

News & Views

ON CIVIL JUSTICE REFORM

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May 2006 – See you in Montréal!

The Canadian Forum on Civil Justice, in partnership with the Association of Canadian Court Administrators, the Canadian Bar Association and the Canadian Institute for the Administration of Justice, will host a national conference on the 10th anniversary of the CBA Task Force Report on the Systems of Civil Justice.

The conference will provide an update on the status of civil justice reform in Canada, identify barriers preventing effective reform and consider mechanisms promoting effective change. We will also look at completed evaluations of civil justice reforms and discuss how they can inform our next steps.

Watch for updates on the conference page of the Forum website at: www.cfcj-fcjc.org

We welcome your submission of articles (or topics of interest) for publication in *News & Views on Civil Justice Reform*. Tell us about an experience of civil justice reform in your jurisdiction. Provide us with a comparative analysis. Report on what is new in your civil justice system. Let us know what you would like to find out more about. Submissions may be made in French or English; however we ask that contributions be written in plain language. For more detailed information, please contact the editors: Kim Taylor & Diana Lowe.

News & Views is intended to serve as an information source on civil justice reform initiatives for lawyers, judges, legal educators, court administrators and members of the public.

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- Saskatchewan Justice

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The content of *News & Views* is intended as general legal information only and should not be relied upon as legal advice.

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The Judge as Counsel

D.A. Rollie Thompson, Dalhousie Law School, Halifax, Nova Scotia

Unrepresented litigants need “legal advice”, in some form and from some source. If they don’t get it outside of court, they’ll look for it at the courthouse. If they don’t get it somewhere in the courthouse, then they’ll try to get it in court, from the judge. The buck stops at the judge.

Some judges will refuse to give legal advice. Other judges will venture into the realm of legal advice, just to move a trial or hearing along, albeit with a sense of unease. Some judges will actually change their procedures, especially when both parties are without lawyers. Hence my title, even if it is a bit melodramatic.

A quick comment about language. Most use the term “self-represented litigants” to describe lawyer-less parties, a dangerous term. The vast majority of lawyer-less parties are “unrepresented”, as they have no choice. The unrepresented would like to have a lawyer, but can’t afford or find one. The “self-represented” might be able to afford a lawyer, but don’t want one or can’t keep one. There is some small overlap between these two categories. Estimates suggest that 15 to 25 per cent of those without lawyers fall into the “self-represented” category.¹ For the most part, I will therefore use the term “unrepresented”, as a more accurate description, especially in civil matters.

All of these unrepresented, litigants or not, lack legal advice. The best they can hope for is some “legal information”. Most unrepresented litigants will eventually wind up before a judge, still looking for “legal advice”.

This short article addresses these linked problems. First, how do the unrepresented get “legal advice” outside the courtroom? Is “legal information” enough? What’s the difference between the two? Second, if the unrepresented can’t get “legal advice” outside the courtroom, what can or should judges do inside the courtroom? If both parties are unrepresented? If only one party is unrepresented? Is this a matter for individual judges to sort out, case by case, or does this problem demand a systemic response, by way of practice directions, policies or rules?

The Need for Representation in Our Adversarial System

The “unrepresented” work within an adversarial system of litigation, which we inherited from England, as did other British colonies. Here we’re back to basics for a moment. In an adversarial system, the parties – and their lawyers – are responsible for the investigation, preparation, prosecution and presentation of their own cases. The judge sits as a neutral umpire, deciding the case as presented by the parties.

This is especially true in civil matters, where the institutional purpose is primarily dispute resolution.

Lawyers are a necessary element of a party-driven system, but the services of lawyers are distributed on a market basis. Those who can afford lawyers get them. Wealthy individuals and institutions can afford very good lawyers. The poor can’t afford lawyers and, with rare exceptions, there is no civil legal aid in Canada.² For those in between, for the middle class and small businesses, litigation is a “catastrophic” experience – expensive, painful, requiring extraordinary financial arrangements with lenders or lawyers, and to be avoided whenever possible.

The result has been a dramatic increase in unrepresented litigants appearing in non-family civil cases in our superior courts, which is the focus of this piece. The corollary, noticed less often, is the absence of certain classes of claimants and claims from the same superior courts, because potential claimants can’t get a lawyer or legal advice. The literature abounds with concerns about the unrepresented who appear before our superior courts. We should be equally concerned about those who don’t appear.

Legal Information, But Not Legal Advice

Most courts adhere to the standard instruction, “not to give legal advice”. Court staff are not to give legal advice. At most, court staff may be permitted to give limited “legal information”, typically only in courts where the unrepresented appear most frequently such as small claims courts or family courts. Outside of these areas, superior courts generally maintain a passive “registry” approach, consistent with their umpireal role in litigation. Counter staff accept documents for filing, provided their “form” looks about right (and sometimes even if the form isn’t right).

Courts are not alone, however, in trying to draw the line between “legal information” and “legal advice”. That same line is drawn outside the courts, by public legal education and information bodies, by websites, by dial-a-law lines, by “do-it-yourself” kits, by student *pro bono* projects, even by lawyer volunteer programs. The only people who will give you “advice” are your friends and relatives, and it isn’t “legal” advice.

Typically the line is drawn something like this. “Legal information” involves answers about the law in general, about the options available, about basic court processes, and – more dangerously – about how the law “might” apply or “usually” applies. By contrast, “legal advice” involves individualised answers about how the law would apply to a person’s particular case or what option the person should pursue or what outcome is likely in the person’s case.

“Legal advice” is a term difficult to define, as John Greacen has pointed out,³ in his context of directives to court staff.

Instead, Greacen has offered a set of five general principles to govern what court staff should keep in mind in answering questions, followed by eleven further guidelines for staff to use (five about what staff can do, six what they can't). Greacen's articles have been widely used in the United States and even in Canada, to underpin directions to court staff. For example, among the guidelines, court staff can answer "questions about court rules, procedures and ordinary practices", questions that often contain the words "Can I?" or "How do I?" Or, court staff can "explain the meaning of terms and documents used in the court process". But court staff cannot "advise litigants whether to take a particular course of action", usually in questions that contain the words "Should I?" In the end, Greacen's helpful suggestions just elaborate more carefully and more practically the line between "legal information" and "legal advice".

What do Unrepresented litigants really need?

There is another problem with this line being drawn. The distinction between "legal information" and "legal advice" is really more often a statement about the nature of the

underlying law, than about how questions are answered or who answers them. This in turn has serious implications for dealing with the unrepresented.

Where the law consists of a "rule", legal information is legal advice.⁴

For example, to commence an action, a plaintiff must file some form of originating notice and a statement of claim.

Or, in a child support case, a parent who

makes a certain income must pay the "table amount" – the amount stated in the readily available provincial tables, depending upon the number of children involved.⁵ What a party should do is what a party must do, under a "rule".

Admittedly, there can be issues around whether a set of facts does or doesn't fall within a rule. And sometimes there can be a limited number of exceptions to a rule, an exception which might apply. Still, providing "information" about rules is likely to be helpful to the unrepresented.

Contrast the answers on a topic where the law is "discretionary". Where there is more than one valid option for action, or where a court has more than one available option in the outcome, then "legal information" is decidedly

unhelpful. Too much information, about too many options, with too little guidance. For example, think of explaining the law of summary judgment, or *forum conveniens*, or any one of a host of procedural issues. Or, even worse, explain the principled approach to hearsay and how a court can admit hearsay evidence that does not fit an existing exception. What the unrepresented want here is "advice", some guidance through the welter of possibilities.

Unfortunately, the modern trend is away from "rules" and towards "principles" and "discretion", especially in our law of procedure and evidence. Our rules of civil procedure are mislabelled, as they are not "rules" at all. For the most part, our civil procedure rules contain broad statements of principle, consistent with their origins in equity procedures. Great pools of discretion are left to judges, to manage and direct litigation in a fair and efficient manner. Even more so, "principled flexibility" has taken over our evidence law, on topics like hearsay, privilege, character evidence, expert evidence, etc. Not only does all this require a lawyer, increasingly it requires a very good lawyer, one who can argue from policy and rationale, rather than rule and exception.

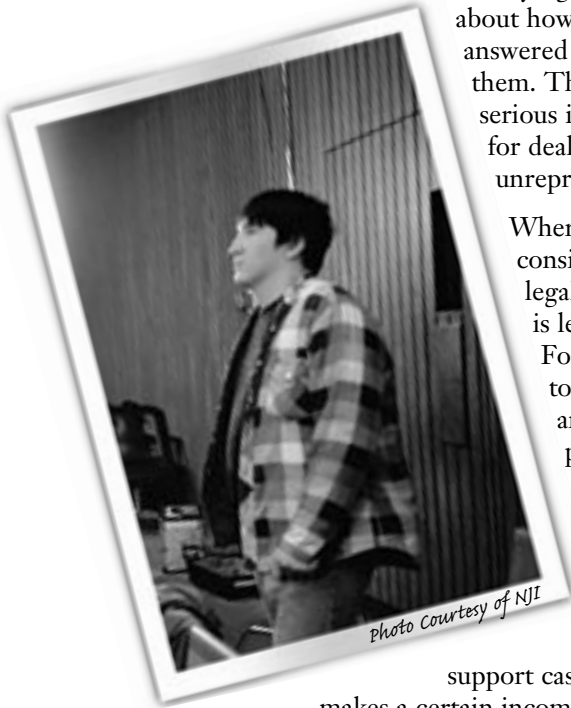
This modern trend in the law – more complex, more policy-oriented, more multi-factor balancing tests, more discretion – makes the law largely inaccessible to those without lawyers, or even those without very good lawyers. Good old "rules", printed in legislation or stated in a leading case, are an endangered species, perhaps on their way to legal extinction. It may be time to recognise the merits of rules of substantive law, at least in those areas of law where the unrepresented appear more frequently. Legislators and judges should keep in mind the cost and confusion of litigating vague, open-ended, contextual law.

In some of these areas of law, we already see more rules of substantive law, for example, child support or property division in family law, or employment standards or residential tenancies in administrative law. Even in these fields, however, the law of procedure and evidence remains flexible and discretionary. And, in my experience, it is the procedural stuff that baffles the unrepresented, that is, how to get from claim to hearing.

It is little surprise then that unrepresented litigants receive very little helpful "legal information" about matters of civil procedure and evidence, from sources outside the courthouse or from court staff. And the unrepresented can't get "legal advice" on such matters either. So they come to court, looking for that advice.

Looking for Legal Advice from the Judge

If unrepresented litigants can't find legal advice outside the courtroom, they will look for advice from the judge. The same questions that weren't answered at the clerk's counter will be repeated inside the courtroom, only now with an edge to the voice. Or, if not asked, the need for an answer is implicit in the gaps seen in the preparation of an unrepresented litigant, whether those are procedural





or substantive in nature. But the giving of “legal advice” is inconsistent with the role of “judge-as-neutral-umpire”, a role developed in the context of the adversary trial.⁶ Judges in our

superior courts don’t investigate, or gather evidence, or examine witnesses, or root out documents, or prepare arguments. That’s left to the parties, represented or unrepresented.

