

Early Self-Help for Litigants Without Lawyers

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This paper provides information about structured front-end information and advice services as a way to enhance access to justice for litigants without lawyers.¹

Information, Advice and Referral Services

One response often proposed to the increasing number of people who are seeking to use the justice system without representation is the creation of point-of-entry information, advice and referral services. A report recently issued in British Columbia by the Justice Review Task Force², for example, recommends that “highly accessible Family Justice Information Hubs” be established throughout British Columbia as the front door to the family justice system.³

The theory behind such front end services is that information is a dispute resolution tool and that making information and advice services available with enhance access to justice for unrepresented parties.⁴ Advice, direction and orientation early in the life of a dispute will, logically, make progress through the justice system more effective and efficient, for both the unrepresented litigant and the system.

The model recommended in the BC report proposes that Family Justice Information Hubs:

- offer extensive information, needs assessment services, and referrals to other services, including to lawyers;
- be promoted as a place where people can go for help with family problems at any time, from the very early stages, and as long as there are issues to be resolved;
- be established in as many communities as possible and be located, where possible, in a court house;
- be accessible province-wide over the telephone and Internet;
- be part of a province-wide network, but supported by local community service providers and other stakeholders; and

¹ Access to justice must be understood throughout as meaning more than simply access to the courts. Clients are looking for resolution, not necessarily litigation. It may be more helpful to think in terms of “access to resolution”, meaning access to any process-unassisted negotiation, assisted negotiation, mediation, conciliation, collaborative law – which facilitates settlement.

² See <http://www.bcjusticereview.org/>

³ *A New Justice System for Families and Children* – report of the B.C. Family Justice Reform Working Group, May 2005

⁴ The services are also available to represented parties.

- serve as a focus for coordinating justice system services, including local community services for separating families, so as to minimize gaps in overlaps in services.

A Self-Help Information Pilot

The Supreme Court “Self-Help Information Centre” (SHIC) pilot project has been operating in Vancouver Law Courts for about one year. The SHIC has some of the features of a Hub, but offers fewer services (for example, a Hub offers individual assessment services where an SHIC does not). The goal of the SHIC pilot was to test enhanced access to justice for unrepresented litigants by giving them more information about the family and civil justice system. The SHIC was designed to provide legal information, education and referral services to unrepresented litigants in both family and civil cases by way of a “client-centred” model.⁵

Specifically, people can use the SHIC to:

- talk to staff about available resources and referrals;
- locate and use print, video and online resources to learn about the court system, procedures and legal information;
- locate and fill out relevant court forms for family or civil cases;
- get referrals to free legal help and advice;
- find information on alternatives to court.

Phones are available to access "LawLINE", a toll free legal aid hotline that connects people with lawyers. Internet terminals are also available. The SHIC does not provide legal advice but it does provide advice on how to navigate the system. Two full-time staff members answer questions, provide assistance and make referrals to other services, including legal advice.

The most recent evaluation of the SHIC provides some interesting information about who uses such centers, what they use them for, and how effective they are. Much of what follows is taken from a research report published in February of this year by researchers John Malcolmson & Gayla Reid describing the first several months of the pilot project.⁶

As a general statement, the evaluation demonstrates that SHIC effectively helps people prepare for court and successfully connects them to appropriate services through referrals. It does well what it was intended to do, but there are of course limits to the assistance that it can provide, and the population that it reaches may be limited as well.

Who uses the SHIC?

⁵ The SHIC is fully described on the Internet at <http://www.supremcourtsselfhelp.bc.ca/>

⁶ A February 2006 evaluation report was written with reference to the findings of the Initial Evaluation Report, which covered the period of April to September, 2005. The Final Evaluation Report, due March 31, 2006, will be a stand-alone document for the entire Project period. This paper also incorporates some information from another BC study: *Developing Models for Coordinated Services for Self-Representing Litigants -Mapping Services, Gaps, Issues and Needs.* (Gayla Reid, Donna Sinnew and John Malcolmson, January 2004)

- in the first eight months of operation the Centre helped more than 3000 people (500 full service users and 2,500 brief service users).⁷ The center was busy from the first day;
- both unrepresented and self represented litigants use the service. The great majority were unrepresented;
- 90% were single-time users;
- the largest block of users fell between the ages of 40 and 49, with slightly more male than female users;
- people using this service had significantly higher than average levels of education. More than 33% have a college or university degree, and nearly 66% reporting at least some level of post-secondary education;
- at the same time, people using this service had lower than average levels of income. More than 60% report a gross monthly income below \$2,000 per month;
- people using this service had high levels of overall technical facility; about 75% have access to and ability to use a computer. The data also suggests reasonably high levels of effectiveness and ability;⁸
- more than 50% speak a language other than English at home (Asian languages dominate). However, less than 7% report having a problem with English-only services;
- The main reason 64% of users gave for not having a lawyer was "not being able to afford one".⁹ Another 10% said they had no lawyer because they did not qualify for legal aid;
- about 40% reported having had a lawyer at one point, but that they "could not afford to continue"
- Approximately 66% of users were initiating rather than responding to claims.

