CANADIAN
RESEARCH INSTITUTE
FOR LAW AND THE FAMILY

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

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TABLE OF CONTENTS

LIST OF TABLES AND FIGURES

Page

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1.0 INTRODUCTION

The issue of access to justice for individuals involved in family law disputes has received growing attention in recent years both nationally and internationally. A related issue concerns the rise in the number of self-represented individuals involved in family courts proceedings,[1] and a concern that these litigants may not be receiving the type of legal services and advice they need, potentially affecting the outcome of their cases. Although self-representation may be a viable option for some individuals engaged in relatively straightforward, low-conflict matters, cases involving disputes about the care of children, relocation, allegations of domestic violence or matrimonial property are difficult to manage without the assistance of legal counsel. Some governments and agencies have attempted to address this problem by increasing the availability of information and the variety of services designed to assist self-represented individuals (Gray, 2013; Hilbert, 2009; Malcolmson & Reid, 2006; MacRae *et al.*, 2009; Zorza, 2002).

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

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

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

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

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

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

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

- Almost one-half of the judges surveyed believe that self-represented litigants achieve worse outcomes with regards to their children than individuals with representation and almost two-thirds believe that self-represented parties have worse outcomes with respect to economic matters.

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

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

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

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

A recent survey of judges of the Alberta Court of Queen's Bench (Boyd, Bertrand & Paetsch, 2014) found that judges believe that there are additional challenges in cases involving at least one self-represented litigant, that settlement before trial or before the end of trial is less likely in cases where there is at least one self-represented party and that self-represented litigants generally achieved worse outcomes in matters involving claims for child support, spousal support and the division of property.

1.1 The Present Study

This report presents an analysis and comparison of the Bertrand *et al*. (2012) Survey on Experiences with Self-represented Litigants and Boyd *et al*. (2014) Survey on Self-represented Litigants in Family Law Matters, which used a number of common questions allowing for the direct comparison of the views of Alberta lawyers and those of Court of Queen's Bench judges.

The Survey on Experiences with Self-represented Litigants was a web-based survey that was conducted with a sample of 73 family law lawyers in Alberta in June and July of 2012. The Survey on Self-represented Litigants in Family Law Matters was

conducted with a sample of 32 judges attending the Alberta Court of Queen's Bench education seminar held in Calgary, Alberta from 29 to 31 January 2014.

Both surveys asked questions regarding judges' and lawyers' experience with family law in general, their perceptions of and experiences with self-represented litigants in family law disputes and their opinions about the effects of self-represented litigants on case outcomes. Participants were also asked for their views on alternatives to the traditional start to finish model of legal representation in family law matters, such as the retainer of counsel for limited purposes and the delegation of certain services normally performed by lawyers to paralegals.

The results of these surveys should not be taken as representative of the views of all family law lawyers in Alberta or all judges of the Alberta Court of Queen's Bench.

2.0 FINDINGS FROM THE SURVEYS

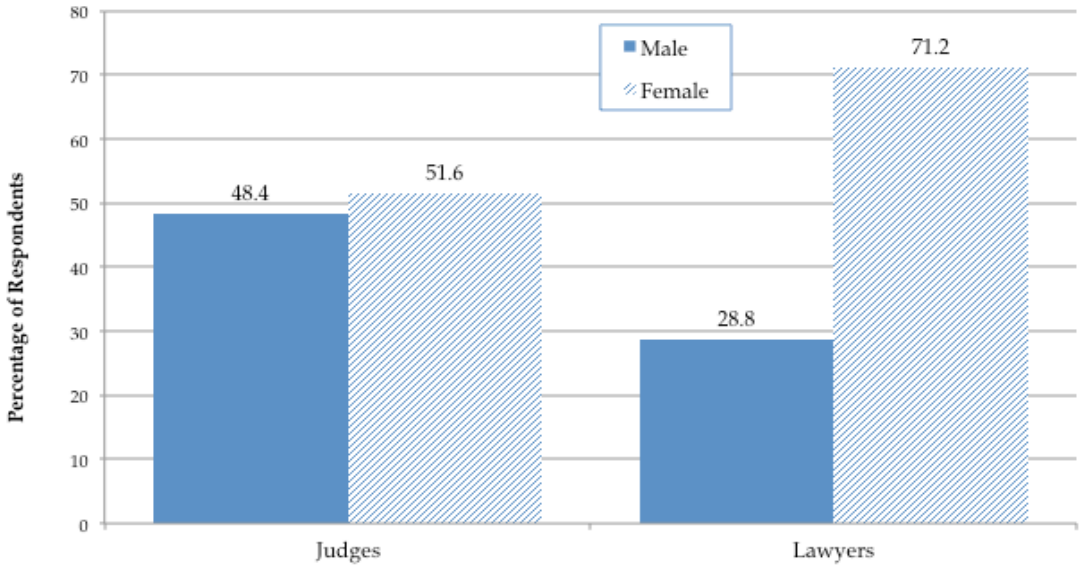
This chapter presents a comparison of the findings from the Bertrand *et al*. (2012) Survey on Experiences with Self-represented Litigants, completed by 73 Alberta family law lawyers in June and July of 2012, and the Boyd *et al*. (2014) Survey on Self-represented Litigants in Family Law Matters, completed by 32 judges of the Alberta Court of Queen's Bench in January 2014. The findings concern participants' experiences with and perceptions of self-represented litigants, their views of self-represented litigants' challenges with the court system and their views of case outcomes for self-represented litigants, as well as their views on alternatives to the traditional model of legal representation and the potential role of paralegals in the family justice system.