What’s a judge to do? First, provide “legal information” to the unrepresented, with all the complications mentioned above. Second, push and prod the matter along with the most innocuous bits and pieces of “legal advice” possible. Third, make procedural rulings to move the matter forward, rulings that “tell” the unrepresented what to do and what the law is. These rulings are often no more than what a lawyer would have told the litigant, effectively amounting to “legal advice”, for example, you should complete this form, or disclose these documents, or provide that information. As I said in a previous article:

Lawyers explain the realities of the court process, again and again and again – informing clients of their obligations as litigants and the penalties for non-compliance. Lawyers screen or gate-keep every step clients take in the court process – suppressing ill-considered or frivolous motions or restraining senseless opposition. Lawyers serve as enforcers and compliance officers for the courts – explaining obligations under court orders, dissuading clients from contemptuous conduct and nagging clients until they’ve done what they must.⁷

Fourth, relax the procedural rules to accommodate the unrepresented in order to get to the substantive issues.⁸

One American author has gone further, arguing that judges, mediators and clerks have a duty to provide legal advice and assistance to the unrepresented within the adversary system, to ensure fairness and justice.⁹ In this stimulating article, Russell Engler suggests a broader view of impartiality, that courts need to provide more help to the unrepresented, especially where the other side is represented. Courts must look closely at “voluntary” settlements where one party is unrepresented. Judges in superior courts should adopt the more active trial roles performed by small claims courts and administrative agencies. The pre-trial roles of clerks and court-connected mediators should also be expanded, to provide more assistance and “advice” to unrepresented litigants. As Engler points out, the less advice received at these earlier stages, the more that will be demanded of the judge.

Engler’s proposals are seen as controversial, even though he is trying to improve the existing adversary system.¹⁰ In Canada, we have addressed the “problem of self-represented litigants” by a number of measures, all of which leave

the superior court procedures more-or-less intact and “lawyerly”.¹¹ We have hived the unrepresented and self-represented off to administrative tribunals or sent them to administrators. We have sent them to alternative dispute resolution. We have adopted simplified rules in particular areas of law, like family law or small claims or smaller civil claims.¹² We simplify some forms. We even experiment with providing education about the process and help with completing forms.

More lawyers for civil cases in our superior courts will not be forthcoming. There is no chance that our market system for allocating lawyers, based upon the wealth of parties, will be changed. Legal aid gives a low priority to civil matters outside of family law. Even if there were more money for legal aid lawyers in civil matters, the real priority should be poverty law – like income assistance, residential tenancies, public housing, mental health, etc. – which takes place outside the superior courts. Given these legal aid priorities, duty counsel will likely never be allocated to civil matters in superior courts.

A Modest Proposal for Changing the Rules for the Unrepresented

So we’re back to superior courts and judges facing more unrepresented litigants. One solution would be to retain the long tradition of elitist English superior courts, with limited access for those without money and little concern about the issue. In our populist democratic times, this option is less and less viable. Second would be what these courts are doing now, adjusting for unrepresented litigants on an ad hoc basis, as I’ve described above, within the conventional role of neutral umpire in an adversary system. Third would be Engler’s suggestion, to redefine the roles of judges, mediators and clerks to ensure true impartiality within a reformed adversary system.

In my view, none of these measures go far enough. It’s time to admit that the traditional adversary system cannot accommodate more unrepresented litigants. And it’s time to address this in a systemic way, by way of practice directions and rule changes. Herewith I offer a modest proposal, one that draws from our experience with family courts, small claims and administrative tribunals.

First, we need to make changes to our superior court rules to adjust for the increased presence of unrepresented litigants. Ad hoc adjustments by judges are not sufficient.

Second, Russell Engler reminds us that there are really three categories of cases: those where both or all parties are represented; those where both or all parties are unrepresented; and those where one or some parties are represented and others unrepresented, the most difficult category. The existing rules are built on the assumption that all parties are represented, so we need new rules for the other two categories. But what should those rules be?

Third, where all parties are unrepresented, we need to change the “front end” of the court process, to provide more

assistance and advice to all parties. These rules and forms should be simplified and more “rule-like” in their drafting, so as to provide concrete guidance to the unrepresented parties. The assistance need not come from judges, but it would require better-trained court staff and lawyers acting as “judicial” or “court” officers.¹³ These court officers would supervise the pre-trial process, assisting the parties with filing of forms, disclosure, identification of the issues, preparation of the case for trial, and case management before trial. In effect, this process involves a shift to a more inquisitorial system in the pre-trial phase.¹⁴ Trials and hearings would eventually take place before judges, for those cases that did not settle.

At the initial stage, it may be wise to limit access for this new procedure to only certain kinds of claims, or some maximum monetary amount, not unlike the limits on “simplified proceedings”. In fashioning these limits, superior courts might wish to review their existing dockets, to identify those fields of law where the unrepresented are more common. But it should not be forgotten that there is another group of claims to be considered, those “ghost claims” not seen now, because unrepresented claimants don’t bring them to superior courts.

Fourth, within this unrepresented procedure, there should be different rules for the conduct of the trial or hearing. We should recognize the need to shift to a more inquisitorial procedure in such cases, with the judge examining witnesses, proving documents, retaining experts, suggesting possible arguments to the parties, etc.

Fifth, where one party is represented and the other is unrepresented, it may be wise to give the unrepresented claimant the choice of procedure: the conventional adversary rules or the unrepresented, more inquisitorial route. We might even let a represented defendant choose this route, but only with leave of the court. And we might give the court discretion to order the parties into, or out of, this unrepresented procedure, in appropriate cases. As Engler says, the represented vs. unrepresented proceeding is the greatest challenge of all for the court process and the judges.

There need to be specific rule changes to address the represented vs. unrepresented proceeding, in both conventional and inquisitorial procedures. In particular, there should be a clear acknowledgement of the court’s duty and the judge’s duty to provide more help to the unrepresented party to maintain a meaningful impartiality. Effectively, this means an element of “judge-as-counsel” or, perhaps more accurately, a more active, inquisitorial approach in such cases.

There is nothing all that unusual about these proposals. Over the last fifty years, we have recognised increasingly the need for specialised rules for different types of proceedings. The days of generalist judges and trans-substantive rules of civil procedure are gone. Case management and caseload management have accustomed us to the differential treatment of civil cases, not to mention increased judicial control over the progress of cases. Rationing procedure to match the monetary amount involved is reflected in small

claims courts and simplified rules. This modest proposal to accommodate unrepresented litigants is just another incremental step in the necessary reform of our civil procedure.

Endnotes

- 1 D.A.R. Thompson and L. Reiersen, “A Practising Lawyer’s Field Guide to the Self-Represented” (2002), 19 Can. F.L.Q. 529 at 530. This whole issue of the Canadian Family Law Quarterly is devoted to self-represented litigants in family law matters, Issue 19.3.
- 2 Technically, I mean “non-family civil” here, as there is coverage in family law matters in most jurisdictions, although varying wildly from one jurisdiction to another. We have yet to see how the Federal Justice Minister’s announcement of more funding for civil legal aid translates in terms of actual services.
- 3 John Greacen, “No Legal Advice from Court Personnel! What Does That Mean?” (1995), 34 Judges’ Journal 10 and a follow-up article John Greacen, “Legal Information vs. Legal Advice – Developments During the Last Five Years” (2001), 84 Judicature 198.
- 4 For an excellent discussion of the nature of “rules”, see Cass R. Sunstein, “Problems with Rules” (1995), 83 Cal. L.Rev. 953. I discussed the merits of rules in the family law context in “Rules and Rulelessness in Family Law: Recent Developments, Judicial and Legislative” (2000), 18 Can.F.L.Q. 25 at 27-31.
- 5 I pick child support as an example here, because the legislators chose to adopt “child support guidelines” (which really should be called “child support rules”), in a conscious decision to opt for rules that mandated a particular result in most cases.
- 6 For a marvellous historical account, one that reads more like a mystery novel, see John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003). A mere 400 years ago, the judge as counsel for the unrepresented accused was a fundamental element of the “trial before the lawyers”.
- 7 D.A.R. Thompson, “No Lawyer: Institutional Coping with the Self-Represented” (2002), 19 Can. F.L.Q. 455 at 478-9.
- 8 While enforcing the rules strictly for the self-represented, *ibid.* at 474-8.
- 9 Russell Engler, “And Justice for All – Including the Unrepresented Poor: Revisiting the Roles of Judges, Mediators, and Clerks” (1999), 67 Fordham L. Rev. 1987.
- 10 See, for example, Russell G. Pearce, “Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help” (2004), 73 Fordham L. Rev. 969.
- 11 Above, note 7 at 488-92.
- 12 Like Ontario’s Rule 76, Saskatchewan’s Rules 477-489 or Manitoba’s Rule 20A.
- 13 In part, this model draws upon and extends the process employed in Rule 70, the family proceedings rule in the Nova Scotia Civil Procedure Rules.
- 14 See John H. Langbein, “The German “Advantage in Civil Procedure” (1985), 52 U. Chi. L. Rev. 823.

Court Technology SCAN – How accessible is your court web site?

Dene Rossouw, President, Global E-learning Interactive



A few best practice guidelines

Let's imagine that you are part of a national research team made up of various legal experts and members of the public. The mandate of your team is to come up with a workable solution that will ensure that court processes across Canada become more accessible to the general public and in particular, self-represented litigants. Bearing in mind the fine line between legal information and legal advice, your team has been instructed to think 'outside of the box'.

At the conclusion of the research, one of the main recommendations is to incorporate plain language into all communications. As part of this larger recommendation, it is suggested that court websites be reviewed to ensure that they will be clear and accessible for all users, including self-represented litigants.

Here are a few best practices guidelines that focus on three areas: web site administration, web site design and information design.

Web site administration

One of the key factors in making a court web site understandable and accessible is the commitment of the web team leader and team members to a client-centered focus.

A recurring theme will be one of ownership. Who or what department is responsible for this information? Once the site is launched, who will update it? Who or what group will act as web editors to improve, rewrite and vet information before posting?

Action guidelines need to be in place for webmasters for various types of information so that they know what procedures to follow when updating information on the web site. Clear protocols such as 'Post on web site', 'Post and inform' and 'Seek approval before posting' from content providers will help to keep the web site current. Each department or content provider needs to take ownership of their information and to notify the web editors and web master of changes. Ideally, all new information should be screened and subjected to plain language principles and user-friendliness before posting.

Web site design

The web address of your site should be the name of the court, making it easy to remember. See <http://www.manitobacourts.mb.ca> for example. Ensure that you have secured domains both in English & French and that both addresses point to the same location. A web address such as the above also promotes the independence of the court.

Web sites should be designed to cater to users who are visually and physically challenged by including a link from the home page to a graphic-free text-only version of the site in black and white. The fonts and screen size of this

site should not be hard coded so that the user can adjust the font and screen size. Provide a table of key strokes that will enable users with physical challenges to navigate and access information without using the mouse.

Use colours that appeal to a broad spectrum of users of different cultures. What message does the colour psychology of your site convey? Do users feel welcome to explore?

All fonts should be browser friendly and graphics should be labeled using the alt tags within HTML so that visually challenged users can read information about graphics while navigating this site as well.

Provide downloadable files in a common format such as PDF and make sure all pages can be printed out within the margins of an average printer. Ensure that the pages of your site align properly when viewed with the most common browsers.

User testing will immediately indicate if the site navigation is user-friendly. Can the user do a simple text search using the search engine? Let the user know when he or she is leaving your site when following an external link and provide the user with an option to return to your site instead.

