*12*	**41.4**	*4*	13.8	*0*	0.0	*0*	0.0	*7*	24.1
Other Mental Health Issues (such as bipolar disorder, depression or schizophrenia)	*8*	27.6	*9*	**31.0**	*4*	13.8	*1*	3.4	*1*	3.4	*6*	20.7

Total N=32

2.4 Case Outcomes

Judges were asked a series of questions regarding the outcomes of cases they have heard that involved self-represented litigants. When asked if a case with a self-represented litigant increases the legal costs for the party with counsel, almost all participants who answered this question answered in the affirmative (n = 26; 89.7%). No respondent said that legal costs are not increased, and three respondents said that they do not know.

Table 2.4 presents judges' responses to a number of other questions regarding cases with self-represented litigants:

- When asked if settlement before trial or before the end of trial is more or less likely when one party is self-represented compared to cases in which all parties have counsel, the majority of respondents stated that settlement is either *less likely* or *much less likely* (86.7%). One respondent said that the likelihood of settlement is *about the same* in these cases, and one respondent said that settlement is *more likely*.

- When asked if settlement is more or less likely in cases where all parties are self-represented compared to cases where all parties have counsel, more than three-quarters of respondents who answered this question (76.6%) thought that settlement was either *less likely* or *much less likely*. 6.7% thought that the likelihood of settlement is *about the same* in these cases, 6.7% thought that settlement is *more likely* in these cases, and 10% said that they do not know.

- If all parties are self-represented, almost two-thirds of judges (65.7%) said that this makes settlement before trial or before the end of trial either *less likely* or *much less likely* than if only one party had counsel. 15.6% thought that the likelihood of settlement is *about the same*, 9.4% said that settlement is *more likely* in these cases, and 9.4% said that they do not know.

- The majority of respondents also said that they are *no more or less likely* to make an order for costs in cases in which at least one party is self-represented (62.1%); 6.9% of respondents said that they are *more likely* to make an order for costs, and 31% said that they are *less likely* to do so.

Table 2.4

Judges' Opinions on the Frequency of Various Case Outcomes for Self-represented Litigants Compared to Other Litigants

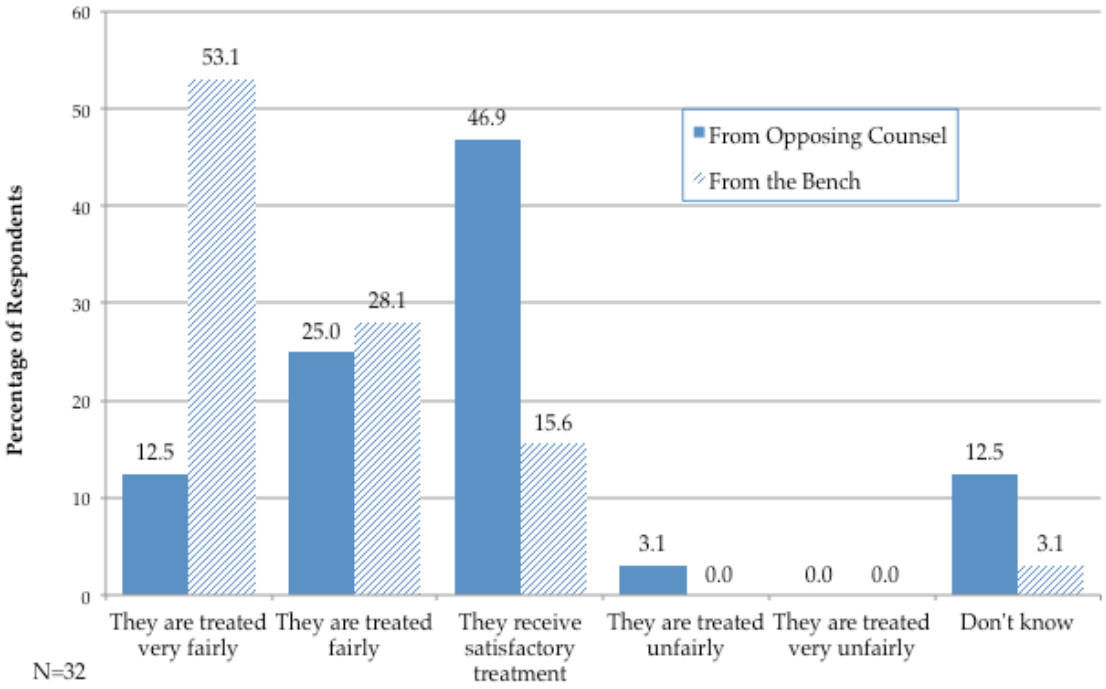
Case Outcome	Much More		More		About the Same		Less		Much Less		Don't Know	
	n	%	n	%	n	%	n	%	n	%	n	%
If all parties are self-represented, does this make settlement before trial (or before the end of trial) more likely or less likely than if *one party* had counsel?	*0*	0.0	*3*	9.4	*5*	15.6	*11*	**34.4**	*10*	31.3	*3*	9.4
If one party is self-represented, does this make settlement before trial (or before the end of trial) more likely or less likely than if *all parties* were represented by counsel?	*0*	0.0	*1*	3.3	*1*	3.3	*8*	26.7	*18*	**60.0**	*2*	6.7
If all parties are self-represented, does this make settlement before trial (or before the end of trial) more likely or less likely than if *all parties* were represented by counsel?	*0*	0.0	*2*	6.7	*2*	6.7	*4*	13.3	*19*	**63.3**	*3*	10.0
If one party is self-represented, are you more or less likely to make an order for costs?	*0*	0.0	*2*	6.9	*18*	**62.1**	*9*	31.0	*0*	0.0	*0*	0.0

Total N=32

Judges were asked whether they believe that self-represented litigants generally receive fair treatment from opposing counsel and from the bench; their responses are presented in Figure 2.2. The patterns of responses were somewhat different with respect to opposing counsel and the bench, and indicated that 53.1% of participants thought that self-represented parties are treated *very fairly* by the bench while only 12.5% thought that they receive *very fair* treatment by opposing counsel. Approximately equal proportions of judges thought that self-represented litigants receive *fair treatment* from the bench (28.1%) and from opposing counsel (25%). A substantially higher proportion of respondents said that self-represented parties receive *satisfactory* treatment from opposing counsel (46.9%) than from the bench (15.6%). Very few respondents thought that self-represented litigants are treated *unfairly* by either opposing counsel or the bench, and none thought that they were treated *very unfairly*.

Figure 2.2

Judges' Opinions on Whether Self-represented Litigants Receive Fair Treatment from Opposing Counsel and the Bench



Judges were also asked their opinions regarding the outcomes of specific claims in cases involving self-represented litigants; their responses are provided in Table 2.5:

- With regard to outcomes related to parenting arrangements, equal proportions of respondents thought that there was *no difference* in outcomes between self-represented and represented litigants (37.5%) and that self-represented parties achieve *worse outcomes* (37.5%). No respondents said that self-represented litigants achieve *better outcomes* and 25% said that they do not know.