Service characteristics

- referral sources to the SHIC in order of size are: the court registry, other services within the family justice system and the Internet. These 3 account for almost 75% of all full service users.
- approximately 80% of SHIC services provided are in the family law area. Civil matters, including judicial review (e.g. landlord / tenant, foreclosure, employment, personal injury), account for the balance.
- female users are more likely to seek family law-related services from SHIC than are males, and less likely to receive services in other legal areas.

⁷ "Full service" users are those who require more than 15 minutes of staff time. "Brief service" users are those who require less than 15 minutes of staff time. Note that data is collected for "full service" users only.

⁸ This raises the question, 'who is not using the service?' That is, how many people walk away from the system because they lack the skills, confidence or courage to go it alone? Without representation other non-monetary barriers can arise: culture, language, education, mental health, etc.

⁹ This link is frequently drawn between legal fees and unrepresented litigants. The March 10, 2006 Globe and Mail quoted a B.C. Supreme Court justice telling a conference in Toronto on access to justice that lawyers fees are "completely beyond the reach" of most individual litigants. "The middle class, probably even the upper middle class have been abandoned by the legal profession." She added that between 10% and 20% of the litigants who appear before her are self represented. A Quebec Superior Court justice said that "ordinary people have completely deserted the court system" except for family law matters, where an estimated 40% of people represent themselves.

Types of services provided

- service needs fall into 3 main categories: procedural advice, substantive advice, information and education (court room procedure and behaviour, information about ADR, etc.);
- those using the service frequently do not have "big picture" information; they do not understand the process or where they are in it at any given time. They may not know what to ask;
- those using the service need assistance at strategic points in the process;
- the most common type of service provided at SHIC is information (for over 91% of user visits), followed by assistance with the completion of court forms (in 73% of visits);
- frequency of referrals increased the longer the center operated (more than doubled from the first to the second interim evaluation);
- the top four referral destinations are: pro bono services, duty counsel, the court registry, and the private bar;
- referrals to legal advice in one form or another account for 71 % of all referrals. (This figure increased by 10% from the first to the second interim evaluation);
- a relatively smaller number of referrals were made to non-legal services.

Interview results

The following summarizes some of the themes to emerge from interviews with individuals connected to the SHIC.

Perspectives on service functioning:

- users generally reported that SHIC answered their questions, helped prepare them to take their matter forward, provided a place for research, and directed them to legal advice and other services;
- while some of the line-ups at the registry counter were reduced, a more important outcome is that "it gives clients a place to go," as well as a space to work on documents;
- some judges report that unrepresented litigants are on average better prepared than they were before.

Features of service delivery:

- one-on-one assistance is key. The overwhelming majority of service providers and users identified in-person, hands-on assistance as being a crucial feature of the service. "Having someone to talk to" is frequently identified as very important by those using the SHIC;
- staff require a sophisticated range of knowledge and skills – including familiarity with all aspects of registry service, understanding of civil procedure, very good interpersonal skills and an ability to innovate and "think outside the box."
- service providers outside SHIC (e.g. pro bono services) see the SHIC services as complementary to their own;

- SHIC is a service that must be closely connected to and coordinated with other services for unrepresented litigants.

Perspectives on legal advice:

- service providers were very positive about the referral pathways that developed between SHIC and legal advice providers.
- users reported that they are willing to "work back and forth" between SHIC and legal advice providers, but this process risks becoming cumbersome;
- a separate BC study identified a need for service providers to develop a common and shared model of service delivery that goes beyond existing referral arrangements. That is, a good referral system still falls short of what is needed - an integrated model and approach to service delivery.

Outstanding needs:

- the SHIC probably needs to expand its reach to a broader range of unrepresented litigants. Language and education barriers, for example, exclude some who need access to the system;
- more outreach and communications work is required to better educate the bar and the judiciary about SHIC services;
- users of the system suggested improvements including private areas to talk to staff, more videos and faster computers;
- court system reform (e.g. simplified forms and streamline procedures) would facilitate better access for unrepresented parties. A truly "client-centered" model would be designed for all those using the system and not just for lawyers and judges;
- better coordination of court and community resources would enhance services to unrepresented parties.

Conclusion

Unrepresented and self represented litigants lawyers are here to stay. Their numbers are growing and they are taking on increasingly complex matters. They are daunted, confused and frustrated by the justice system and they expend much time and energy and use significant public resources trying to work their way through a system that was not designed for them.

There is clear evidence that a structured information and advice service is both necessary and helpful to them. People like the service and they report that it clearly helps them to deal more effectively with their legal problems. At the same time proceeding without legal representation remains a complex and difficult challenge in any event. Also, while front end information centers are demonstrably useful to unrepresented litigants who have reasonably high levels of education and self-sufficiency, they may be inaccessible to those who are less educated or self sufficient.

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