Information design

Many users will come to your site not knowing what they are looking for. Others will come with a specific item in mind. A good information architecture will balance content and functionality, providing critical information up front, while enabling users to access additional information in multiple ways.

Avoid burying too much information within a category under a drop down navigation menu. When tested by users, these categories often make sense only to internal users. Rather, create a new category and link it from the home page. Use drop-down menus only when all information within the category makes sense from an external user's point of view.

In addition to incorporating client-centric plain language principles, ensure that all information provided is chunked or grouped together and has bulleted lists of key points. Provide sidebars and interpretive links to non-technical explanations of difficult words, either in a glossary or as 'mouse-overs' within the text.

Make sure that all downloadable files and self-help kits are correctly labeled using standard client-friendly file naming conventions. This includes using the underscore rather than spaces.

If you provide documents both in HTML and PDF, make sure that both are labeled the same, for example parent_info2.pdf and parent_info2.html.

In order for your site to be accessible to the public, use descriptor and keyword meta-tags within your html code to ensure your site will be found by Internet search engines such as Google and Teoma. To view meta-tags, use your

browser to find a site, click on 'view' and then 'source'.

If you bear in mind these few best practice guidelines when you are constructing or updating your site, it will continue to play an important role in providing critical information for self-represented litigants, lawyers, researchers and the general public.

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Self-represented Litigants & Summary Trials

Rob Curtis, QC

A Summary Trial is different from a regular trial in that the procedures for a Summary Trial are simplified and, in particular, the rules of evidence are somewhat relaxed. It is meant to allow for prompt, timesaving judgments while providing those involved with the greatest amount of flexibility.¹ They are less formal, faster and therefore less costly than a regular trial.

Summary Trials and the Rules governing them were primarily designed for two circumstances:

- 1) Where the Summary Judgment Rules² are not applicable to a case because evidence is still required; and
- 2) Where time-consuming attention to the formalities of evidence would overly complicate a case.

It is in this second context that self-represented litigants could most benefit. As a lawyer who has had several trials in such circumstances, I have found that the less formal structure of a Summary Trial is more easily used both by self-represented litigants and those appearing against them, resulting in a somewhat smoother process.

One obvious benefit to a self-represented litigant is when there are many pieces of evidence which are not really in dispute, but are costly to assemble. Another is when it would take more time and money than it is worth to examine the evidence orally. For example, while viva-voce evidence is certainly admissible in a Summary Trial, the lack of requirement for such testimony or evidence is at the heart of the difference between it and a regular trial. So, for instance, if there is an important witness whose cross-examination would be cursory, but who lives far away, his or her evidence can be taken by a sworn affidavit. In regular trials, such affidavits are not admissible, but they are usual in Chamber's Motions and Summary Trials. Similarly, evidence may already have been taken under oath, such as in Discovery, on Cross-examination of previous Chamber's Motions, or in other proceedings, and it may not make sense, economically, to call the person to give the same evidence all over again.

Lastly, documents may speak more loudly than witnesses. In a case which is largely dependent on documents and where introducing them according to the usual rules of evidence for a regular trial may take a very long time, the simpler

requirements of a Summary Trial could reduce the amount of time necessary and allow the documents to simply be presented to the Court for review. All of these allow justice to be served while maintaining sufficient procedural and other safeguards.³

As a former lecturer in evidence, I should not complain too much about the rules of evidence, but ... I do have to admit that they are hard to understand most of the time, occasionally cumbersome, and the single most difficult obstacle for the self-represented litigant. If a self-represented litigant has documents that he thinks prove his case, he may be completely puzzled, perhaps rightly so, as to why he can't simply hand them up to the judge to make a decision. So, the ability to rely on documents, Discovery, previous affidavits and similar things to prove a case in a Summary Trial, as opposed to live witnesses properly briefed and cross-examined, would make the case of a self-represented litigant much friendlier, and probably easier.

At the same time, I have observed that many self-represented litigants cannot distinguish between their differing roles as both advocate and witness. They tend to present a mixture of evidence and argument at almost all times. Again, the Summary Trial is ideally suited to this, since the whole thing is essentially one large Chambers Application, where it is the job of the judge, not the litigants, to sort the evidence from the argument. One interesting element of Summary Trials is that they are rarely over until the judge says they are. They are more of a tennis match, where each side speaks in turn until everything is said. This is somewhat better for both sides when there is a self-represented litigant. I have found that self-represented litigants tend to want debate more than a singular "day in court" and may not understand the procedures or the importance of some of the things taking place in the courtroom. The Summary Trial process allows these issues to be considered and dealt with more easily.

Where one of the parties is not trained in the mechanics of the adversary system, or the rules of evidence, we can level the playing field without significantly eroding the legal standards by defaulting to the Summary Trial system. The Rules of Court might be amended to provide that the default mode of trial would be Summary Trial where there is a self-represented litigant, unless the court can be convinced

Are there summary trial rules or practice notes in place?*

Compiled by Leanne Drury, August 10, 2004; updated by Kim A. Taylor, April 5, 2005

BC	Yes	Rule 18A – Summary Trial http://www.ag.gov.bc.ca/courts/civil/sup_crt_rules/rules/htm/rule_18a.htm Rules of Court: http://www.ag.gov.bc.ca/courts/civil/sup_crt_rules/rules/index.htm
AB	Yes	Rules 158.1 - 158.7 - Summary Trial Rules http://www.albertacourts.ab.ca/qb/practicenotes/civil/PN8SummTrials.pdf (Practice Note #8) Rules of Court: http://www.qp.gov.ab.ca/display_rules.cfm
SK	Yes	Rule 485(1) – Motion for Summary Judgment or Summary Trial Contained within “Simplified Procedure” http://www.qp.gov.sk.ca/documents/English/Rules/practice.pdf (Practice Directive 8) Rules of Court: http://www.qp.gov.sk.ca/documents/English/Rules/qbrules.pdf (pg. 133)
MB	No	Summary Judgment and Expedited Trial Only - Rule 20 http://www.web2.gov.mb.ca/laws/rules/qbr1e.php#r20 Rules of Court: http://web2.gov.mb.ca/laws/rules/qbr1e.php
ON	Yes	Rule 76.12 – Summary Trial; Contained in Rule 76 “Simplified Proceedings” http://www.canlii.org/on/laws/regu/1990r.194/20040705/part1.html
QC	No	Rules of Practice of the Superior Court of Québec: http://www.tribunaux.qc.ca/mjq_en/c-superieure/regle-pratique/index-menu_reg.html <i>Code of Civil Procedure of Québec</i> : http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_25/C25_A.HTM
NB	No	Summary Judgment Only - Rule 22 http://www.gnb.ca/0062/regs/Rule/RULE22.pdf Rules of Court: http://www.gnb.ca/0062/regs/Rule/rule_list.htm
NS	No	Summary Judgment Only - Rule 13: http://www.courts.ns.ca/Rules/rule11_13.htm#rule13 The Rules of Civil Procedure: http://www.courts.ns.ca/Rules/toc.htm#
PEI	Yes	Rule 75.1.11 – Summary Trial http://www.gov.pe.ca/courts/supreme/rules/annotated/a-rule751.pdf?PHPSESSID=d6ad6674a6b83f064871b54d246e9f73 (pgs.11-12) Rules of Court: http://www.gov.pe.ca/courts/supreme/rules/
NL	Yes	Rule 17A – Summary Trial and Expedited Trial, Rules of the Supreme Court http://www.hoa.gov.nl.ca/hoa/regulations/RulesSC/Rc86ru17A.htm Rules of Court: http://www.hoa.gov.nl.ca/hoa/regulations/Rc86rules.htm
NU	No	Summary Judgment Only – Part 12 Rules 174-184 Uses the Consolidation of Rules of the Supreme Court of the Northwest Territories http://www.nunavutcourtofjustice.ca/rules/CRNu_603_Rules_of_NCJ_Regles.pdf
NT	No	Summary Judgment Only – Part 12 Rules 174-184(pg. 53) http://www.justice.gov.nt.ca/pdf/REGS/JUDICATURE/Rules_Supr_Crt_NWT_Pt_1.pdf
YU	Yes	Rule 18A - http://www.ag.gov.bc.ca/courts/civil/sup_crt_rules/rules/htm/rule_18a.htm Uses the Rules of the Supreme Court of British Columbia See Practice Direction #35: http://www.justice.gov.yk.ca/pdf/pracdir/35.pdf Rules of Court: http://www.ag.gov.bc.ca/courts/civil/sup_crt_rules/rules/index.htm
Federal Court	No	Summary Judgment, Rules 213 – 219 and Simplified Action, Rules 292 – 299 Only Rules of Court: http://www.fct-cf.gc.ca/business/act/integratedversion-en.pdf
Tax Court	No	Informal Procedure(s) Only – s. 18(1) <i>Tax Court of Canada Act</i> Rules of Court: http://www.tcc-cci.gc.ca/rules_e.htm

*There is considerable variation in both the organization and naming of the Rules of Court or Rules of Civil Procedure across the country. A process referred to in one jurisdiction as a “Summary Trial” may be included under “Simplified Procedure” provisions in another. “Expedited Process”, “Fast Track” and “Quick Ruling” provisions are generally different from “Summary Trials”. The Canadian Forum on Civil Justice is creating a Civil Justice Thesaurus which will help with clarifying such terminology, making it easier to understand the differences and similarities amongst jurisdictions.

that justice requires proceeding by the regular Rules. The regular Rules of Court would apply, for example, when the credibility of witnesses is central to the case. Even in those situations, there could be a middle ground where those witnesses are directed to give viva-voce evidence and all other evidence be given summarily.

Appearing against a self-represented litigant is a challenge no matter what system is used. Even in a Summary Trial, as a lawyer I find myself posing rhetorical questions that are really what I would like to say on cross-examination of the

opposite side. But I think in most cases you would get to the bottom of the dispute more easily with a Summary Trial than you would in the stuffy atmosphere of cross-examination in a regular trial. Moreover, the level playing field is important because there is less need for the court to assist the self-represented, and the lawyer is not seen to be taking advantage of superior knowledge.

To be sure, not every case can become a Summary Trial, but I do believe that many of our traditional trials could be Summary Trials if there were greater co-operation between

counsel, less antagonistic adversary requirements, and more willingness on the part of the Bench to sort out truth from fiction or argument. We do things the adversarial way because we are trained that way, not because it is the only way. As another way to approach resolving conflict, I think Summary Trials are quite useful, particularly in the context of providing access to justice for the self-represented litigant.

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Target: Fair and Reasonable Public Access to All Legal Information – Improving Access to Justice

Kathryn Arbuckle, Law Librarian, University of Alberta

For the past three years the John A. Weir Memorial Law Library of the University of Alberta has been working toward a goal of making legal information electronically available across campus. Access to legal information is critical to supporting interdisciplinary research as the use of legal resources by faculty and students in a variety of disciplines is growing. A side effect of this initiative is more electronic legal information is available to members of the public physically present on campus. While we do not deal with a large number of self-represented litigants or unrepresented accused, our experience over the past year indicates a content gap in the range of legal information generally available to the public and that available in proprietary resources widely used by the legal community. This can result in a limiting of access to justice for self-represented litigants and unrepresented accused.