2.1 Background Information

The gender breakdown of the respondents to the two surveys is shown in Figure 2.1. Approximately equal numbers of judges identified as female (51.6%) and male (48.4%), while almost three-quarters of lawyers who completed the survey identified as female (71.2%).

Figure 2.1

Respondents' Gender



Judges: N=32; Missing cases=1
Lawyers: N=73

Lawyer respondents had practiced law for an average of 17 years (range = 1 to 41 years) and judge respondents had been on the bench an average of 10.2 years (range = 0.3 to 23 years). Participants were also asked how much of their current workload

involved family law. Judges said that an average of 39.6% of their cases in the past year had been family law matters (range = 20 to 70%); lawyers stated that, on average, 84.4% of their current practice is in family law (range = 0 to 100%).

2.2 Self-represented Litigants in Family Law Matters

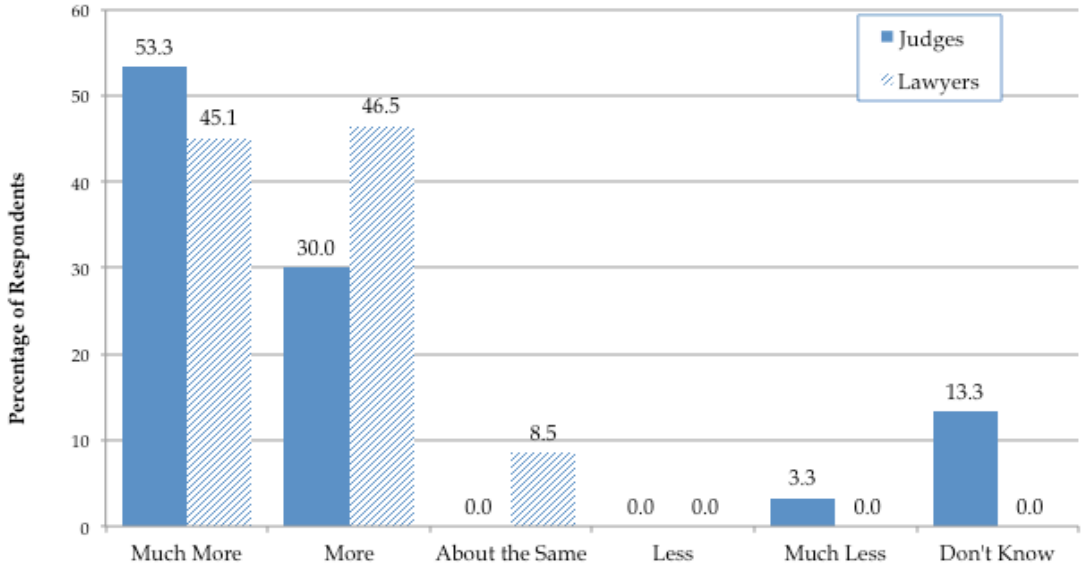
2.2.1 Experience with Self-represented Litigants

Lawyers stated that, on average, 19.5% of their family law cases in the past year involved a self-represented party for *some* of the litigation process (range = 0 to 80%) and that 13.9% of their family law cases in the past year involved a self-represented party for *all* of the litigation process (range = 0 to 80%). Judges said that an average of 47.5% of their family law cases in the past year involved at least one self-represented party for *part* of the litigation process (range = 15 to 75%) and that an average of 34.8% of their family law cases in the past year involved at least one self-represented party for *all* of the litigation process (range = 10 to 60%).

Participants were asked if they thought there had been a change in the number of self-represented litigants since 2007;[2] their responses are shown in Figure 2.2.

Figure 2.2

Judges' and Lawyers' Opinions Regarding Whether the Number of Self-represented Litigants Has Changed



Judges: N=32; Missing cases=2
Lawyers: N=73; Missing cases=2
Lawyers were not given the option to respond "Don't Know"

[2] Lawyers were asked if the number of self-represented litigants had changed in the past *five* years; as over a year elapsed between the administration of the two surveys, judges were asked if the number of self-represented individuals had changed in the past *six* years.