- With regard to support, one-half of judges (50%) said that self-represented parties achieve *worse outcomes*, while almost one-third (31.3%) said that there was *no difference* between self-represented and represented parties. No respondents said that self-represented litigants achieve *better outcomes*, and 18.8% said that they do not know.

- With regard to the division of property, the majority of participants (56.3%) thought that self-represented parties achieve *worse outcomes*, while almost one-third (31.3%) thought that there was *no difference* between self-represented and represented litigants. Once again, no respondents said that self-represented individuals achieve *better outcomes*. 12.5% said that they do not know.

Table 2.5

Judges' Opinions on the Outcomes for Self-represented Litigants Compared to Litigants with Legal Representation

Question	Outcome							
	Better		No Difference		Worse		Don't Know	
	n	%	n	%	n	%	n	%
Do you think that self-represented litigants achieve better or worse outcomes in regard to *parenting arrangements* than those with counsel?	*0*	0.0	*12*	**37.5**	*12*	**37.5**	*8*	25.0
Do you think that self-represented litigants achieve better or worse outcomes in regard to *support issues* than those with counsel?	*0*	0.0	*10*	31.3	*16*	**50.0**	*6*	18.8
Do you think that self-represented litigants achieve better or worse outcomes in regard to the *division of property* than those with counsel?	*0*	0.0	*10*	31.3	18	**56.3**	*4*	12.5

Total N=32

2.5 Challenges Posed by Self-represented Litigants

Judges were asked if any additional challenges are posed by self-represented litigants with respect to specific aspects of court processes; their responses are shown in Table 2.6. With very few exceptions, in all of the areas identified, respondents said that additional challenges are posed *always*, *usually* or *sometimes*. For example, when asked if there are additional challenges because self-represented litigants have unrealistically high expectations of outcome, over two-thirds of judges (68.8%) said that this is *usually* the case, 21.9% said that this is *sometimes* the case, and 6.3% said that this is *always* the case. No respondents said that this was *rarely* or *never* the case.

Areas in which judges were most likely to report additional challenges involving self-represented litigants were related to the parties' lack of knowledge regarding the substantive law and legal processes. For example, when asked if self-represented litigants pose additional challenges because they are unfamiliar with hearing and trial processes, the substantial majority of respondents (84.4%) said that this is *always* or *usually* the case. Similarly, when asked if additional challenges arise because self-represented parties are unfamiliar with the Rules of Court, most respondents (93.8%) said that this is *always* or *usually* the case. All respondents said that additional challenges are posed *always* or *usually* because self-represented litigants are unfamiliar with the law of evidence, and most (87.5%) said that additional challenges are *always* or *usually* posed because self-represented parties are unfamiliar with the legislation that applies to their matter.

Table 2.6

Judges' Opinions on Whether There Are Additional Challenges in Cases Involving at Least One Self-represented Litigant

Reasons	Always		Usually		Sometimes		Rarely		Never		Don't Know	
	n	%	n	%	n	%	n	%	n	%	n	%
Self-represented litigants have *unrealistically high expectations* of outcome	*2*	6.3	*22*	**68.8**	*7*	21.9	*0*	0.0	*0*	0.0	*1*	3.1
Self-represented litigants are *more likely to take unreasonable positions* based on principle	*3*	9.7	*11*	35.5	*16*	**51.6**	*0*	0.0	*0*	0.0	*1*	3.2
Self-represented litigants are *more interested in the fight than the result*	*1*	3.1	*6*	18.8	*20*	**62.5**	*3*	9.4	*0*	0.0	*2*	6.3
Self-represented litigants are *less likely to settle*	*2*	6.5	*11*	35.5	*15*	**48.4**	*0*	0.0	*0*	0.0	*3*	9.7
Self-represented litigants are *unfamiliar with hearing and trial processes*	*8*	25.0	*19*	**59.4**	*5*	15.6	*0*	0.0	*0*	0.0	*0*	0.0
Self-represented litigants are *unfamiliar with the Rules of Court*	*8*	25.0	*22*	**68.8**	*2*	6.3	*0*	0.0	*0*	0.0	*0*	0.0
Self-represented litigants are *unfamiliar with the law of evidence*	*11*	34.4	*21*	**65.6**	*0*	0.0	*0*	0.0	*0*	0.0	*0*	0.0
Self-represented litigants are *unfamiliar with the legislation* that applies to their matter	*3*	9.4	*25*	**78.1**	*4*	12.5	*0*	0.0	*0*	0.0	*0*	0.0
Self-represented litigants *look to opposing counsel for information and advice*	*1*	3.3	*6*	20.0	*17*	**56.7**	*5*	16.7	*0*	0.0	*1*	3.3
Need to provide appropriate assistance to self-represented litigants about *procedural issues* without appearing biased	*12*	37.5	*14*	**43.8**	*6*	18.8	*0*	0.0	*0*	0.0	*0*	0.0
Need to provide appropriate assistance to self-represented litigants about *evidentiary issues* without appearing biased	*11*	35.5	*15*	**48.4**	*5*	16.1	*0*	0.0	*0*	0.0	*0*	0.0
Need to provide appropriate assistance to self-represented litigants about the *case law* or *applicable legislation* without appearing biased	*11*	35.5	*15*	**48.4**	*5*	16.1	*0*	0.0	*0*	0.0	*0*	0.0

Total N=32

When asked if additional challenges arise because self-represented litigants are more interested in the fight than the result, the most common response was that this is *sometimes* the case (62.5%), while 18.8% said that this is *usually* the case. A few judges (9.4%) said that this is *rarely* the case. Similarly, when asked if additional challenges are posed because self-represented litigants look to opposing counsel for information and advice, the most common response was that this is *sometimes* the case (56.7%), while 20% of participants said that this is *usually* the case and 16.7% said that this is *rarely* the case.

Respondents indicated that additional challenges often arise in cases with self-represented litigants because they need more assistance from the bench. For example, when asked if additional challenges are posed because of the need to provide assistance to self-represented parties about procedural issues without appearing biased, the substantial majority of respondents (81.3%) said that this is *always* or *usually* the case. When asked if additional challenges arise because of the need to provide appropriate assistance to self-represented litigants about both evidentiary issues and about the case law or applicable legislation without appearing biased, 83.9% of participants indicated that this is *always* or *usually* the case.

2.6 Concerns and Complaints Received Regarding Self-represented Litigants

A series of questions was asked about judges' experiences with concerns about their treatment of self-represented litigants, complaints made by self-represented litigants, and the manner in which they deal with cases involving self-represented litigants; see Table 2.7.

When asked how often counsel express concerns regarding respondents' treatment of self-represented parties, the most common response provided by participants was *rarely* (34.4%), followed by *never* (31.3%) and *sometimes* (28.1%). Similarly, with regard to concerns expressed by self-represented litigants regarding judges' treatment of another self-represented party, respondents said that this *rarely* occurs (43.8%) or *sometimes* occurs (31.3%). Self-represented individuals are also unlikely to express concerns about judges' treatment of counsel; respondents said that this *never* happens (38.7%), that it *rarely* occurs (32.3%) or that it occurs *sometimes* (29%).