Self-represented litigants are often in that situation for monetary reasons, so generally they seek to invest their time, not money, in finding legal information. Many people start looking for legal information on the Web. There's a lot available; sometimes the organization of the information is helpful, and some of the information is of excellent quality. But it is far from complete. The truth is I have yet to meet a lawyer or law student who would rely only on free web information in researching a case or preparing for a hearing. The Net is not – at least not yet – the answer.

Law society libraries, public libraries and academic law libraries all deal to a greater or lesser extent with members of the public seeking legal information. These users typically have to deal with emotional and intellectual barriers to using what may be a very unfamiliar and daunting institution, as well as barriers of time and distance in getting to a library. The legal information resources available to any member of the public depend in part on what is owned by the library he or she is using. The information resources of academic law libraries are generally the most extensive, with public libraries typically having comparatively little in terms of a

Endnotes

- 1 Court of Queen's Bench of Alberta, Civil Practice Note No. 8, Summary Trials, effective September 1, 2000.
- 2 An application under the Summary Judgment Rule can only be made when one side or the other swears that there is no issue to be determined, or that the only issue to be determined is the amount of the claim. If an application for Summary Judgment is denied, the matter must proceed to trial. A Summary Trial, however, is an alternative to a full trial, and is the same as a full trial. The decision made is a final one, subject only to appeal.
- 3 McEachern, C.J.B.C. in *Inspiration Management Ltd. v McDermid St. Lawrence*, 1989, 36 B.C.L.R. (2nd) 202 @ 213 (B.C.C.A.)

legal reference collection. Resources of law society libraries range from extensive in urban centres to basic in rural areas. Borrowing limitations on reference books may apply in any of these libraries. Core legal reference items are rarely available through inter-library loan, so a person wishing to consult something as basic as a relevant section in the Canadian Encyclopedic Digest¹ or a current textbook on family law may have to travel to consult the item. It may take a considerable persistence, plus time and willingness to travel to the resources, but generally speaking members of the public can directly access printed legal information in library settings.

Electronic legal information is another matter. Access to legal databases, where available for licensing by libraries, may be priced beyond the means of many libraries. Even if the subscription costs can be afforded, license restrictions may exclude public direct and/or indirect access². It is here that a gap has emerged that is problematic in terms of fair and reasonable access³ as there is content in these proprietary sources that does not readily exist elsewhere. Specifically, Canadian Case Citations, a print resource, regularly includes references to cases that are only accessible in eCarswell or QuickLaw. On more than one occasion I have dealt with a member of the public who has a case citation that he or she has found, that is only available in one or the other of these two proprietary sources. Without a license provision allowing public access to these databases, a library cannot provide access to the requested information.⁴

In some cases, the lack of access to electronic resources represents a barrier of inconvenience and time, as much of the content of some proprietary sources is available in a print format that can be substituted. As noted however, in other instances there is an inability to access a basic unit of legal information – a case – in a library setting. Paying a legal publisher for access to the requested information may be the only option open to a self-represented litigant. Considering that the information in question is typically a judicial

decision, funded by public spending, the inability of a library to purchase access for its users at a reasonable price raises a fundamental question of reasonable access to the full range of legal information.

Canada's major legal publishers have in most cases developed pricing and licensing models that make it possible for libraries to acquire quality legal information at reasonable prices. Given the unique content in the two leading products, libraries – and the general legal community – should be lobbying publishers for the development of pricing and licensing models that allow broader based access to the unique content in LawSource⁵ and QuickLaw. The self-represented litigant has a challenging task. It is made even more challenging when they cannot reasonably access this unique content. Their access to justice becomes limited as a result. Providing reasonable access to the full range of legal information in library settings should be an achievable goal. It is a target toward which we are aiming with both concern and hope.

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My Experience with a Do-it-Yourself Uncontested Divorce

A. N. Onymous LLB

I must confess up-front that I am a lawyer. I have 25 years practice experience. And I am currently employed by a law related organization. I have not, however, been in private practice for 7 years. Recently, I got around to doing my own uncontested divorce. Our legal and personal issues had been settled years ago, so it was time to finally do the paperwork. I consulted the various public information web sites, downloaded forms from the court and legal aid systems, and bought a “self-help” book that included paper forms. I started out on my “do-it yourself” voyage.

It was clear as I waited in the court registry line-ups to file my documents that many others were trying to do the same thing. The questions I overheard seemed in my view to be quite simple. “What goes in this space?” “How many copies do I need to make?” “Do you need original documents?” “Who has to sign this form?” “How much money will this cost?” “How long will it take?” People looked for assistance from the registry staff who, quite patiently, explained that they could not help them.

Endnotes

- 1 A Canadian legal encyclopedia.
- 2 A stock vendor response to our library request for inclusion of public access in the license for a legal product is that such a provision would encourage private subscribers to cancel their subscriptions. (See for example comments from Lexis published with “Democracy in the Dark”, below at note 3.) Time, inconvenience, and the practical challenges of finding a parking place on campus and competing with students for access to the computers are all reasons why this has not happened, yet that rational is still advanced by some.
- 3 For a description of a related concern regarding access to proprietary legal databases in the U.S. see M. Barr “Democracy in the Dark: Public Access Restrictions from Westlaw and LexisNexis” at <http://www.infotoday.com/searcher/jan03/barr.shtml> (accessed January 5, 2005). That article focuses on pricing and licensing terms, and does not discuss the issue of content in these resources that is unavailable elsewhere.
- 4 See list of law databases at <http://www.library.ualberta.ca/subject/law/index.cfm> Under current licensing, members of the public who are on campus may directly access databases. These users must first register for a guest computing ID to use the public access computers. The guest IDs expire at midnight. As noted above, the walk-in user competes with students for access to the public access computers.
- 5 LawSource has begun moving in this direction with development of an academic license available on a campus-wide basis.



The most common phrase given to the persons in the line-up ahead of me seemed to be “I can’t tell you....” Implicit in the comments is the idea that the clerk does, in fact, know the answer to the question. But for some reason is unable or unwilling to share that answer with the person in front of them. I’ve no doubt that this is quite perplexing to someone who has just paid a substantial amount of money for this “service.”

My impression was that in spite of the various materials that are available, it was difficult for consumers to navigate the system without much frustrating trial and error. They were not looking so much for legal advice as for process advice. It is the details that seem to be the “Gotcha’s!” that frustrate users of the legal system. The clerks appear to have a clear idea of those details, but were obviously struggling with what they could and could not tell litigants.

On one form, I was concerned about using the proper wording for a required paragraph. After consulting the various Continuing Legal Education and other materials it was still not clear, so I called an experienced family law lawyer I know. She gave a suggestion, but would not accept my offer of payment for the advice, as she said that there was only a 50% chance that the court would accept even her wording. She went on to say how hard it was to explain to clients that, even with her many years of experience, she could not be sure that the documents she drafted would be accepted by whatever judge happened to get the file. My wording was accepted, but I wonder how many documents are rejected and must be redone. How do self-represented litigants deal with these kinds of issues? Perhaps the judiciary could provide advice to the court administration to assist them in being able to answer these questions with confidence.

Another form required the calculation of a date for an event to occur. I puzzled over this, and none of the various references seemed to give any useful guidance. After consulting the court Rules and various Statutes, I put in my best guess. When I handed the document to the court clerk she clearly was amazed that I had got it right. She commented that even on documents received from law firms, it was usually done incorrectly. Would it be so terrible if the registry handed out a simple instruction on this issue – complete with examples?

And how would I know when the divorce was done, I asked? I was told to keep phoning in and enquiring. I asked if the registry could phone me or send an e-mail or fax. No, they could not. I can only imagine how much time this wastes.

The system appears very unwilling and largely unable to provide good feedback. No wonder self-represented litigants (and even lawyers!) find the system impenetrable. It reminded me of those “BC” cartoons by Johnny Hart, where the caveman carves a question on a piece of wood and pushes it out to sea. Eventually, a note comes back with an arcane and

humorous comment. Unfortunately, this sort of process is not so funny to people just wanting to get on with their lives.

We seem reluctant to treat processes like uncontested divorces as processes and systems that can be documented and streamlined. A simple F.A.Q. (“Frequently Asked Questions”) booklet alone would resolve a significant number of questions. In order to create such a booklet, I’d have someone record all the questions asked at the registry counter for one month. Then we could have a real dialogue about which questions are about the system, which are merely bureaucratic detail that needs to be better explained, and which are concerns that require legal advice away from the registry counter. It is amazing to me that a process that is done over and over again appears to be setup so that infrequent users need to struggle to make it work. Imagine pushing a mattress up the stairs! I’m sure the survey would document how much time is wasted on both sides of the registry counter.

Web sites now allow for the easy distribution of information. In other countries web sites offer very accessible services that take lay litigants through divorce actions. Some offer the option to obtain legal advice at various points in the process. In many instances a small bit of “unbundled” advice is all that is required. Several Law Societies in Canada are looking at the whole question of “unbundled” legal services and how they fit with current rules and ethical concerns.

If the legal community and the courts do not address these issues, it is inevitable that others will step in to fill the void. Already there are many web sites offering advice and services that may be questionable. Some may even be the unauthorized practice of law. There are also people offering assistance who are not members of the respective Law Societies of their province. These kinds of services will be increasingly attractive to users of the system, especially if they are frustrated by their experience with the courts and the legal community. We must decide how best to respond.

Canadian Judicial Council – Self-Represented Litigants Project

The Canadian Judicial Council has formed a sub-committee of their Administration of Justice Committee and commissioned research “to assess the nature and extent of challenges presented to trial and appeal courts across Canada by self-represented litigants (SRLs) and to prepare a set of practical suggestions for Canadian judges and court administrators.”* The Council selected the Canadian Forum on Civil Justice and Robert Hann and Associates to jointly undertake this project. The research is ongoing and will be considered by the Administration of Justice Committee and ultimately by the Council, who will then determine whether to adopt or recommend any of the material that is being developed. That material includes an extensive, annotated bibliography on self-represented litigants; a bench-book for sitting judges, a briefing book for Chief Justices and a manual for court administrators. The sub-committee is also considering the advisability and feasibility of adopting a statement of principles for dealing with self-represented litigants.

* *From the Request for Proposals on Self-Represented Litigants/Unrepresented Accused Persons, Canadian Judicial Council, July 2003*

Cross Country Snapshots – Rules, Practices and Self-Representation

This issue of *News & Views* looks at self-represented litigants (SRLs) from a number of different perspectives. The apparently growing phenomenon of self-represented litigants is of significant interest and concern to most sectors of the justice community. A key sector is the Law Societies and so we asked the Law Societies across Canada for their input.

The Nova Scotia Barristers' Society has recently had the opportunity to collaborate with other sectors of the justice system in examining the issues of self-represented litigants in some depth. They were part of a team that included the Courts, the provincial Department of Justice and representatives of the public, and which has been actively engaged in a project developing and ensuring better services for self-represented parties. This project has been ongoing for several years and has led to a better understanding of the phenomenon of SRLs, a co-operative approach to these litigants and the development of materials to help individuals navigate through the justice system when they cannot afford a lawyer, do not qualify for legal aid or choose not to have a lawyer.