Overall, a substantial majority of both judges and lawyers thought the number of self-represented litigants had increased, with 83.3% of judges and 91.6% of lawyers saying that self-represented litigants are either *much more* or *more* common. Judges were somewhat more likely to say that self-represented litigants are *much more* common (53.3%) than were lawyers (45.1%). No respondents to either survey said that the number of self-represented individuals is *less* now; however, one judge did say that they are *much less* common, and 13.3% of judges said they do not know if the number has changed.

2.2.2 Reasons for Self-representing

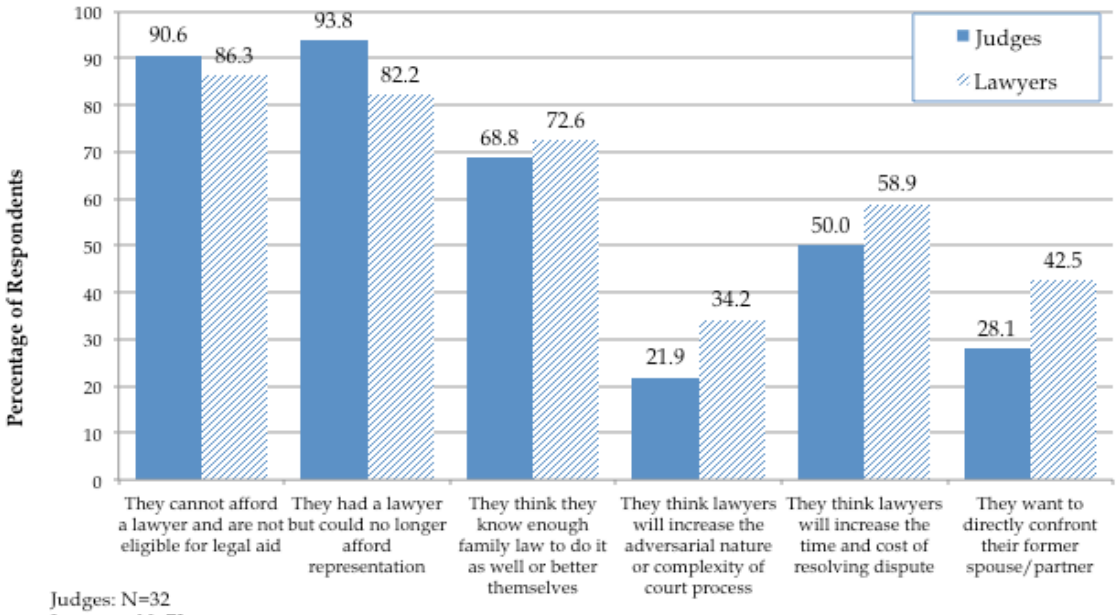
Respondents to both surveys were asked to indicate why they think family law litigants are self-represented by endorsing one or more of a number of statements provided in the surveys; see Figure 2.3. The responses of judges and lawyers were quite similar. The most common reasons for self-representation, selected by a substantial majority of both judges and lawyers, were that:

- self-represented parties cannot afford a lawyer and are not eligible for legal aid (90.6% of judges and 86.3% of lawyers), and

- self-represented parties initially had a lawyer but could no longer afford legal representation (93.8% of judges and 82.2% of lawyers).

Figure 2.3

Judges' and Lawyers' Opinions of Why Family Law Litigants Are Self-represented



Judges: N=32
Lawyers: N=73
Multiple response data (i.e., participants could choose more than one response)

Lawyers (34.2%) were somewhat more likely than judges (21.9%) to believe that parties self-represent because they think lawyers will increase the adversarial nature or complexity of the court process. Similarly, lawyers (42.5%) were more likely than judges (28.1%) to think that litigants self-represent because they want to directly confront their former spouse or partner.