Judges were also asked how often, in cases where at least one party is self-represented, they receive correspondence from that party. Responses indicated that this was a relatively frequent event, with 54.8% of respondents saying that this happens *sometimes* (54.8%) or *usually* (25.8%). Only 16.1% of judges said that this happens *rarely* or *never*.

With regard to complaints lodged with the Chief Justice of the Alberta Court of Queen's Bench about any aspect of the case when at least one party is self-represented, respondents indicated that this occurs relatively frequently, with 32.3% saying that this happens *sometimes* and 32.3% indicating that it is a *rare* occurrence, however, 19.4% of respondents also said that they don't know how often this happens. Similarly, when asked how often a complaint is lodged with the Canadian Judicial Council in these cases, must judges said that this happens *sometimes* (29%) or *rarely* (29%). About a fifth

of respondents (19.4%) said that this *never* happens, and almost one-quarter of participants (22.6%) said that they do not know how often this happens.

Table 2.7

Judges' Opinions on Concerns/Complaints in Cases Involving at Least One Self-represented Litigant

Question	Always		Usually		Sometimes		Rarely		Never		Don't Know	
	n	%	n	%	n	%	n	%	n	%	n	%
How often do *counsel* express concerns about your treatment of a *self-represented litigant*?	*0*	0.0	*1*	3.1	*9*	29.0	*11*	**34.4**	*10*	31.3	*1*	3.1
How often do *self-represented litigants* express concerns about your treatment of another *self-represented litigant*?	*1*	3.1	*1*	3.1	*10*	31.3	*14*	**43.8**	*6*	18.8	*0*	0.0
How often do *self-represented litigants* express concerns about your treatment of *counsel*?	*0*	0.0	*0*	0.0	*9*	29.0	*10*	32.3	*12*	**38.7**	*0*	0.0
Are you *more careful with your communication* from the bench when at least one party is self-represented?	*10*	32.3	*15*	**48.4**	*5*	16.1	*1*	3.2	*0*	0.0	*0*	0.0
In cases where at least one party is self-represented, how often do you *receive correspondence* from that party?	*0*	0.0	*8*	25.8	*17*	**54.8**	*4*	12.9	*1*	3.2	*1*	3.2
Are you *more likely to issue written reasons* when at least one party is self-represented?	*1*	3.2	*3*	9.7	*11*	**35.5**	*11*	**35.5**	*4*	12.9	*1*	3.2
In cases where at least one party is self-represented, how often does the party *lodge a complaint about any aspect of the case with the Chief Justice*?	*0*	0.0	*0*	0.0	*10*	**32.3**	*10*	**32.3**	*5*	16.1	*6*	19.4
In cases where at least one party is self-represented, how often does the party *lodge a complaint about any aspect of the case with the Canadian Judicial Council*?	*0*	0.0	*0*	0.0	*9*	**29.0**	*9*	**29.0**	*6*	19.4	*7*	22.6

Total N=32

2.7 Alternatives to the Traditional Delivery of Legal Services

Judges were asked a number of questions regarding alternatives to the traditional delivery of legal services in family law matters, and the extent to which they thought that these alternatives might improve self-represented litigants' use of the court system.

All respondents said that they were aware of lawyers offering services on a limited retainer or unbundled basis. A series of questions was then asked regarding the extent to which respondents had encountered different varieties of limited scope retainers, from the provision of legal advice to representation in court; see Table 2.8. Judges reported that they had encountered each variety of limited retainer relatively infrequently.

Table 2.8

Judges' Opinions on How Often They Deal with Self-represented Litigants Who Have Retained Counsel for Limited Purposes

How often do you deal with self-represented litigants who have:	Always n	%	Usually n	%	Sometimes n	%	Rarely n	%	Never n	%	Don't Know n	%
Retained counsel for the limited purpose of *obtaining legal advice* during the litigation process?	*1*	3.2	*2*	6.5	*14*	**45.2**	*8*	25.8	*0*	0.0	*6*	19.4
Retained counsel for the limited purpose of *conducting legal research* during the litigation process?	*1*	3.2	*0*	0.0	*8*	25.8	*10*	**32.3**	*2*	6.5	*10*	**32.3**
Retained counsel for the limited purpose of *preparing written arguments* during the litigation process?	*1*	3.2	*0*	0.0	*10*	32.3	*13*	**41.9**	*3*	9.7	*4*	12.9
Retained counsel for the limited purpose of *representing them in court* for all or part of the litigation process?	*1*	3.2	*0*	0.0	19	**61.3**	*4*	32.3	*0*	0.0	*1*	3.2

Total N=32

- With regard to the retainer of counsel for the limited purpose of providing legal advice during the litigation process, respondents indicated that they have encountered this *sometimes* (45.2%) or *rarely* (25.8%). However, two participants said they have dealt with this situation *usually*, and one respondent *always* deals with self-represented litigants who had retained counsel for legal advice.

- With regard to the retainer of counsel for the limited purpose of conducting legal research during the litigation process, respondents were most likely to state that they have encountered this *rarely* (32.3%) or *sometimes* (25.8%).

- When asked how often they have dealt with self-represented parties who have retained counsel for the limited purpose of preparing written arguments during the litigation process, respondents were most likely to say that this has occurred *rarely* (41.9%) or *sometimes* (32.3%). 9.7% of respondents said that this *never* happens.

- With regard to self-represented litigants retaining counsel for the limited purpose of representing them in court for all or part of the litigation process, most respondents have dealt with this situation *sometimes* (61.3%). 32.3% of respondents said that this *never* happens.

Judges were asked whether certain measures might improve self-represented litigants' use of the court system; their responses are presented in Table 2.9. The most frequently endorsed measure was requiring self-represented parties to attend an information session on the law and court processes (78.1%).

More than half of respondents supported: providing plain-language guides to the *Divorce Act*, the *Family Law Act*, the *Matrimonial Property Act*, and the Child Support Guidelines (65.6%); providing plain-language guides to court and trial processes (59.4%); providing plain-language guides to the rules of evidence (59.4%); appointing counsel as *amicus curiae* to facilitate the hearing process when one or all parties are self-represented (53.1% and 59.4% respectively); requiring mandatory mediation following the commencement of an action whenever at least one party is self-represented (59.4%); requiring mandatory mediation prior to the trial of an action whenever at least one party is self-represented (56.3%); and, adopting a mediation-litigation hybrid approach in cases where at least one party is self-represented in which judicial mediation is attempted and trial ensues if settlement cannot be reached (53.1%).

Measures that were endorsed by relatively few respondents included: simplifying the Rules of Court (18.8%); simplifying the rules of evidence and trial processes (9.4%); and, simplifying the *Family Law Act* and the *Matrimonial Property Act* (9.4%).

Seven respondents suggested other measures to improve self-represented litigants' use of the court system. One respondent suggested the use of additional quasi-judicial resources such as case management officers, intake counsel/officers, and the availability of court-appointed counsellors; another suggested a triage system where no self-represented litigant could get a court date without meeting with a triage person to decide if the action is appropriate and, if so, ensure that the necessary disclosure has been made. Another respondent recommended limiting the number of pre-trial applications to two or three, because "*often we see parties become [self-represented litigants] after the money has run out from all the interim applications*." Another respondent suggested that consideration should be given to the "*UK model where self-representation is not allowed without denying access to justice*.