One of the most innovative aspects of this collaboration has been The Courts of Nova Scotia web site, <http://www.courts.ns.ca>, which provides a wealth of information on the justice system, an opportunity for users to understand how the system works and the role of all the players in it. Nova Scotia Legal Aid now runs a number of "Duty Counsel" programs at the Provincial Court, Youth Court and the Family Division of the Superior Court. These programs exist in the two main population centres of Halifax and Sydney.

The Nova Scotia Barristers' Society has been actively involved in these initiatives through its Administration of Justice Committee, which continues to look at the issue of unbundling of legal services as a means to expand the availability of legal services to individuals who may not be able to afford a lawyer for full representation. Research commissioned by the Society supports the move in this direction.

Given the experience of the Nova Scotia Barristers' Society we posed four questions to Darrell Pink, the Executive Director, who provided the following answers.

Q. Can we redraw the line between legal information and legal advice, to enable a more effective response for unrepresented litigants?

A. Though there is a fine balance, I believe there is no choice but to allow the courts and justice offices to provide basic information to individuals who are using the Court system without the benefit of a lawyer. For a very long time there has been a market for information about legal processes, for example wills have been developed and marketed by the private sector. This "how to" information is important for the public to

have. Providing such information through the courts' offices and court registries, with some good training for staff about what the information is and how it is to be used, cannot help but be a good service. The demand is there. The system can ignore it but that will not make it go away. The individuals who need the information will use the system anyway but without assistance they will make mistakes that will cost the system even more to address later in the process. Is this not where the saying "An ounce of prevention is worth a pound of cure" is perfectly appropriate?

Q. Can we enable front-line advice centres, legal advice lines and duty counsel to provide assistance to self-represented litigants without concern for the usual conflict rules?

A. This is more problematic but I think needs to be addressed. First it is essential to draw a clear line between legal information including "how to" assistance, and legal advice, which is given to help solve a problem or direct a person to a particular choice or solution.

Our ethical rules do not require the creation of a solicitor-client relationship for the duty of confidentiality to exist. Once this duty exists, the conflict rules that flow from it come into effect. So the issue for lawyers is whether the client provides confidential information in the context of a professional relationship. I believe that for any advice lines or duty counsel system to work there must be a free exchange of information and if this is the case, then duties of confidentiality flow from there. And conflicts of interest will arise. Therefore systems have to be established to prevent conflicts by preventing the flow of confidential information from an advisor/counsel to another if both parties to a dispute are using the service. It is imperative that we not accept lower standards of ethical conduct to suffice for the poor or those who cannot afford lawyers.

Q. What is the response of the Nova Scotia Barristers' Society to the growing call for lawyers to provide unbundled legal services?¹

A. In Nova Scotia, we have begun to actively look at this to determine the framework in which it is appropriate for lawyers to provide only part of the required legal services to a client and still do so within the limits of both ethical and court rules. It will be essential to develop new models for the delivery of legal services that are effective for clients as well as being worthwhile for lawyers to deliver. I am not sure what this model will be, but I do know it will require some new thinking by individual lawyers - to respond to the marketplace, legal regulators and the courts. A new provision is

being proposed for our Legal Ethics Handbook to deal with “limited retainers” which clearly articulates the lawyer’s duty in these circumstances.

- Q. *How is the Nova Scotia Barristers’ Society responding to suggestions that the use of paralegals may assist in filling the needs of self-represented litigants?*
- A. In Nova Scotia this has not yet been part of the discussion. There may be a role for trained paralegals to do some work to assist individuals. We have seen this done successfully in the Workers Compensation area and in firms many supervised paralegals/legal assistants help clients navigate the legal system all the time. The challenge is to always ensure they do not trespass in to the area of legal advice.

The Barreau du Québec responded:

- Q. *Can we redraw the line between legal information and legal advice, to enable a more effective response for unrepresented litigants?*
- A. The Barreau du Québec (Law Society of the Province of Québec) distinguishes between information and a legal opinion by stating that information is general in nature which does not involve applying legal concepts to an actual situation. A general statement, for example, which does not apply to an actual situation, cannot be considered as a legal opinion. A legal opinion, however, is a statement of facts applicable to a particular case or a hypothetical case.
- Q. *Can we enable front-line advice centres, legal advice lines and duty counsel to provide assistance to self-represented litigants without concern for the usual conflict rules?*
- A. The lawyer’s duty to avoid conflicts of interest begins as soon as the lawyer prepares to address a particular situation (Section 128 of *An Act Respecting the Barreau du Québec*) prior to giving a legal opinion. The lawyer must then ensure that he or she is not in a conflict situation. It would appear that as long as legal counsel restricts the scope of his or her undertaking to the provision of general information, the question of conflict of interest does not apply, but it comes into play as soon as he or she addresses a specific factual situation.
- Q. *What is the response of the Barreau du Québec to the growing call for lawyers to provide unbundled legal services?*
- A. With respect to the sharing of tasks between a lawyer and his client with a view to mitigating the cost of a lawsuit, although it is not prohibited, the Barreau du Québec believes that this practice should not be encouraged. The lawyer’s level of duty does not vary depending on his or her level of involvement. From the moment that he or she signs documents for civil proceedings, the lawyer engages his or her professional liability, whether he or she or another party drafted the pleadings. Whenever

a lawyer acts as the mere conduit for legal proceedings prepared by a third party, this is a breach of duty in his or her role as an officer of the court (*Barreau du Québec v. Lemieux*, (1996) J.Q. 4766).

The Barreau du Québec stresses the importance of the lawyer’s role both before the courts, and during the preliminary stages of the settlement of claims.

- Q. *How is the Barreau du Québec responding to suggestions that the use of paralegals may assist in filling the needs of self-represented litigants?*
- A. In Québec, a person who represents himself may file pleadings that he has drafted personally (Section 61 of the *Code of Civil Procedure*). The person who represents himself may also receive assistance from another person who is not a member of the Bar when preparing pleadings. The purpose of Section 128 is to prohibit the unauthorized practice of law; pleadings prepared by a non-member of the Bar were ruled valid, but any agreement whereby a non-member undertakes to prepare such pleadings is considered unenforceable (*Fortin v. Chrétien*, [2001] 2 RSC 500).

With respect to the use of paralegals to assist non-represented litigants, one should refer again to Section 128 of *An Act Respecting the Barreau du Québec*, which clearly defines which documents must be prepared exclusively by lawyers. Legal opinions are within the exclusive domain of members of the Bar; however, nothing prevents paralegals from responding to information requests and providing general statements about the rights and remedies available under legislation.

And Manitoba replied:

A question to be considered is “So why do people self-represent?” Some simply don’t want to pay a lawyer. Some do because they have frivolous cases that a lawyer won’t take on a contingency. Some fall through the cracks in that, for example, they have a meritorious case but can’t get legal aid, afford a lawyer or find one to act on a contingency.

It is not in the public interest to assist those who face no systemic barriers and simply choose to self-represent. We have limited resources and should devote them to those who need them. Nor is it in the public interest to assist frivolous litigation. It wastes court time and resources. It also places an unfair burden on those who find themselves on the other side of the case, being forced to expend time and effort to defend against those frivolous claims. The latter group, those with meritorious cases lacking access to a lawyer, is the one that should be facilitated.

The situation will of course be different in different Provinces but in Manitoba there are a number of venues that assist in providing access to justice. We have a Small Claims Court

with easy and less expensive access for individuals in disputes involving smaller amounts of money. We have several informal dispute resolution forums for resolving disputes without litigation and many disputes are adjudicated in user-friendly forums such as administrative tribunals. We have a Legal Aid program that includes a means for the working poor to get coverage on a contributory basis. We also allow for contingency agreements and they are well utilized.

Helping those in the gap by getting them untrained and unregulated help, such as paralegals, or by some other unsatisfactory bending of rules is not the answer. Instead, we should facilitate those people getting the help they need to connect with a lawyer through programs like lawyer referral services and expanded legal aid coverage. In this way, access to justice is preserved within the parameters of available resources.



These same four questions were posed to every Law Society in the country and we received a variety of responses. Each Law Society's mandate is established by their respective statutory authority, so there are real differences in the kinds of issues with which each Society concerns itself. As can be seen with services such as lawyer referral lines, there are functions which a Law Society in one jurisdiction might take on that falls within the mandate of other organizations in a different jurisdiction. And of course, some Law Societies have had the opportunity to participate in collaborative initiatives with other justice community organizations, which has allowed them to be more involved in responses to SRLs.

Law Societies from several jurisdictions indicated that as regulators of the profession and protectors of the public, their main role in dealing with self-represented litigants is assisting those who are self-represented to find counsel. Usually, this is done through lawyer referral services or other such mechanisms, often in concert with other community or government agencies.

As part of their role in protecting the public, including SRLs, Law Societies seek to prevent untrained, unlicensed and unregulated persons from providing legal advice by defining the practice of law through legislation and by prosecuting those they believe are 'practising law without a license'. In Alberta, the Alberta Law Reform Institute has recently released Consultation Memo 12.18 - Self-Represented Litigants, for the Rules of Court Project. The use of paralegals and other SRL issues in Alberta are reviewed in detail. See: <http://www.law.ualberta.ca/alri/>

The Law Societies also seek to protect self-represented litigants. In most jurisdictions, the right to represent oneself before the courts is specifically allowed by the legislation and not considered "practicing law". These important but sometimes conflicting needs contribute to the complexity of addressing the issues raised by the increasing demands placed on the system by SRLs.

Many Law Societies pointed to their collective funding of the Canadian Legal Information Institute (CanLII) <http://www.canlii.ca> as one way that they provide support for self-represented litigants. CanLII is a significant vehicle for SRLs and the public at large to obtain access to current statute and case law.

Other Law Societies indicated that their limited resources have been focussed elsewhere to date, and that there has been no opportunity to consider the issues surrounding SRLs. Some Law Societies, although recognizing that various components of the justice community have concerns, indicated that self-represented litigants are not an issue for them.

The following Cross Country Snapshots provide insight into how the enabling legislation for the Law Society in each jurisdiction defines and regulates the practice of law, and provides for the participation of self-represented litigants in the justice system. The Snapshots also identify, where available, each Law Society's committees and other programs that might impact self-represented litigants.

Our goal in setting out the following legislative provisions, committees and programs of the various Law Societies is to highlight the many different approaches that Canadian Law Societies have taken on these issues. We hope that these Snapshots will be of interest to their counterparts and to others in the justice community who are seeking answers to the growing phenomenon of self-represented litigants.

Endnotes

1. Responses to this question from other Law Societies focused on the lack of any requirement for a lawyer to undertake responsibility for each and every aspect of a client's case *if the client and lawyer are agreed otherwise* (emphasis added). From that perspective, the major issue in unbundling then becomes, not whether it can be done, but ensuring that there is no unmet expectation on the part of the client, or performance by the lawyer of either additional or, more importantly, less, than what is required of him or her by the agreement. These issues can be dealt with through meticulous client communication and ensuring that what has been agreed upon is accurately reduced to writing.



British Columbia

Legal Profession Act, SBC 1998, c. 9 Effective date: December 31, 1998 Last revised: May 12, 2004

http://www.lawsociety.bc.ca/library/lpa/body_lpa_toc.html

- s.1 defines the practice of law by listing specific activities;
- if those acts are performed without expectation of, or for payment or fee, gain or reward, direct or indirect, they are exempt from being considered the practice of law;
- other exemptions include prepaid legal services plans or other liability insurance programs;
- s. 15 prohibits anyone except a “practicing lawyer “ from engaging in the practice of law, with some exemptions;
- self-represented litigants are specifically allowed under s. 15 (1)(a);
- s. 15 (6) allows the Law Society to make rules preventing lawyers from participating or facilitating unauthorized persons from practicing law.