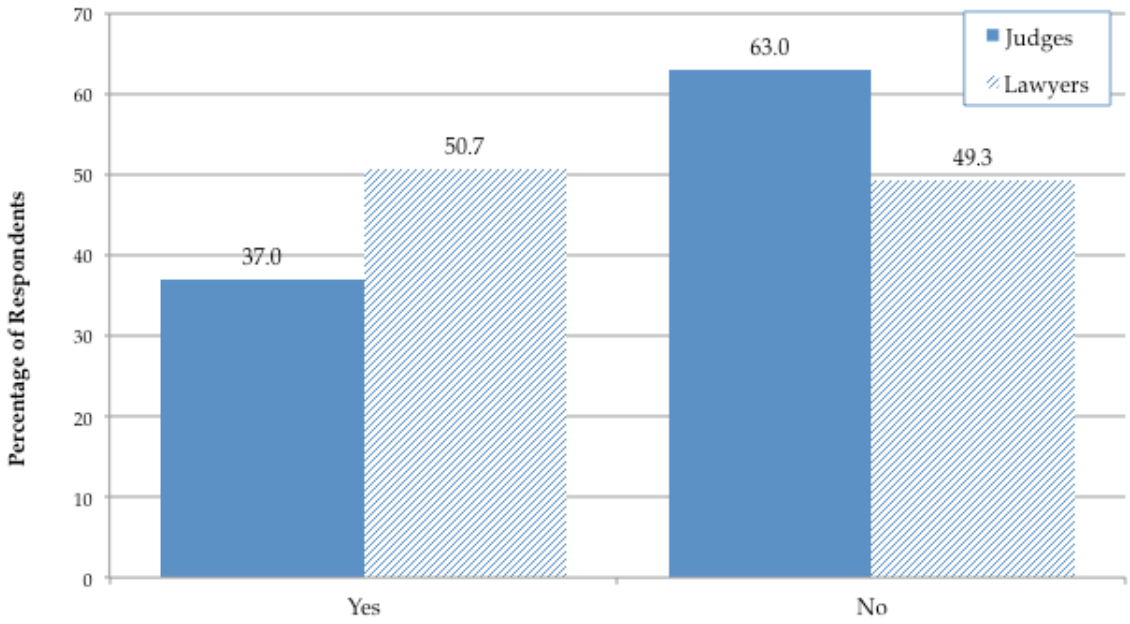
Respondents were asked if there were any other reasons why parties self-represent in family law matters. The most common other reason provided by both judges (37.5%, n = 8) and lawyers (20.8%, n = 24) was that such parties do not, or do not want, to accept the legal advice they have received. The second most common other reason provided by both judges (37.5%) and lawyers (12.5%) was that such parties suffer from mental health difficulties that impact on their interactions with the justice system.

2.2.3 Gender Differences in Self-representation

Judges and lawyers were asked whether they thought that men and women self-represent for different reasons, and their responses are presented in Figure 2.4. Lawyers were more likely to say that the decision to self-represent is related to gender (50.7%) than were judges (37%).

Figure 2.4

Judges' and Lawyers' Opinions Regarding Whether Men and Women Decide to Self-represent for Different Reasons



Judges: N=32; Missing cases=5
Lawyers: N=73; Missing cases=2

Respondents who believed that men and women decide to self-represent for different reasons were further asked why they thought this was the case. Their responses are shown in Table 2.1. Ten judges provided 13 comments and 36 lawyers offered 70 comments.

The most common explanations of the different reasons why men and women self-represent, given by both lawyers and judges, were that:

- women do not have the financial resources to hire a lawyer (69.4% of lawyers and 50% of judges), and

- men do not think they need lawyers (66.7% of lawyers and 30% of judges).

Lawyers (30.6%) were somewhat more likely than judges (10%) to say that men decide to self-represent because they seek confrontation or to control the process. Almost one-third of judges (30%) said men self-represent because they are more confident or aggressive; no lawyers offered a similar explanation.

Table 2.1

Judges' and Lawyers' Opinions on Why Men and Women Decide to Self-represent

Reasons for Self-representation	Judges		Lawyers	
	n	%	n	%
Women don't have the financial resources	*5*	**50.0**	*25*	**69.4**
Men don't think they need lawyers	*3*	30.0	*24*	66.7
Men want confrontation/want to control the process	*1*	10.0	*11*	30.6
Men are more confident/aggressive	*3*	30.0	--	--
Men and women have different views of the issues	*1*	10.0	--	--
Men think they can get a better deal negotiating with ex-partner	--	--	*3*	8.3
Women want to be represented by a lawyer	--	--	*3*	8.3
Men don't want to move the matter along	--	--	*1*	2.8
Men want to avoid conflict	--	--	*1*	2.8
Women feel only they can get their children's needs across	--	--	*1*	2.8
Women are more inclined to try and deceive the court than men	--	--	*1*	2.8