Table 2.9

Judges' Opinions on the Measures They Think Would Improve Self-represented Litigants' Use of the Court System

Measure	n	%
Requiring self-represented parties to attend an information session on the law and court processes	*25*	78.1
Providing plain-language guides to the *Divorce Act*, the *Family Law Act*, the *Matrimonial Property Act* and the Child Support Guidelines	*21*	65.6
Providing plain-language guides to court and trial processes	*19*	59.4
Providing plain-language guides to the rules of evidence	*19*	59.4
Appointing counsel as *amicus curiae* to facilitate the hearing process when *all parties* are self-represented	*19*	59.4
Appointing counsel as *amicus curiae* to facilitate the hearing process when *one party* is self-represented	*17*	53.1
Requiring mandatory mediation following the commencement of an action whenever at least one party is self-represented	*19*	59.4
Requiring mandatory mediation prior to the trial of an action whenever at least one party is self-represented	*18*	56.3
Adopting a mediation-litigation hybrid approach in which judicial mediation is attempted and a trial ensues if settlement cannot be reached when at least one party is self-represented	*17*	53.1
Adopting a mediation-litigation hybrid approach in which judicial mediation is attempted and a trial ensues if settlement cannot be reached when *all parties* are self-represented	*14*	43.8
Adopting an inquisitorial approach to the hearing of applications and trials when *all parties* are self-represented	*12*	37.5
Adopting an inquisitorial approach to the hearing of applications and trials when *one party* is self-represented	*10*	31.3
Simplifying the Rules of Court	*6*	18.8
Simplifying the rules of evidence and trial processes	*3*	9.4
Simplifying the *Family Law Act* and the *Matrimonial Property Act*	*3*	9.4
Other measures	*7*	21.9

Total N=32
Multiple response data

Two respondents suggested educational measures, one of whom said:

Cease or reduce learned pronouncements upon the issue/topic of "access to justice" which too often are relied upon by [self-represented litigants] to justify why they've brought their ill-advised and ill-considered applications.

Finally, respondents were asked about their views on allowing paralegals to perform limited legal services in family law cases. Three-quarters of judges who responded to this question said that they do approve of paralegals providing limited services (n = 22; 75.9%) while seven respondents (24.1%) said that they do not approve of this practice. Table 2.10 presents the types of services that judges think paralegals should be permitted to provide. The most commonly approved type of service was the preparation of documents, forms and affidavits (68.8%). Other identified services were endorsed by considerably fewer respondents.

Table 2.10

Judges' Opinions on the Types of Services Paralegals Should be Permitted to Perform

Types of Services	n	%
Preparation of documents/forms/affidavits	*11*	68.8
Calculation and division on property issues/calculating quantum under legislated guidelines	*3*	18.8
Provision of basic procedural and substantive information on such matters as child support, parenting after separation, mediation/ADR options/providing research	*2*	12.5
Drafting deadlines/determining what documents need to be filed and when	*2*	12.5
Agent in court	*1*	6.3
Court process help	*1*	6.3
Post-hearing assistance	*1*	6.3
Triage services	*1*	6.3
Filing pleadings	*1*	6.3
Assist in mediation and arbitration	*1*	6.3
Help prepare access schedules	*1*	6.3
Help with printouts with respect to maintenance	*1*	6.3
Assisting with information on types of disclosure required	*1*	6.3
All but advocacy	*1*	6.3
All aspects of family law under supervision of a lawyer	*1*	6.3

Total number of respondents providing comments = 16.
Multiple response data

2.8 Respondents' Concluding Comments

The final question on the survey asked respondents if they had any other comments about self-represented litigants in family law matters or issues of access to family justice in general; 15 respondents provided comments. Three judges provided general comments on the unsuitability of family law matters for resolution through the litigation process. As one judge said, "*Court with the basis of (1) adversarial system and (2) 'win on a balance of probabilities' is a lousy place to determine family law matters*." Half of the

judges who provided comments argued for a mandatory intake or triage process. For example:

> *No [self-represented litigant] should be permitted before a judge without having gone through a mandatory intake process – similar to that provided by [Family Justice Services] in family provincial court.*
>
> *We need better intake – litigants don't often know or can't articulate what they want or need. Someone needs to give them "a reality check."*
>
> *… consider some mandatory preliminary screenings before being allowed access to the Court (for chambers) not unlike an emergency room at a hospital where not everyone gets to see the physician, let alone the specialist.*
>
> *Too many self-represented parties get time in front of a judge where it is not appropriate – mediation, arbitration would be better or the court cannot help them OR they are there without the necessary documentation, evidence. We don't allow citizens to go to a hospital and get to the operating room without first meeting a triage nurse – why can't we do this before we destroy our whole court system to provide services it was never meant to provide (people in front of judges with no idea of procedure, law or without the necessary evidence).*

Two respondents commented on the need to reduce the number of interim applications. One of these respondents said:

> *Limit the number of interlocutory applications that a litigant may bring thereafter to only a capped amount – and even then only with leave – so that the case goes to trial within a finite time, e.g., 2 years from filing of claim to trial date. Too many of our cases go on and on with endless interlocutory applications over years with no real intention to conclude their litigation. Court time is precious and is wasted. Case management adds to this problem especially where some litigants conclude that they now have their very own, special judge.*

Other respondents suggested implementing procedural changes for family law matters, including:

> *Family problems should be dealt with in a similar way as landlord and tenant problems are resolved in Alberta. A government funded board and educational/mediation/decision making institution should be instituted and put in a problem solving environment and out of the courts but for appeals and property matters.*
>
> *Current simplified processes should be the normal route (e.g., summary trial) with option to apply for [regular] processes. [Self-represented litigants] should be provided with legal advice early (e.g., at the [Family Law Information Centres] or [Family Law Information Centres]) and duty counsel are required for chambers. Multiple services should be offered to litigants early. Require disclosures prior to applications.*

> *In our [self-represented litigant] courtroom … I always start with an outline about the Rules, i.e., the point of the applications, their expected length, my preparation (none – files are not brought to us beforehand), the possibility of the need for an adjournment, etc. The flow of the applications always goes much better when I do this. If I skip it, invariably it goes worse. This leads one to conclude that, in general: 1. [self-represented litigants] want to do a good job and don't know how; 2. if they are given even simple instructions they will follow them; 3. so video instruction like BC has via their Federation would be excellent as would the requirement to take a short seminar before would be good.*

Other respondents commented on the need for additional resources. As one respondent said, "*The system must recognize and accommodate [self-represented litigants] by providing significant resources to educate, assist, and direct the parties to [alternative dispute resolution] etc.*" Another judge said, "*Having duty counsel in court is absolutely essential to running family chambers with a court room of [self-represented litigants] – which is what we have now in Edmonton*." Another judge commented on the lack of funding for legal aid and said, "*do it yourself access to all forms and information means the most important element is missing in matters that come before the court – objectivity!"*

Finally, another respondent expressed a more fundamental concern about the appetite and capacity of the judiciary to deal with the needs of self-represented litigants:

> *I do not enjoy dealing with self-represented litigants and do not believe my skill set and that of my colleagues is particularly well suited to dealing with self-represented litigants. We must do better in serving these people.*

3.0 SUMMARY AND CONCLUSIONS

The survey on Self-represented Litigants in Family Law Matters asked judges of the Alberta Court of Queen's Bench a number of questions regarding their experiences with and opinions of self-represented litigants in family law matters. Participants were also asked their views on alternatives to the traditional delivery of legal services in family law matters, and on a variety of measures proposed to improve self-represented litigants' use of the court system. This chapter presents a summary of the survey findings, the conclusions drawn from these findings and recommendations for further research.