Legal Services Society Act (Legal Aid)

http://www.qp.gov.bc.ca/statreg/stat/L/02030_01.htm

- s. 11 explicitly allows the Society to assist self-represented persons;
- s. 12 of the *Legal Services Society Act* creates an exemption to the *Legal Profession Act* and allows non-lawyers employed by the Society to provide legal services so long as the individual is supervised by a lawyer. Such an individual may only appear as counsel with leave of the court. Web site: <http://lss.bc.ca>

Committees and Programs relevant to SRLs:

Unauthorized Practice of Law - The Unauthorized Practice Committee enforces the *Legal Profession Act* with respect to all aspects of the practice of law by non-lawyers and develops policy recommendations for the Benchers in unauthorized practice matters.

Access to Justice -The Access to Justice Committee identifies access to justice concerns that are within the statutory mandate of the Law Society, examines and analyses such areas of concern and assists the Benchers in prioritizing them with a view to improving meaningful access to justice. It acts as a coordinating body to promote liaison and prevent duplication among the Bar, the courts, federal and provincial Attorneys General, the Legal Services Society, administrative tribunals, alternative dispute resolution service providers and accrediting bodies and others.

Unbundling Legal Services Task Force – In 2005, this Task Force began a study on the “unbundling of legal services”. Unbundling allows lawyers to offer clients the option of discrete or limited scope legal assistance, instead

of full representation in every matter. Limited scope legal services have the potential to increase access to justice for members of the public who might otherwise not be able to retain a lawyer. The task force will examine ethical issues (such as conflicts of interest), possible rule revisions, appropriate practice guidelines and materials for lawyers, relations with the courts and liability issues.

Legal Information Committee - The Legal Information Committee liaises with the BC Courthouse Library Society, CanLII, law school libraries, other law-related libraries and the Lawyer Education Task Force (particularly in relation to the overlap between technology-based libraries and continuing legal education activities). It is also developing a Queen’s Printer LegalEze strategy, supports open access to all BC judgments (including anonymization of family law and other judgments to which access is otherwise restricted) and is following up on the Supreme Court of Canada copyright decision.

Paralegals Task Force - This Task Force will review and consult with lawyers and the public about the implications of the Cory Report, (executive summary available on web archive: <http://web.archive.org/web/20001208151300/http://www.attorneygeneral.jus.gov.on.ca/html/cory/execsummary.htm>) evaluate legal services currently being provided by non-lawyers and the impact on the public and the courts, and develop options for responding to the increasing use of non-lawyers.

Pre-paid legal services plans - Are allowed, but regulated by the *Act*.

Pro Bono Law of BC - An independent society founded by the Law Society of BC and the BC Branch of the Canadian Bar Association to promote the delivery of *pro bono* services. It is working on several projects specifically for self-represented litigants.

Many other BC projects that impact self-represented litigants are actually under the direction of other agencies, but the Law Society of BC is also involved either directly or indirectly, through staff and Benchers of the Society. Of particular note is the BC Supreme Court Self-Help Centre that will be launched in April 2005.

See <http://www.supremecourtselfhelp.bc.ca>

Contact:

The Law Society of British Columbia
845 Cambie Street

Vancouver BC V6B 4Z9

Tel: (604) 669 - 2533 Toll-free in BC: 1 - 800 - 903 - 5300

Fax: (604) 669 - 5232 TTY: (604) 443 - 5700

e-mail: information@lsbc.org

Web site: <<http://www.lawsociety.bc.ca>>



Alberta

Legal Profession Act, c. L-8 RSA 2000

http://www.qp.gov.ab.ca/documents/Acts/L08.cfm?frm_isbn=0779732790

- s.1 defines “member” and “active member”;
- s. 106 provides that only an “active member” of the Law Society is allowed to practice as a barrister or solicitor and perform other specific activities;
- s. 106(2)(h) exempts a person who acts on their own behalf or prepares documents for themselves, if they are a party;
- s. 106(2)(l) exempts someone authorized by statute to appear as an agent for someone else before a justice of the peace, provincial judge or in Provincial Court in respect of services provided by that person as an agent;
- other exemptions are also listed.

Committees and Programs relevant to SRLs:

Unauthorized Practice - The Law Society of Alberta’s Unauthorized Practice of Law Department monitors non-lawyers to ensure their work falls within the allowable exceptions outlined in the *Legal Profession Act*. The department fields complaints by lawyers and the public, and provides resources to educate the public, lawyers and unsupervised paralegals on the limitations of legal services that non-lawyers can provide. Recently, the lay benchers of the Law Society of Alberta requested a review of access to justice issues and in particular, the protection of the public and the role of independent paralegals. The Society will look at these issues during the coming year.

Pro Bono Committee - The Law Society of Alberta’s Pro Bono Committee reviewed and reported on its role in the provision of *pro bono* legal services in April 2003. The report, “Pro Bono Publico – For the public good” is available at <http://www.lawsocietyalberta.com>. The Committee has been working to implement all the recommendations in the report which include: the establishment of *pro bono* legal clinics in various locations throughout the province; the implementation of a new membership category for retired and inactive lawyers

– “active for *pro bono* services only”; and the establishment of a *pro bono* stakeholder group to further the *pro bono* culture in Alberta’s legal profession. As part of this initiative, the Committee will be consulting with the profession in the coming months about developing and implementing a comprehensive strategy to further enhance the provision of *pro bono* legal services in Alberta. The Law Society of Alberta has already provided considerable support to *pro bono* legal clinics in Alberta: Calgary Legal Guidance (in operation since 1971), the Edmonton Centre for Equal Justice and two new initiatives underway in Red Deer and Lethbridge. Through volunteer lawyers, these clinics provide *pro bono* legal information, advice and assistance for matters not covered by legal aid to thousands of low income Albertans each year.

Lawyer Referral Service - Provides three referrals in a requested area of law with a 1/2 hour free consultation. Phone 1-800-661-1095 (AB, SK, YK, NWT, NU & Lower Mainland BC) or Calgary (403) 228-1722.

Pre-paid legal services plans – Are allowed but lawyer participation is regulated under the Code of Professional Conduct. <http://www.lawsocietyalberta.com/resources/codeProfConduct.cfm>

Contact:

The Law Society of Alberta
500, 919 - 11th Avenue SW
Calgary AB T2R 1P3
Tel: (403) 229-4700
Fax:(403) 228-1728
Toll Free: 1-800-661-9003

The Law Society of Alberta
201 Scotia Place Tower 2
201, 10060 Jasper Avenue
Edmonton AB T5J 3R8
Tel: (780) 429-3343
Fax: (780) 424-1620
Toll Free: 1-800-272-8839

Please direct general inquiries to the Calgary office. Toll Free numbers available only in: AB, SK, Lower Mainland BC, YT, NT, and NU

e-mail: Go to the web site and click on the “Contact” icon in the upper left hand corner. Scroll down to access e-mail for the Communications Director, IT or Membership Services. Web site: <<http://www.lawsocietyalberta.com>>



Saskatchewan

The Legal Profession Act, 1990, RSS c. L - 10.1

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/L10-1.pdf>

- s. 2(1) defines “member” of the Society;
- s. 30 (1) prohibits anyone other than a member who holds a subsisting certificate from engaging in a specific list of activities;
- s.30 (2) prevents any non-member who does any of those activities from collecting any fee, reward or disbursement for it and deems those who do to be in

contempt of the court in which the proceeding is or has taken place;

- s. 31(f) exempts someone who self-represents from the operation of section 30;
- other exemptions to the restrictions on the practice of law are included in s. 31.

Committees and Programs relevant to SRLs:

Libraries - The Law Society operates 18 law libraries in the province, open to lawyers, articling students, law students, the judiciary and the general public. The libraries in Regina

and Saskatoon are specifically open to the public, while the other libraries in the system are open to authorized personnel. Some users may need permission from local courthouse personnel to access the Law Society library's collection.

Lawyer Referral Service - Often the public does not know what lawyer to contact on a problem. To assist in finding a lawyer, the Law Society has established a service for enquiring members of the public to be given the name and address of a lawyer in their area with whom they can discuss their legal matters at an initial fee not to exceed \$25.00 for the first half hour. Lawyer Referral Service: Tel: (306) 359-1767

Toll Free in Saskatchewan: 1-800-667-9886 <http://www.lawsociety.sk.ca/newlook/Programs/referral.htm>

8:30 am to 12:00 noon; 1:00 pm - 4:30 pm

Senior's Legal Assistance Service - The Law Society offers a referral service to seniors in Saskatchewan who receive the

Federal Guaranteed Income Supplement. Through the service, seniors are referred to lawyers who have agreed to act in certain areas of law free of charge. This is a voluntary service and not all eligible persons can be provided legal service.

Pre-paid legal services plans - Are allowed but lawyer participation is regulated by Rule 1650 (& following) of the Rules of the Law Society of Saskatchewan. <http://www.lawsociety.sk.ca/newlook/Publications/LSrules/LSrules2003.htm>

Contact:
The Law Society of Saskatchewan
1100 - 2500 Victoria Avenue
Regina SK S4P 3X2
Tel: (306) 569-8242
Fax: (306) 352-2989
e-mail: reception@lawsociety.sk.ca
Web site: <<http://www.lawsociety.sk.ca>>



Manitoba

The Legal Profession Act, CCSM c. L107

<http://web2.gov.mb.ca/laws/statutes/ccsm/l107e.php>

- s. 1 defines “lawyer”, “member” and “practicing lawyer”;
- s. 20(1) provides that subject to any restrictions imposed by or under the *Act*, a practicing lawyer may practice law in Manitoba;
- s. 20(2) prohibits anyone not authorized by the statute from carrying on the practice of law and other specified activities;
- s. 20(3) deems those who prepare various types of documents; negotiate or solicit the right to negotiate for settlement or settle claims for loss or damage founded in tort; or agree to provide the services of a practicing lawyer, *for, or in expectation of, fee or reward* (emphasis added), as carrying on the practice of law;
- s. 20(3)(c) exempts certain legal service plans that provide lawyers for their members or clients;
- s. 20(4) exempts self-represented persons and those preparing documents on their own behalf or to which they are a party from being deemed to be carrying on the practice of law;
- s. 40 specifically allows agents pursuant to the *Highway Traffic Act* to provide legal advice and representation in certain prescribed circumstances.

Committees and Programs relevant to SRLs:

Law Phone-In and Lawyer Referral Program - Provides general legal information over the phone in response to callers' inquiries. Callers are also referred to appropriate law-related agencies where such an agency exists and the situation warrants it. For legal advice, referral can be

made to a lawyer registered with the service. Referrals are made to lawyers on a rotational basis. The lawyer to whom the client is referred will advise during an interview lasting about a half hour. There is no charge for this interview. If further legal help is needed, a person may (if the lawyer agrees) hire the lawyer at a fee to be decided between them. Hours are 9 am to 4 pm, Monday through Friday. Call 943-2305 in Winnipeg or toll free 1-800-262-8800 (from outside Winnipeg only please). For a referral to a lawyer only, call 943-3602. For referral by e-mail: info@communitylegal.mb.ca

Online Public Access Computer (OPAC) - Effective April 1, 2004 the Great Library provides service to the general public via Internet resources only. There will be no in-person access for the general public except with an occasional use pass (see below). Users can access free Internet resources by going to the Manitoba Law Libraries Inc. website: <http://www.lawlibrary.mb.ca/index.html>. There are direct links to many free products, including the CanLII website, which is supported by the Manitoba Law Society and contains most Canadian cases and statutes.