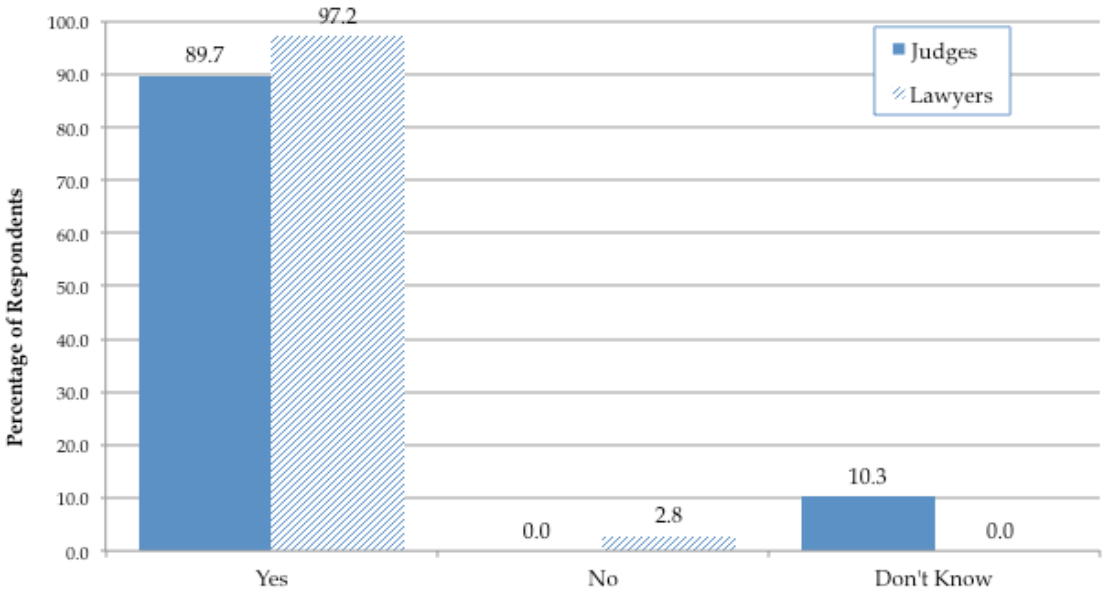
Judges: Total n providing comments = 10
Lawyers: Total n providing comments = 36
Multiple response data; percentages are based on the number of judges and lawyers providing comments

2.2.4 Effects of Self-represented Litigants on Case Characteristics

Respondents to both surveys were asked if they believe that the legal fees for litigants with counsel are increased when the other party is self-represented; their opinions are shown in Figure 2.5. All but two lawyers (97.2%) said that the expenses of the party with counsel are increased, and the substantial majority of judges (89.7%) agreed as well. Only two lawyers (2.8%) and no judges said that this is not the case; 10.3% of judges said they do not know.

Figure 2.5

Judges' and Lawyers' Opinions Regarding Whether Costs for Parties with Counsel Are Increased if the Other Party Is Self-represented



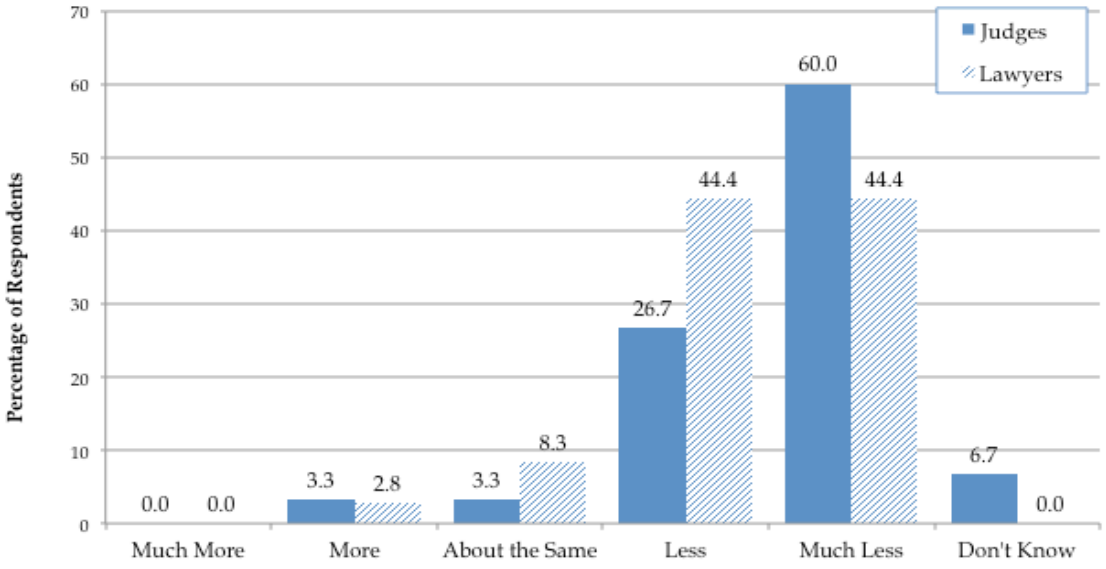
Judges: N=32; Missing cases=5
Lawyers: N=73; Missing cases=2
Lawyers were not given the option to respond "Don't Know"

Respondents to both surveys were also asked if they thought settlement is more or less likely in cases where one party is self-represented; see Figure 2.6. Most judges (86.7%) and lawyers (88.8%) said that settlement is either *less* or *much less* likely when there is a self-represented party. A higher proportion of judges (60%) than lawyers (44.4%) said settlement is *much less* likely in these cases. No respondents said that settlement is *much more* likely, and only 3.3% of judges and 2.8% of lawyers indicated that settlement is *more* likely in these cases.