3.1 Summary of Survey Findings

3.1.1 Background Information

- Approximately equal numbers of survey respondents identified as female and male, and participants had served as a judge for an average of 10.2 years.

- 90.6% of judges said that their primary areas of practice included general civil litigation, commercial litigation and administrative law before their appointment to the bench. Two judges said that their primary area of practice was in family law.

- Judges reported that, on average, 40% of their files in the past year involved family law matters.

3.1.2 Experiences with Self-represented Litigants

- On average, 47.5% of respondents' cases in the past year involved at least one self-represented litigant for *part* of the litigation process; 34.8% of their cases involved at least one self-represented litigant for *all* of the litigation process.

- 83.3% of judges thought that there are more self-represented litigants in family law cases now than there were six years ago.

- Most judges believed that litigants self-represent because they can no longer afford to pay for legal representation and are not eligible for legal aid.

- Almost two-thirds of judges do not believe that there are any differences in the reasons why men and women are self-represented.

3.1.3 Judges' Perceptions of Self-represented Litigants

- The majority of judges believe that personality disorders, anxiety disorders and other mental health issues, such as schizophrenia and bipolar disorder, are more common among self-represented litigants than litigants with counsel.

3.1.4 Case Outcomes

- Almost all judges stated that the legal fees of litigants with counsel are higher when another litigant is self-represented.

- The substantial majority of judges said that settlement before trial or before the end of trial is less likely in cases where at least one party is self-represented compared to cases where all parties have counsel.

- In cases where all parties are self-represented, the majority of judges thought that settlement before trial or before the end of trial is less likely than in cases in which only one party has counsel.

- The majority of judges believe that there is either no difference in outcomes for self-represented litigants on parenting issues than for represented litigants, or that self-represented litigants achieve worse outcomes than represented litigants, however:

    - one-half of judges stated that self-represented litigants achieve worse outcomes on support issues than those with counsel.

    - with respect to the division of property, the majority of judges thought that self-represented individuals achieve worse outcomes than those with counsel.

- Just over one-half of judges believe that self-represented litigants are treated very fairly by the bench, while only 13% believe that self-represented litigants receive very fair treatment from counsel for an opposing litigant.

3.1.5 Challenges Posed by Self-represented Litigants

- When asked if self-represented litigants pose additional challenges in the administration of court processes, judges were most likely to say that there are additional challenges always, usually, or sometimes.

- Processes in which respondents were most likely to report additional challenges related to self-represented litigants' lack of knowledge regarding the substantive law and legal processes.

3.1.6 Concerns and Complaints Received Regarding Self-represented Litigants

- Judges reported that counsel seldom express concern regarding their treatment of self-represented parties, and that self-represented litigants rarely express concern regarding their treatment of another self-represented party.

- Judges stated that they are frequently more likely to be more careful with their communication from the bench in cases with at least one self-represented litigant than in cases where all parties are represented.

- Judges said that complaints to the Chief Justice or the Canadian Judicial Council arise relatively frequently from cases involving at least one self-represented litigant.

3.1.7 Alternatives to the Traditional Delivery of Legal Services

- All judges indicated that they are aware of counsel providing services on a limited scope retainer. However, respondents indicated that they had encountered relatively few litigants employing counsel on a limited basis.

- Three-quarters of judges approved of paralegals providing limited services in family matters; however, the only potential service that received a broad endorsement was the preparation of documents, forms and affidavits.

- When asked about a variety of measures that might improve self-represented litigants' use of the court system, the most frequently endorsed measure was to require self-represented parties to attend an information session on the law and court processes. More than half of respondents supported:

    - providing plain-language guides to the *Divorce Act*, the *Family Law Act*, the *Matrimonial Property Act*, and the Child Support Guidelines.

    - providing plain-language guides to court and trial processes.

    - providing plain-language guides to the rules of evidence.

    - appointing counsel as *amicus curiae* to facilitate the hearing process when one or all parties are self-represented.

    - requiring mandatory mediation following the commencement of an action whenever at least one party is self-represented.

    - requiring mandatory mediation prior to the trial of an action whenever at least one party is self-represented.

    - adopting a mediation-litigation hybrid approach in which judicial mediation is attempted and a trial ensues if settlement cannot be reached when at least one party is self-represented.

3.2 Conclusions and Recommendations

Protecting and promoting Canadian's, and Albertan's, access to justice is one of the most critical issues facing the justice system at present. The final report of the Action

Committee on Access to Justice in Civil and Family Matters, published in 2013, described the problem in this manner:

> *There is a serious access to justice problem in Canada. The civil and family justice system is too complex, too slow and too expensive. It is too often incapable of producing just outcomes that are proportional to the problems brought to it or are reflective of the needs of the people it is meant to serve.*

This problem is especially acute for self-represented litigants. The 2013 final report of the Canadian Bar Association's Access to Justice Committee discussed self-represented litigant's experience of the justice system:

> *While online materials offer the prospect of enhanced access to justice, many are too complex and difficult to understand. Available resources are often insufficient to meet the need for face-to-face orientation, education and other support. Respondents to the study describe the justice system as "broken".*

Professor Julie Macfarlane commented on the complexity of the justice system for self-represented litigants in the final report of her National Self-Represented Litigants Project, published in 2013:

> *Only a small number of [self-represented litigants] spoke with any confidence about returning to the courts another time. The majority were, quite simply, overwhelmed. Some said that the process was nothing like what they had expected, and far more demanding of both their skills and time. Even those who began apprehensive told us that their experience turned out to be worse than they had ever imagined.*

Self-represented litigants' lack of familiarity with such a complex system ultimately leads to concerns that these litigants are not effectively navigating their way through the system, are abandoning meritorious claims or are unable to obtain justice in matters taken to trial (Gray, 2013; Macfarlane, 2013), which may result in their legal needs going unmet (Action Committee, 2013). Given the increasing numbers of parties who are choosing to represent themselves, or have no choice but to do so (Macfarlane, 2013; Birnbaum & Bala, 2012), the efficiency of the court system inevitably degrades as cases take longer to resolve (Birnbaum & Bala, 2012; Gray, 2013).

These issues are particularly prevalent in family law disputes, which are among the most difficult, complicated and time-consuming to resolve (Buckley, 2011), and in which the number of self-represented litigants is significantly higher than among other civil matters (Gray, 2013) and continues to grow (Shaw, 2012; Macfarlane, 2013). The 2012 report of the Family Justice Working Group of the Action Committee noted the special nature and high social significance of family law matters:

> *Disputes arising out of family separation present an immense challenge to Canadian justice systems. They are many in number and they typically involve complex interpersonal relationships, highly charged emotions, vulnerable family members and outcomes that are particularly consequential to the lives of all*

involved. The scale and complexity of family [law] disputes have been complicated considerably by the barriers that inhibit access to the justice system.