Pre-paid legal service plans - Are allowed, but regulated by the *Act*.

Contact:
The Law Society of Manitoba
219 Kennedy Street
Winnipeg MB R3C 1S8
Tel: (204) 942-5571
Fax: (204) 956-0624
e-mail: admin@lawsociety.mb.ca
Web site: <<http://www.lawsociety.mb.ca/index.htm>>



Ontario

Law Society Act RSO 1990, c. L.8

Solicitors Act, RSO 1990, c. S.15

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90l08_e.htm; http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90s15_e.htm

The “practice of law” is not defined in Ontario legislation.

A prohibition against the unauthorized practice of law is found in s. 50(1)(a) of the *Law Society Act* which provides that:

“Except where otherwise provided by the law, no person other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practice as a barrister or solicitor.”

Section 50.1(1) of the *Act* makes it an offence to contravene s. 50.

The *Solicitors Act*, R.S.O. 1990, c. S.15 prohibits anyone who is not a party to the proceeding from commencing, prosecuting or defending an action or proceeding for financial gain, unless that person is admitted and enrolled as a solicitor. Anyone engaged in this activity is guilty of contempt of court.

Although it appears that s.1 of the *Solicitors Act* prohibits a person from acting as an agent for remuneration, in *R. v. Lawrie* [1987] O.J. No. 225 the Ontario Court of Appeal held that s.1 of the *Solicitors Act* merely provides additional penalties for the unauthorized practice of law as set out in the *Law Society Act*. The court found that agents authorized to appear by statute are permitted to do so for financial reward without being held in contempt of court.

Committees and Programs relevant to SRLs:

Access to Justice Committee - The mandate of the Access to Justice Committee is to develop, for Convocation’s approval, policy options for promoting access to justice throughout Ontario. The Committee works with related organizations such as *Pro Bono Law Ontario* (PBLO) and the Ontario Justice Education Network (OJEN). The committee co-ordinated, in conjunction with the Law Foundation of Ontario, an important full-day symposium and awards dinner entitled “Access to Justice for a New Century: The Way Forward” in May 2003. The symposium featured speakers from around the world and considered a wide range of topics. The papers have recently been published by the Law Society and are being distributed by Irwin Law. In 2004, the Committee and the University of Toronto co-sponsored a symposium on “Remedies for Victims of Torture”.

CanLII - The Law Society of Upper Canada, through its membership in the Federation of Law Societies of Canada, funds the Canadian Legal Information Institute (CanLII),

which makes available on the Internet free of charge to the public, statutes, case law and legal commentary.

Great Library - The Law Society of Upper Canada operates the Great Library at Osgoode Hall. The Great Library is open to the public, providing access to paper, electronic and Internet resources. It is important to note that the Supreme Court of Canada has recognized that persons conducting research are not infringing the *Copyright Act* if they make photocopies of published case law. (For further information, please refer to the Law Society Web site at http://www.lsuc.on.ca/news/updates/mar1604_copyright.jsp and to *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, available on-line at www.canlii.ca).

Lawyer Referral Service - The Lawyer Referral Service is available to members of the public in need of a lawyer. By calling the 1-900 number, an individual will be referred to a local lawyer who is able to assist with the issue. A \$6.00 charge is added to the caller’s phone bill. When the individual contacts that lawyer, the individual is entitled to a 30-minute free consultation.

Paralegal Regulation - In January 2004, the Hon. Michael Bryant, the Ontario Attorney General, asked the Law Society to take on the responsibility for regulating paralegals, and to propose a regulatory model. The Task Force on Paralegal Regulation conducted extensive consultations with stakeholders and in September 2004, the Law Society submitted a proposal to the Attorney General. Since then, discussions between the Law Society and the government have continued with a view to developing legislation in this area. The proposal is grounded in the Law Society’s public interest mandate. More information on the topic of paralegal regulation can be accessed on the Law Society’s web site at http://www.lsuc.on.ca/news/updates/jan2105_cag.jsp

Contingency Fees - The Law Society has long recognized that permitting contingency fees would enhance access to justice. In 2003, the Law Society invited interested legal organizations to meet for the purpose of drafting submissions in response to the provincial government’s proposed legislation amendments permitting contingency fees. These submissions, which reflected the consensus position of the Law Society, the Advocates’ Society, the Country and District Law Presidents’ Association, the Ontario Bar Association, the Ontario Trial Lawyers’ Association and the Toronto Lawyers’ Association, were instrumental in the development of the current legislation and regulations permitting contingency fees.

Pro Bono Law Ontario - The Law Society helped establish *Pro Bono Law Ontario*, which was created in 2002 to foster the development of projects that match volunteer lawyers with low-income people or charitable organizations. Members of the public who are served by *Pro Bono Law Ontario* projects benefit from the free legal services of participating lawyers.

Ontario Justice Education Network - The Law Society of Upper Canada is one of twenty partners with the Ontario Justice Education Network, an organization that seeks to promote understanding, education and dialogue in support of a responsive and inclusive justice system. <http://www.ojen.ca>

Law Society of Upper Canada Web site - The Law Society maintains up-to-date information on its access to justice programs and initiatives at <http://www.lsuc.on.ca>. The web site is accessible by members of the public.

Contact:
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto ON M5H 2N6
Toll-free in Canada: 1-800-668-7380
General line: (416) 947-3300
Fax: (416) 947-5263
e-mail: lawsociety@lsuc.on.ca
Web site: <<http://www.lsuc.on.ca>>



Québec

An Act Respecting The Barreau du Québec, RSQ, c. B-1

http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/B_1/B1_A.HTM

- s.1 defines “advocate”, “legal counsel”, “member of the Bar”, “attorney”, “the Bar”, “solicitor” and the “Roll”;
- s. 128 defines the practice of law by listing various acts *done for others* (emphasis added) that may only be done by a practicing advocate or solicitor, including giving legal advice and consultations on legal matters and preparing or drawing up documents for use in a case before the courts, as well as other specified activities.
- s. 129 lists rights not affected by s. 128, including certain rights of a practicing notary;
- ss. 132 – 136 deal with the illegal practice of law, including penalties;
- s. 141 safeguards the rights of accountants recognized by the *Chartered Accountants Act* or their Professional Code to give advice and consultations on all questions of a financial, administrative or fiscal nature.

Committees and Programs relevant to SRLs:

Unauthorized Practice of Law Committee - Executive and Plenary; Dealing with the unauthorized practice of law in Québec.

Legal expenses insurance plans – Approximately 150,000 people in Québec subscribe to some kind of legal expenses insurance plan.

Éducaloi – Éducaloi is a non-profit organization created in 2000. Its mission is legal education for the citizens of Québec. Éducaloi provides access to the law through their interactive web site <http://www.educaloi.qc.ca>. It is supported in part by the Barreau du Québec.

Lawyer Referral Service – The lawyer referral service is available by website at: <http://www.barreau.qc.ca/repertoire/reference.html> or by calling in Montreal: (514) 866-2490; in Québec City: (418) 529-0301; and in the rest of Québec: (514) 954-3528 or 1-866-954-3528 or by e-mail at: referenceaap@barreau.qc.ca

Contact:
Barreau du Québec
Maison du Barreau
445, boulevard Saint-Laurent
Montréal QC H2Y 3T8
Tél: (514) 954-3400 or 1-800 -361-8495
e-mail: information@barreau.qc.ca
Web site: <<http://www.barreau.qc.ca>>



New Brunswick

Law Society Act, 1996, SNB 1996, c. 89

<http://www.lawsociety.nb.ca/assets/documents/law-society-act.doc>

In New Brunswick, section 2 of the *Law Society Act*, 1996 defines the practice of law as applying legal principles and procedures for the benefit of or at the request of another person. Specific activities that are considered to be the practice of law are found in the definition. Section 2 also defines who is a member of the Law Society of New Brunswick.

Section 33 restricts the practice of law to practicing members of the Law Society of New Brunswick in good standing,

professional corporations and students-at-law (to the extent allowed by the rules.)

It should be noted that self-represented litigants are specifically allowed under sub-section 33(2), which also outlines other exceptions to the restriction of practicing law.

Code of Professional Conduct - Chapter 15 of the Law Society of New Brunswick Code of Professional Conduct stipulates that the lawyer shall practice the same principals of good faith and courtesy towards laypersons lawfully representing themselves in a matter as the lawyer is required to observe toward other lawyers.

Committees and Programs relevant to SRLs:

Unauthorized practice of law - Section 34 of the *Law Society Act*, 1996 prohibits lawyers from assisting the unauthorized practice of law. Section 35 prohibits anyone using any title, name or description that suggest that the person is authorized to practice law, unless that person is in fact qualified to practice law in New Brunswick.

Section 105 allows the Law Society to obtain an injunction against a person who has been practising law in an unauthorized fashion. In addition, pursuant to section 104, the Law Society has the option of laying information against a person for the unauthorized practice of law under the *Provincial Offences Procedure Act*. During the past two years, the Law Society of New Brunswick has been involved in two lengthy litigations pertaining to the unauthorized practice of law.

CanLII is a web-based legal information resource, which provides a quick and free access to recent Canadian case law and legislation to all lawyers and the public. The Law Society of New Brunswick (along with all the law societies in Canada) provides annual funding for the ongoing maintenance of the site. In addition, in September 2004,

the Law Society of New Brunswick along with CanLII, embarked on a 3-year project, which will add decisions of the New Brunswick Court of Appeal and the Court of Queen's Bench of New Brunswick dating back to 1990, to the database. The addition of these decisions will add tremendous value to the site, increasing its usability and relevance for users.

The Law Society of New Brunswick operates nine law libraries across the Province, which gives access to legal information and research resources to members of the Society, the Judiciary and the public. In addition, they have 12 computer workstations available across the Province that give access to lawyers and the public to search legal information on CanLII and the Internet.

Contact:

Law Society of New Brunswick
1133 Regent Street, Suite 206
Fredericton NB E3B 3Z2
Tél: (506) 458-8540
Fax: (506) 451-1421
e-mail: general@lawsociety-barreau.nb.ca
Web site: <<http://www.lawsociety.nb.ca>>



Nova Scotia

Legal Profession Act, c. 28 of the *Acts* of 2004

http://www.gov.ns.ca/legislature/legc/bills/59th_1st/3rd_read/b130.htm

To be proclaimed in June 2005 and Regulations are also expected in June.

- s. 2 defines “lawyer”, “practice of law” and “practicing lawyer”;
- s. 16 (1) defines the practice of law as the application of legal principles and judgement with regard to the circumstances or objectives of a person that requires the knowledge and skill of a person trained in the law and includes performing a specified list of activities for another;
- s. 16 (2) prohibits anyone from practicing law for fee, gain, reward or direct or indirect compensation unless they meet the criteria listed in the subsections;
- s. 16(4) provides exemptions to this prohibition (a) - (m), including (d) self-represented litigants;
- s. 17 makes contravention an offence and applies the *Summary Conviction Act* to the offence;
- s. 18 allows for an injunction and costs in cases of threatened or continuing offences.