Judges and lawyers were asked if they believed that self-represented litigants receive fair treatment from the bench; their answers are provided in Figure 2.7. Interestingly, over three-quarters of lawyers (77.8%) said these individuals receive *very fair* treatment from the bench, compared to just over one-half (53.1%) of judges. Judges (28.1%) were more likely to say that self-represented people receive *fair* treatment from

Figure 2.6

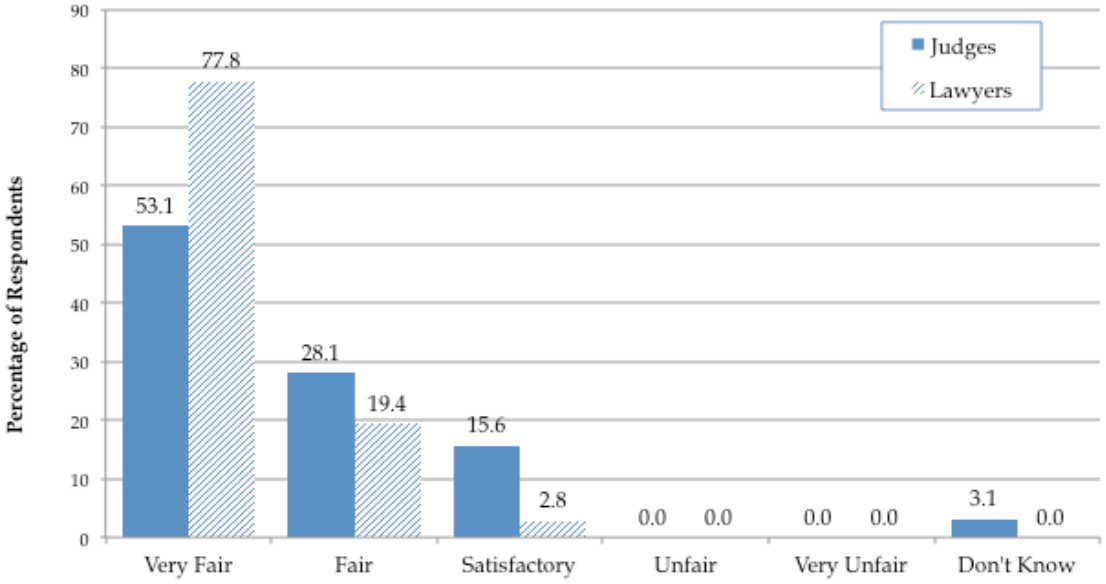
Judges' and Lawyers' Opinions Regarding Whether Settlement Is More or Less Likely if One Party Is Self-represented



Judges: N=32; Missing cases=2
Lawyers: N=73; Missing cases=1
Lawyers were not given the option to respond "Don't Know"

Figure 2.7

Judges' and Lawyers' Opinions Regarding Whether Self-represented Litigants Receive Fair Treatment from the Bench



Judges: N=32
Lawyers: N=73; Missing cases=1
Lawyers were not given the option to respond "Don't Know"

the bench than were lawyers (19.4%). Judges (15.6%) were also more likely than lawyers (2.8%) to state that self-represented parties receive *satisfactory* treatment from the bench. No judges or lawyers said that self-represented litigants receive either *unfair* or *very unfair* treatment from the bench.

2.2.5 Challenges Posed by Self-represented Litigants

Respondents to both surveys were asked whether certain specified challenges arise in cases involving at least one self-represented party, and their responses are provided in Table 2.2. When asked if challenges are posed because self-represented litigants have unrealistically high expectations of outcome, three-quarters of judges (75.1%) and almost all lawyers (89.6%) responded that this is *always* or *usually* the case. No respondents said this is *rarely* or *never* the case.

Table 2.2

Judges' and Lawyers' Opinions Regarding Whether There Are Added Challenges for Various Reasons in Cases Involving at Least One Self-represented Litigant

Reason	Always		Usually		Some-times		Rarely		Never		Don't Know[1]	
	n	%	n	%	n	%	n	%	n	%	n	%
Self-represented litigants have unrealistically high expectations of outcome												
Judges	*2*	6.3	*22*	**68.8**	*7*	21.9	*0*	0.0	*0*	0.0	*1*	3.1
Lawyers[2]	*19*	28.4	*41*	**61.2**	*7*	10.4	*0*	0.0	*0*	0.0	*0*	0.0
Self-represented litigants are less likely to settle												
Judges[3]	*2*	6.5	*11*	35.5	*15*	**48.4**	*0*	0.0	*0*	0.0	*3*	9.7
Lawyers[4]	*8*	11.9	*42*	**62.7**	*16*	23.9	*1*	1.5	*0*	0.0	*0*	0.0
Self-represented litigants look to opposing counsel for information and advice												
Judges[5]	*1*	3.3	*6*	20.0	*17*	**56.7**	*5*	16.7	*0*	0.0	*1*	3.3
Lawyers[6]	*11*	16.9	*33*	**50.8**	*18*	27.7	*3*	4.6	*0*	0.0	*0*	0.0

Judges: N = 32
Lawyers: N = 73
[1]Lawyers were not given the option to respond "Don't Know"
[2]Missing cases = 6
[3]Missing cases = 1
[4]Missing cases = 6
[5]Missing cases = 2
[6]Missing cases = 8

When asked if there are added challenges because self-represented litigants are less likely to settle, 42% of judges said this is *always* or *usually* the case, compared to 74.6% of lawyers. Judges (48.4%) were considerably more likely to say this is *sometimes*

the case than were lawyers (23.9%). No judges and only one lawyer said this is *rarely* the case, and no one responded that this is *never* the case.