Despite the importance of access to justice in family law matters, empirical research on the issues flowing from the increase in self-representation in family law matters remains sparse (Canadian Bar Association, 2013; Action Committee, 2013; Gray, 2013). This study is intended to add to the pool of available data and contribute to our understanding of these issues.

3.2.1 Conclusions

The judges of the Alberta Court of Queen's Bench clearly view the number of parties representing themselves as having increased in the last six years. They view finances and ineligibility for legal aid as key reasons for litigants' self-representation, although litigants' concerns about the cost and delay resulting from legal representation, and suspicions that retaining counsel will exacerbate conflict, are also factors.

Most judges believe that personality disorders, anxiety disorders and other mental health issues are more or much more prevalent among the population of litigants representing themselves than among litigants represented by counsel. Although more research is necessary to determine whether a correlation exists, most judges also noted that self-represented litigants usually have unrealistically high expectations of outcome, usually or sometimes take unreasonable positions based on principles, and usually or sometimes are more interested in the fight than in the result. Perhaps as a result of these expectations and attitudes, most respondents said that cases involving one or more self-represented litigants are less or much less likely to settle before trial than cases in which all litigants have counsel.

These attitudes, combined with self-represented litigants' unfamiliarity with court processes, the law of evidence and the applicable legislation, likely contribute to judges' views that self-represented litigants achieve worse results on issues related to child support, spousal support and the division of property than litigants with counsel. Although judges were evenly split on the question of whether self-represented litigants achieve the same or worse results on issues related to the care of children, no judges believed they obtained better results than litigants with counsel. It should be noted that a significant majority of judges believed that self-represented litigants receive fair or very fair treatment from the bench.

With respect to their familiarity with the law and court processes, the majority of judges reported that self-represented litigants always or usually are unfamiliar with hearing and trial processes, always or usually are unfamiliar with the Rules of Court, always or usually are unfamiliar with the law of evidence, and usually or sometimes are unfamiliar with the legislation applicable to their dispute; these findings are consistent with the views of judges of the British Columbia Supreme Court (Gray, 2013). This resulted in respondents always or usually feeling concerned about perceptions of bias in providing self-represented litigants with information about procedural and evidentiary issues and the law, however judges reported that complaints were rarely

expressed by the opposing parties or opposing counsel about their treatment of self-represented litigants.

Even though judges noted the cost of counsel as a factor leading litigants to represent themselves, judges did not encounter many litigants who had retained counsel for limited purposes. Most judges reported that they sometimes deal with parties who had retained counsel for legal advice or to represent them in all or part of the litigation process; most judges reported that they rarely deal with parties who had retained counsel for help drafting arguments or conducting research. These findings are consistent with an earlier study of family law lawyers in Alberta, which found that 40% of respondents never work on a limited scope retainer, and that the lawyers who do work on such retainers only do so in an average of 12% of their case load (Bertrand *et al.*, 2012).

Judges did not view increasing the services of paralegals, whose rates would presumably be cheaper than those of counsel, as a viable alternative. Most judges agreed that paralegals might assist with the preparation of documents, forms and affidavits, but very few thought that they should have any other role, such as calculating support, providing basic procedural information or appearing in court as agent for a party or counsel.

Judges generally supported educational efforts as a means of improving self-represented litigants' use of the court system. A large majority of judges believed that parties should be required to attend an information session on the law and court processes. More than half of judges believed that parties should be provided with plain-language guides to the legislation, court processes, the Rules of Court and the rules of evidence. A majority of judges also supported changes to the court processes that would: make mediation mandatory for cases involving at least one self-represented party, either before trial or after the commencement of proceedings; require the involvement of counsel as *amicus curiae* to facilitate the hearing process; and require a mediation-litigation hybrid approach to trials involving at least one self-represented litigant, in which judicial mediation would be attempted and the trial ensue only if settlement is not reached.

Judges generally did not support changing hearing or trial processes to adopt an inquisitorial format in cases involving at least one self-represented litigant. Only a small minority of judges, less than 20% of respondents, supported simplifying the Rules of Court, the law of evidence, the *Family Law Act* or the *Matrimonial Property Act*.

It is clear that the trends evident in jurisdictions such as Ontario and British Columbia are also present in Alberta. More litigants are representing themselves in family law matters and their sometimes unrealistic goals and expectations, combined with their unfamiliarity with the law and court processes, are negatively impacting on the resolution of these cases short of trial. Regrettably, where these cases are taken through to trial, the results are usually worse for the self-represented litigant than had he or she been represented by counsel, and of course the resolution of these cases by trial results in increased costs for the opposing parties, especially those represented by counsel, and for the court system.

Although a number of measures are supported by the bench as means of improving self-represented litigants' access to justice, those measures do not include the increased use of paralegals or redrafting the legislation and rules of procedure in a simpler, easier to understand form. The measures supported by the bench are primarily educational in nature and would continue the public legal education efforts underway in Alberta and other jurisdictions by providing information sessions and plain-language guides to the legislation and rules of procedure. The three measures endorsed by more than half of respondents that necessitate some change to existing court processes would require mediation in cases involving at least one self-represented litigant and the appointment of counsel as *amicus curiae* to facilitate hearings and trials.

3.2.2 Recommendations for Further Research

A number of recommendations for addressing the needs of self-represented litigants and their increasing involvement in the family justice system arise from the survey on Self-represented Litigants in Family Law Matters:

- Are mental health issues and disorders more prevalent among self-represented litigants than the general population of litigants? If so, what measures are available to address these needs of this vulnerable group? Is there a relationship between the frequency of these issues and disorders and the reasonableness of the positions and attitudes taken by self-represented litigants in their cases?

- Is settlement short of trial less likely in cases involving at least one self-represented litigant? If so, what can be done to promote the settlement of such cases?

- What measures can be taken to address self-represented litigants' lack of familiarity with the Rules of Court, the law of evidence and the legislation applicable to their case? Will plain-language guides assist? Will an education session delivered after the commencement of proceedings assist?

- What measures can be taken to address self-represented litigants' lack of familiarity with court processes? Will plain-language guides assist? Will an education session delivered after the commencement of proceedings assist?

- Does mandatory mediation increase the likelihood of settlement in family law matters? If so, what are the relative probabilities of settlement and costs savings realized from mandatory mediation occurring after the commencement of proceedings compared to mandatory mediation occurring prior to trial? What are the experiences of other jurisdictions, such as British Columbia, with regulations or legislation making mediation mandatory?

- Does the provision of legal services by limited scope retainers improve self-represented litigants' access to justice? Does it improve the speed and efficiency with which their cases are resolved? Does it improve the outcomes realized by self-represented litigants compared to litigants with counsel? If so, the Legal

Education Society of Alberta should undertake professional education regarding the benefits of this model of legal service delivery.

- Given respondents' views on the involvement of paralegals in family law matters, research should be conducted into the experiences of other jurisdictions, such as British Columbia, which have expanded the services of paralegals. Are their services effective in increasing access to justice? What is the rate of negative outcomes compared to similar services offered by lawyers?