Committees and Programs relevant to SRLs:

Administration of Justice Committee - This Committee serves as the Society's vehicle for liaison with the various courts of the province and for the dissemination of information and the development of policy on broad issues affecting the administration of justice. The Society has actively participated in the development of a range of duty counsel programs now operating in Halifax and Sydney.

Library & Information Services – The Society publishes Nova Scotia Law News Online – a means for the public to access NS case law from all courts. This also feeds into CanLII.

Legal Directory On-line at http://www.nsbs.ns.ca/legal_dir_home.htm

Contact:

The Nova Scotia Barristers' Society
1101-1645 Granville Street
Halifax NS B3J 1X3
Tél: (902) 422-1491
Fax: (902) 429-4869
e-mail: info@nsbs.org
Web site: <<http://www.nsbs.ns.ca>>



Prince Edward Island

Legal Profession Act [proc] Aug.1/92 1992 c.39 RSPEI 1988, L - 6.1

<http://www.gov.pe.ca/law/statutes/>

- s. 1 defines “actual practice”, “member”, “member in good standing”, “practice of law” and “practicing member”;
- s. 20 limits practice as a barrister, solicitor or attorney to a “member in good standing” holding a current practice certificate;
- s. 21 defines the “practice or profession of a barrister, solicitor or attorney” to include the holding out to the public, or the doing by any person, for fee gain, reward or otherwise, directly or indirectly, of any of a number of specified activities;
- s. 21 includes as practice of law, arranging a lawyer for someone else except prepaid legal services plans, insurance plans and collective agreements or bargaining relationships;
- ss. 21(2)(3) & (4) list other exemptions;
- it specifically allows anyone to represent another person before the Labour Arbitration Board;
- s. 36 (1) lists specific prohibitions to the practice of law;
- s. 36(8) deems those providing support to a practicing member and articling clerks acting under the supervision of a practicing member are not practicing law;
- s. 56 makes non-compliance with the *Act* an offence and provides for fines.

Committees and Programs relevant to SRLs:

Unauthorized Practice of Law Committee - The Committee is mandated to deal with reports of unauthorized

practice referred to it from a variety of sources. The Committee makes recommendations for legal or other actions to deal with unauthorized practice issues.

Ad Hoc Access to Justice Implementation Committee – The Committee works on and provides reports regarding the progress of various recommendations of a 2002 Task Force on Access to Justice, including those regarding self-represented litigants.

Library - The Law Society operates a library of legal materials at the courthouse (42 Water St., Charlottetown), which is available to the public. Members of the public can apply at the Commissionaire’s desk at the courthouse.

Lawyer Referral Program - The Law Society cannot refer individuals to particular lawyers, but there is a lawyer referral program financed by the Law Society, which is operated by the Community Legal Information Association (CLIA). Access it by calling 1-800-240-9798 (in PEI) or (902) 892-0853 or e-mail cliapei@isn.net.

Pre-paid legal services plans – Are allowed, but regulated.

Contact:

The Law Society of Prince Edward Island
49 Water Street

PO Box 128

Charlottetown PE C1A 7K2

Tel: (902) 566-1666

Fax: (902) 368-7557

Web site: <<http://www.lspei.pe.ca/>>



Newfoundland & Labrador

Law Society Act, 1999 SNL 1999 c. L-9.1 Amended: 2001 c. N-3.1 s2; 2004 c. 36 s22; 2004 c. 48

<http://www.gov.nf.ca/hoa/statutes/L09-1.htm>

- s. 2(1) (f) defines a “member” and “member in good standing” of the Law Society;
- s. 2(2) lists the activities that the practice of law includes;
- s. 2 exempts certain individuals and prepaid legal services plans and any other acts expressly permitted by the *Act* or the Rules of the Society;
- s. 33 deals with the right to practice;
- s. 76 provides only those who are “members in good standing” may practice law;
- s. 76 (1) (a) exempts self-represented litigants from this prohibition;
- also exempted are those who draw up specific types of legal documents for their own use or do so for others without receiving or expecting to receive a fee, gain, reward or benefit; and

- persons appearing as agent for another person before a Provincial Court judge or Justice of the Peace when authorized to do so by another statute or before an administrative tribunal where permitted by the practice of the tribunal;
- real estate agents preparing formal sale agreements;
- paralegals and employees of members of the Society acting under a member’s supervision.

Contact:

The Law Society of Newfoundland & Labrador
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Nunavut

Legal Profession Act (Nunavut) RSNWT 1988, c. L-2

<http://www.canlii.org/nu/sta/cons/index.html>

- s.1 defines “active member”, “member” and “practice of law”
- the practice of law includes but is not limited to:
 - appearing as counsel or advocate;
 - drawing, revising or settling a number of documents;
 - drawing documents, negotiating or settling of claims or damages in tort;
 - agreeing to place at the disposal of another person the services of a barrister & solicitor; or
 - giving legal advice.
- s. 1(f) exempts anyone who does these things listed if not done for or in expectation of a fee, gain or reward direct

- or indirect, from any other person;
- s. 68 (1) provides that no person except an “active member” of the Society shall practice law;
- s. 68(2)(a) exempts self-represented litigants from the above provision;
- other exemptions include persons appearing before a justice of the peace or judge as agents without reward.

Contact:

Law Society of Nunavut

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Web site: <<http://lawsociety.nu.ca/>>



Northwest Territories

Legal Profession Act, RSNWT 1988, c. L-2 http://www.justice.gov.nt.ca/PDF/ACTS/Legal_Profession.pdf

- s. 1 defines “active member”, “member” and “practice of law”
- “practice of law” includes but is not restricted to appearing as counsel or advocate and a number of other specified activities, including giving legal advice;
- “practice of law” does not include any of those things listed if done without, or without expectation of, fee, gain or reward, direct or indirect from any other person;
- lawful practice of a notary and certain other “public officers” also exempted;
- s. 68 provides that only active members of the Society may engage in the practice of law and special provision is made for students-at-law to act as counsel;
- s. 68(2) specifically exempts self-represented litigants and certain others, including those appearing as agents for someone else, without reward, in front of a justice of the peace or territorial judge when authorized under a Territorial Act or an Act of Canada.

processes. <http://www.justice.gov.nt.ca/legalaid/LegalAid.htm>

Lawyer Referral Service - The Territory-wide Lawyer Referral Service for members of the public is designed to help people find a lawyer when they do not know any lawyers, or when they are looking for a lawyer to assist them in a particular area of law. There is no fee charged by the Law Society for lawyers to participate in the Service, nor for clients to use the Service. The program is made possible by the co-operation of the legal profession. The Service is not available to Legal Aid clients.

Directory – As part of the Lawyer Referral Service, the Law Society has set up a Directory to assist clients in locating a lawyer in specific areas of law. Lawyers will then receive referrals that are consistent with their preferred areas of practice. The Law Society does not advise lawyers when a referral is made and there is no obligation on the client to contact the lawyer. The lawyer will only know that the client has contacted him or her as a result of the Lawyer Referral Service if the client tells them, although clients are asked to do so. Some lawyers are fluent in languages in addition to English and the client should ask about the lawyer’s ability to provide service in the client’s language of preference and about any other special communication requirements the client has when they make contact with the lawyer.

Law Line - If a Northwest Territories resident has a specific legal problem, they can call the Law Line and speak to a lawyer for free and in confidence. The Lawyer Referral Service program and Legal Services Board, with the cooperation of the members of the bar, operate the Law Line, which is open on Tuesday and Thursday nights,

Committees and Programs relevant to SRLs:

Ad hoc committees are struck as necessary to deal with issues brought to the attention of the Law Society.

Unauthorized practice – Any unauthorized practice issues are first dealt with by the Northwest Territories Law Society Executive Director.

Paralegals - Any paralegals in NWT work only under the supervision of lawyers. Other agencies provide assistance such as the Community Court Workers, to deal with Court

6:30 pm - 8:30 pm. Yellowknife residents only phone:
920-2360 Toll Free: 1-867-873-3130.

Public Legal Education materials - The Law Society is also publishing some public legal education information on its web site. <http://www.lawsociety.nt.ca/LRS/index.htm>

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Web site: <<http://www.lawsociety.nt.ca>>

Yukon

Legal Profession Act, SY c. 134, December 14, 2004

<http://www.lawsocietyyukon.com/act.asp>

- s. 1 defines “active member”, “member” and “practice of law”;
- the “practice of law” includes appearing as counsel or advocate and a number of specified activities unless they are performed without, or without expectation of, a fee, gain or reward, direct or indirect from the person for whom the acts are done.
- s. 2 provides that no one except a member is permitted to practice law;
- s. 2(a) exempts an individual party to a proceeding who is self-represented;
- other exemptions include providing legal aid and lawyer referral pursuant to prepaid legal plans and other liability insurance plans is exempt from being considered the practice of law;
- *pro bono* work is limited by the legislation;
- s. 7 states that the executive may make rules prohibiting members from facilitating, or participating in, the practice of law by persons who are not authorized to practise law;
- s. 100(2) provides that the court has discretion to determine what a person otherwise prohibited from practicing law by the definition may do;
- the unauthorized practice of law is punishable by summary conviction and may be subject to an injunction by the Law Society.

Committees and Programs relevant to SRLs:

Lawyer Referral Service - This is a confidential service operated by The Law Society of Yukon for members of the public to help determine whether they have a legal problem for which a lawyer is necessary. Members of the public must contact the Law Society and are provided with a Referral Certificate and a list of lawyers. The person is then responsible for contacting the lawyer of their choice from the list and making an appointment to see that lawyer. The lawyer must be told that it is a referral from the Law Society and given the Referral Certificate at the beginning of the appointment. The lawyer will provide some basic legal information and advise whether or not a lawyer is needed. The lawyer is not responsible for doing any legal work or taking any further action on behalf of the member of the public beyond the one half-hour initial consultation. If they would like that lawyer to represent them after that initial consultation and the lawyer agrees to represent them, the fee and retainer arrangements and instructions will be a private matter between the member of the public and the lawyer. The cost for this consultation is \$30.00 (including GST) and is payable to the lawyer at the consultation. Collect calls from outside of Whitehorse are accepted.

Contact:
The Law Society of Yukon
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Web site: <<http://www.lawsocietyyukon.com>>

A Grateful Farewell...and Welcome

It is with gratitude that we say farewell to our outgoing Board Members. Since the creation of the Forum, leading members of the Bar, the judiciary, academia, government and the public have served as Board and Advisory Board Members. Included among these are H el ene Beaulieu, of New Brunswick, Madam Justice (formerly Professor) June Ross, of Alberta, Monsieur le juge Pierre E. Audet, of Qu ebec and P. Andr e Gervais, QC, also of Qu ebec. Their contributions have been significant and we wish to recognize and thank them. We also wish them the very best in their future endeavours. We welcome Kathryn Arbuckle and Daphne Dumont, QC to the Board.

We want the content of *News & Views* to answer your questions, respond to your concerns, or include your article or comments. Please write to us and contribute your ideas to future issues of *News and Views on Civil Justice Reform*: cjforum@law.ualberta.ca