Finally, judges and lawyers were asked if there are added challenges because self-represented litigants look to opposing counsel for information and advice. Lawyers (67.7%) were substantially more likely to say this is *always* or *usually* the case than were judges (23.3%), while judges were more likely to respond that this is *sometimes* (56.7%) or *rarely* (16.7%) the case. Just over one-quarter of lawyers (27.7%) said this is *sometimes* the case, and only 4.6% said that this is *rarely* the case.

2.3 Alternatives to the Traditional Delivery of Legal Services

Judges and lawyers were also asked their opinion regarding possible alternatives to the traditional delivery of legal services in which a lawyer is retained to manage all aspects of a client's case. When asked if they are aware of lawyers providing services to clients on a limited-scope retainer or unbundled basis, all judges who responded to this question (n = 31) said they are aware of the practice. However, when asked how often they had encountered this practice in specific aspects of the litigation process, such as for the limited purposes of representing litigants in court, for preparing written arguments, for conducting legal research or for providing legal advice, judges were most likely to respond that, in their experience, these practices occurred only *sometimes* or *rarely*.

Lawyers were asked in what percentage of their family law cases they have worked on a limited-scope retainer. Twenty-nine respondents (40.3%) indicated that they *never* provide unbundled services. Those who accept such retainers said that they did so in an average of 12% of their family law cases.

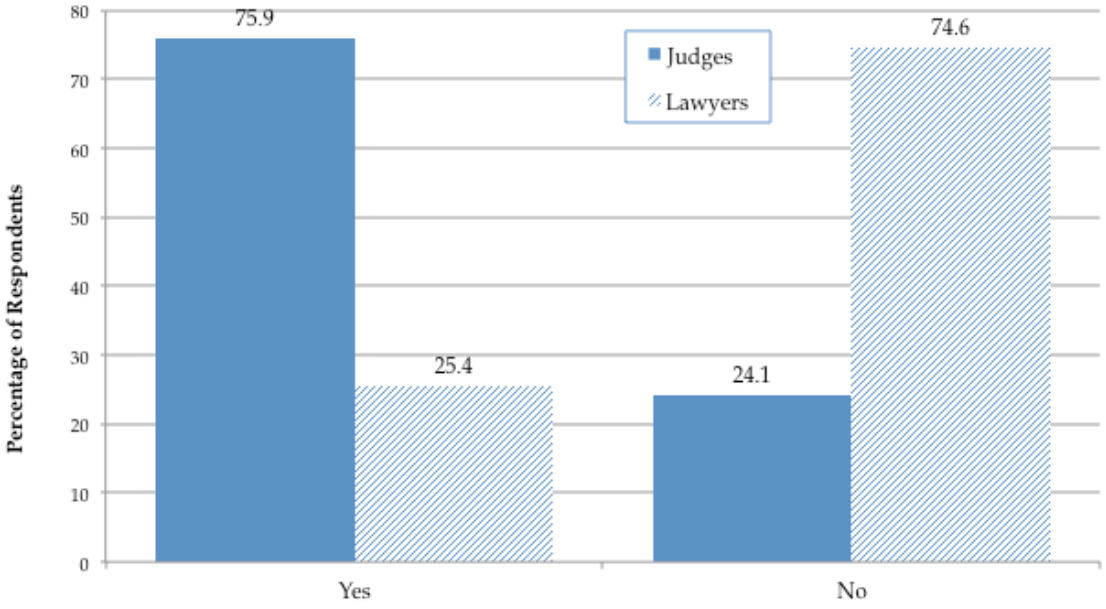
Both surveys asked participants if they approve of licensed paralegals providing limited services in family law cases; their responses are shown in Figure 2.8. An interesting pattern of results was obtained, with three-quarters of judges (75.9%) saying that they approve of this practice, and only one-quarter (25.4%) of lawyers approving.

Judges and lawyers who said that they approve of licensed paralegals providing legal services were asked what types of services paralegals could perform, and 15 judges provided 37 comments and 38 lawyers offered 69 comments. Responses addressing the potential services of paralegals are presented in Table 2.3; responses commenting on paralegals' capacity to provide legal services, and the conditions in or circumstances under which paralegals could provide such services, are presented in Table 2.4.[3]

[3] Responses to this question have been recoded since publication of the two earlier reports compared in this study.