REFERENCES

Action Committee on Access to Justice in Civil and Family Matters. (2012). *Meaningful Change for Family Justice: Beyond Wise Words*. Report of the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters.

Action Committee on Access to Justice in Civil and Family Matters. (2013). *Access to Civil and Family Justice: A Roadmap for Change*. Ottawa, ON: Action Committee on Access to Justice in Civil and Family Matters.

Bertrand, L.D., Paetsch, J.J., Bala, N., & Birnbaum, R. (2012). *Self-represented Litigants in Family Law Disputes: Views of Alberta Lawyers*. Calgary, AB: Canadian Research Institute for Law and the Family.

Birnbaum, R., & Bala, N. (2012). Views of Ontario Lawyers on Family Litigants without Representation. *University of New Brunswick Law Journal*, *63*, 99-124.

Birnbaum, R., Bala, N., & Bertrand, L. (2013). The Rise of Self-representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants. *Canadian Bar Review*, *91*, 67-95.

Buckley, M. (2011) *Access to Legal Services in Canada: A Discussion Paper*. Working group on access to legal services of the action committing on access to justice in civil and family matters.

Canadian Bar Association. (2013). *Reaching Equal Justice: An Invitation to Envision and Act*. A summary report by the CBA Access to Justice Committee. Canadian Bar Association.

Gray, V. (2013). *Filling in the Blanks: Towards a More Inquisitorial Process (with Relevant and Organized Evidence)*. Summary of a study regarding the law of evidence and self-represented family and civil litigants in the B.C. Supreme Court.

Hilbert, J. (2009). Educational Workshops on Settlement and Dispute Resolution: Another Tool for Self-represented Litigants in Family Court. *Family Law Quarterly*, *43*, 545-569.

Law Society of Upper Canada. (2008). *How to Avoid the Complaint – Dealing with Unrepresented and Self-represented Parties in Family Law*. Toronto, ON: Law Society of Upper Canada.

Macfarlane, J. (2013). *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report*. Prepared for the Law Foundation of Ontario, the Alberta Law Foundation and the Law Foundation of British Columbia/Legal Services Society of British Columbia.

MacRae, L.D., Simpson, S., Paetsch, J.J., Bertrand, L.D., Pearson, S., & Hornick, J.P. (2009). *An Evaluation of Alberta's Family Law Act*. Report prepared for the Alberta Law Foundation.

Malcolmson, J., & Reid, G. (2006). *BC Supreme Court Self Help Information Centre Final Evaluation Report*. Vancouver, BC: BC Supreme Court Self Help Information Centre.

Shaw, E. (2012). *Family Justice Reform: A Review of Reports and Initiatives*. Report prepared for the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters.

Zorza, R. (2002). *The Self Help Friendly Court: Designed from the Ground Up to Work for People without Lawyers*. Williamsburg, VA: National Center for State Courts.

GLOSSARY

Mean: The mean is the average response to a question. It is calculated by adding up all of the responses to a question and then dividing the resulting sum by the total number of responses.

Missing Cases: The number of responses on individual questions that are not available. The most common reason for missing cases in survey data is that the respondent chose not to answer a particular question.

Multiple Response Data: Multiple response data refers to questions in which respondents are allowed to choose more than one answer. In tables where multiple response data are presented, the percentages presented for individual items will total more than 100.

N *and* n: N refers to the total number of responses received to a survey while n refers to a subset of the total responses that may be selected for specific data analyses. For example, if 100 people respond to a survey, N = 100. If 30 of those respondents identify as female, then n = 30 females and n = 70 males.

Range: The lowest and highest responses to a question.

Representativeness: The extent to which the responses to a survey can be assumed to accurately reflect the total group of potential respondents.

Response Rate: The percentage of completed surveys returned out of the total number distributed to potential respondents.

APPENDIX A

SURVEY ON SELF-REPRESENTED LITIGANTS

IN FAMILY LAW MATTERS

CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

Self-Represented Litigants in Family Law Matters

In 2012, the Canadian Research Institute for Law and the Family conducted a survey with members of the Family Law Bar in Alberta regarding their experiences with self-represented litigants. The purpose of this survey is to poll the views of the bench on self-represented litigants, asking many of the same questions that were put to the bar, with the aim of combining the results to recommend options to address the needs and challenges of self-represented litigants. Please answer the questions in this survey with regard to your family law cases. The data collected in this survey will only be expressed in aggregate form and as such cannot be used to identify individual respondents.

We would appreciate it if you could complete this survey sometime during the conference and leave it in the box at the back of the room prior to the end of the conference. The survey can also be completed online at [address], however you may have difficulty accessing this link through the court's intranet.

The Institute gratefully acknowledges the financial support of the Alberta Law Foundation.

1. What is your gender? □ Male □ Female

2. How many years have you served as a judge? _____

3. What were your primary areas of practice before your appointment to the bench?

   _____

4. In the past year, what percentage of your cases have been family law matters? _____%

5. In the past year, what percentage of your family law cases have involved at least one self-represented litigant:

   for *part* of the litigation process? _____%

   for *all* of the litigation process? _____%

6. In the past year, in what percentage of your family law cases have *all parties* been self-represented:

   for *part* of the litigation process? _____%

   for *all* of the litigation process? _____%

7. Do you think that there has been a change in the number of self-represented litigants now as compared to six years ago?

□ Much more □ More □ About the same □ Less □ Much less □ Don't know

8. Why do you think family law litigants are self-represented? (Please check all that apply)

□ A. They cannot afford a lawyer and are not eligible for legal aid

□ B. They initially had a lawyer but could no longer afford legal representation

□ C. They think they know enough about family law to do it as well or better themselves

□ D. They think they know enough about court processes to do it as well or better themselves

□ E. They think the judge will favour a party who is self-represented

□ F. They think lawyers will increase the adversarial nature or complexity of the court process

□ G. They think lawyers will increase the time and cost of resolving the dispute

□ H. They want to directly confront their former spouse or partner

□ I. They think their knowledge of their spouse or partner gives them an advantage

□ J. Other reasons (please specify)

_____
_____
_____

9. If you think that more than one of the above applies, please identify (by letter) the three most common reasons why you think litigants are self-represented.

_____ _____ _____

10. Do you think that men and women decide to self-represent for different reasons?

□ Yes □ No

If yes, why?

_____
_____
_____
_____

11. In your view, how common do personality disorders (such as paranoia or antisocial, borderline or narcissistic personality disorders) appear to be among self-represented litigants?

□ Much more common than among other litigants
□ More common than among other litigants
□ About the same
□ Less common than among other litigants
□ Much less common than among other litigants
□ Don't know

12. In your view, how common do anxiety disorders (such as obsessive-compulsive, posttraumatic stress or panic disorders) appear to be among self-represented litigants?

□ Much more common than among other litigants
□ More common than among other litigants
□ About the same
□ Less common than among other litigants
□ Much less common than among other litigants
□ Don't know

13. In your view, how common do other mental health issues (such as bipolar disorder, depression or schizophrenia) appear to be among self-represented litigants?

□ Much more common than among other litigants
□ More common than among other litigants
□ About the same
□ Less common than among other litigants
□ Much less common than among other litigants
□ Don't know

14. If one party is self-represented, does this increase the legal expenses of the party with counsel?

□ Yes □ No □ Don't know

15. If one party is self-represented, are you more or less likely to make an order of costs?

□ Much more □ More □ About the same □ Less □ Much less □ Don't know

16. If one party is self-represented, does this make settlement before trial (or before the end of trial) more likely or less likely than if *all parties* were represented by counsel?

□ Much more □ More □ About the same □ Less □ Much less □ Don't know

17. If all parties are self-represented, does this make settlement before trial (or before the end of trial) more likely or less likely than if *one party* had counsel?

□ Much more □ More □ About the same □ Less □ Much less □ Don't know

18. If all parties are self-represented, does this make settlement before trial (or before the end of trial) more likely or less likely than if *all parties* were represented by counsel?

□ Much more □ More □ About the same □ Less □ Much less □ Don't know

19. Do you think that self-represented litigants generally receive fair treatment from opposing counsel?

□ They are treated very fairly
□ They are treated fairly
□ They receive satisfactory treatment
□ They are treated unfairly
□ They are treated very unfairly
□ Don't know

20. Do you think that self-represented litigants generally receive fair treatment from the bench?

□ They are treated very fairly
□ They are treated fairly
□ They receive satisfactory treatment
□ They are treated unfairly
□ They are treated very unfairly
□ Don't know

21. Do you think that self-represented litigants achieve better or worse outcomes in regard to *parenting arrangements* than those with counsel?

□ Better □ No difference □ Worse □ Don't know

22. Do you think that self-represented litigants achieve better or worse outcomes in regard to *support issues* than those with counsel?

□ Better □ No difference □ Worse □ Don't know

23. Do you think that self-represented litigants achieve better or worse outcomes in regard to the *division of property* than those with counsel?

□ Better □ No difference □ Worse □ Don't know

24. Are there added challenges in cases involving at least one self-represented litigant because:

	Always	Usually	Sometimes	Rarely	Never	Don't Know
self-represented litigants have unrealistically high expectations of outcome?	□	□	□	□	□	□
self-represented litigants are less likely to settle?	□	□	□	□	□	□
self-represented litigants are more likely to take unreasonable positions based on principle?	□	□	□	□	□	□
self-represented litigants are more interested in the fight than the result?	□	□	□	□	□	□
self-represented litigants look to opposing counsel for information and advice?	□	□	□	□	□	□
self-represented litigants are unfamiliar with hearing and trial processes?	□	□	□	□	□	□
self-represented litigants are unfamiliar with the Rules of Court?	□	□	□	□	□	□
self-represented litigants are unfamiliar with the law of evidence?	□	□	□	□	□	□
self-represented litigants are unfamiliar with the legislation that applies to their matter?	□	□	□	□	□	□
of the need to provide appropriate assistance to self-represented litigants about *procedural issues* without appearing biased?	□	□	□	□	□	□
of the need to provide appropriate assistance to self-represented litigants about *evidentiary issues* without appearing biased?	□	□	□	□	□	□
of the need to provide appropriate assistance to self-represented litigants about the *case law* or *applicable legislation* without appearing biased?	□	□	□	□	□	□
25. How often do counsel express concerns about your treatment of a self-represented litigant?	□	□	□	□	□	□
26. How often do self-represented litigants express concerns about your treatment of another self-represented litigant?	□	□	□	□	□	□

		Always	Usually	Sometimes	Rarely	Never	Don't Know
27.	How often do self-represented litigants express concerns about your treatment of counsel?	□	□	□	□	□	□
28.	Are you more careful with your communication from the bench when at least one party is self-represented?	□	□	□	□	□	□
29.	Are you more likely to issue written reasons when at least one party is self-represented?	□	□	□	□	□	□
30.	In cases where at least one party is self-represented, how often do you receive correspondence from that party?	□	□	□	□	□	□
31.	In cases where at least one party is self-represented, how often does the party lodge a complaint about any aspect of the case with the Chief Justice?	□	□	□	□	□	□
32.	In cases where at least one party is self-represented, how often does the party lodge a complaint about any aspect of the case with the CJC?	□	□	□	□	□	□

33. Are you aware of counsel providing services on a limited-scope retainer (unbundled) basis?

□ Yes □ No

34. How often do you deal with self-represented litigants who have:

	Always	Usually	Sometimes	Rarely	Never	Don't Know
retained counsel for the limited purpose of *representing them in court* for all or part of the litigation process?	□	□	□	□	□	□
retained counsel for the limited purpose of *preparing written arguments* during the litigation process?	□	□	□	□	□	□
retained counsel for the limited purpose of *conducting legal research* during the litigation process?	□	□	□	□	□	□
retained counsel for the limited purpose of *obtaining legal advice* during the litigation process?	□	□	□	□	□	□

35. Do you think that any of the following measures would improve self-represented litigants' use of the court system? (Please check all that apply)

□ A. Simplifying the Rules of Court

□ B. Simplifying the rules of evidence and trial processes

□ C. Simplifying the *Family Law Act* and the *Matrimonial Property Act*

□ D. Providing plain-language guides to court and trial processes

□ E. Providing plain-language guides to the rules of evidence

□ F. Providing plain-language guides to the *Divorce Act*, the *Family Law Act*, the *Matrimonial Property Act* and the Child Support Guidelines

□ G. Adopting an inquisitorial approach to the hearing of applications and trials when one party is self-represented

□ H. Adopting an inquisitorial approach to the hearing of applications and trials when *all parties* are self-represented

□ I. Appointing counsel as *amicus curiae* to facilitate the hearing process when one party is self-represented

□ J. Appointing counsel as *amicus curiae* to facilitate the hearing process when *all parties* are self-represented

□ K. Requiring mandatory mediation following the commencement of an action whenever at least one party is self-represented

□ L. Requiring mandatory mediation prior to the trial of an action whenever at least one party is self-represented

□ M. Adopting a mediation-litigation hybrid approach in which judicial mediation is attempted and a trial ensues if settlement cannot be reached when at least one party is self-represented

□ N. Adopting a mediation-litigation hybrid approach in which judicial mediation is attempted and a trial ensues if settlement cannot be reached when *all parties* are self-represented

□ O. Requiring self-represented parties to attend an information session on the law and court processes

□ P. Other (please specify)

_____

_____

_____

36. If you think that more than one of the above applies, please identify (by letter) the three measures that you think are most likely to improve self-represented litigants' use of the court system.

_____ _____ _____

37. Do you approve of licensed paralegals being permitted to provide limited services in family law cases?

□ Yes □ No

If yes, what types of services do you think paralegals should be permitted to perform?

_____
_____
_____
_____

38. Do you have any other comments about self-represented litigants in family law matters or access to family justice issues?

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Thank you very much for your participation.

If you have any questions, concerns or additional comments, please contact:
John-Paul Boyd, Executive Director, Canadian Research Institute for Law and the Family
by e-mail at jpboyd@ucalgary.ca or by telephone at (403) 216-0341.