Figure 2.8

Judges' and Lawyers' Opinions Regarding Whether They Approve of Licensed Paralegals Providing Limited Services in Family Law Cases



Judges: N=32; Missing cases=3
Lawyers: N=73; Missing cases=6

The most common response addressing the potential legal services of paralegals provided by both judges (40%) and lawyers (28.9%) was that paralegals could draft documents and court forms, including the forms necessary for the desk order divorce process. The next most common response from lawyers was that paralegals could assist with the organization and preparation of financial disclosure (7.9%). The next most common responses from judges were that: paralegals could assist with, or provide information about, court processes (26.6%); assist with financial disclosure (20%); and, assist with the gathering of information for, or provide information about, the completion of affidavits (20%).

Lawyers (71.1%, n = 27) were much more likely than judges (33.3%, n = 5) to answer this question in terms of concerns about the competence and skill of paralegals, whether paralegals should provide any legal services at all and limits which should be placed on the scope of paralegals' services. Of these responses, the most common comment from judges was that they would support paralegals providing services as long as paralegals did not provide advocacy or mediate (13.3%). Most lawyers expressed concerns about the quality of paralegal's work, the possibility that their services could increase litigants' expenses or require remedial work to repair (31.6%), and that paralegals lack the necessary training, skills and expertise to provide legal services (21.1%); these concerns were not expressed by any judges.

Table 2.3

Judges' and Lawyers' Views on Services that Could Be Provided by Paralegals:
Services Paralegals Could Provide

Comments	Judges		Lawyers	
	n	%	n	%
Preparation or drafting of documents and forms, including forms required for desk order divorce processes	*6*	**40.0**	*11*	**28.9**
Organizing and preparing financial disclosure / providing information on disclosure	*3*	20.0	*3*	7.9
Helping with court processes / providing information on court processes	*4*	26.6	*2*	5.3
Gathering information for affidavits / providing information on preparation of affidavits	*3*	20.0	*2*	5.3
Filing pleadings and documents in court	*2*	13.3	*2*	5.3
Preparing or printing out child support calculations	*2*	13.3	*1*	2.6
Helping prepare for hearing	*1*	6.2	*1*	2.6
Appearing in court as agent of party	*1*	6.2	*1*	2.6
Assisting with mediation / arbitration / other out-of-court dispute resolution processes	*2*	13.3	--	--
Calculating property division / preparing schedules for property division	*2*	13.3	--	--
Providing all services except advocacy	*1*	6.2	--	--
Assisting in matters after hearing	*1*	6.2	--	--
Providing research	*1*	6.2	--	--
Providing information on substantive law	*1*	6.2	--	--
Providing "triage services"	*1*	6.2	--	--
Helping prepare access schedules	*1*	6.2	--	--
Helping with applications, including applications in simple matters	--	--	*2*	5.3
Appearing in court to obtain consent orders / attend pretrial conferences / obtain court dates	--	--	*2*	5.3

Judges: Total n providing comments = 15
Lawyers: Total n providing comments = 38
Multiple response data; percentages are based on the number of judges and lawyers providing comments

Table 2.4

Judges' and Lawyers' Views on Services that Could Be Provided by Paralegals:
Concerns about Services Provided by Paralegals,
Conditions and Limitations of Services Provided by Paralegals

Comments	Judges		Lawyers	
	n	%	n	%
Would support if limited to providing information about processes / not providing legal advice	*1*	6.2	*3*	7.9
Would support if not providing advocacy / not mediating / not appearing in court	*2*	**13.3**	*1*	2.6
Would support providing all services if supervised by a lawyer	*1*	6.2	*1*	2.6
Would support providing only document preparation services	*1*	6.2	--	--
Concerned about poor quality of paralegals' work, greater expense to party resulting from paralegals' work, expense or need of remediating paralegals' work	--	--	*12*	**31.6**
Concerned that paralegals lack sufficient knowledge / skills / expertise / experience	--	--	*8*	21.1
Assistance services are already available	--	--	*4*	10.5
Concerned that paralegals lack a code of conduct / are not accountable	--	--	*3*	7.9
Concerned about loss of business for lawyer / undermining of role of lawyers	--	--	*2*	5.3
Would support if paralegals had same training as lawyers / same liability as lawyers	--	--	*2*	5.3
Concerned that services of paralegals would add unnecessary complications to process	--	--	*1*	2.6
Would support if limited to preparing financial disclosure for exchange between counsel only	--	--	*1*	2.6
Would support in cases where party cannot afford to retain counsel and does not qualify for legal aid	--	--	*1*	2.6
Rules of court limit who can appear as agent on behalf of a party and would exclude paralegals	--	--	*1*	2.6
Would support preparing documents if such documents included a statement that document was not prepared by a lawyer	--	--	*1*	2.6
Would support paralegals providing services if they have proper training	--	--	*1*	2.6

Judges: Total n providing comments = 15
Lawyers: Total n providing comments = 38
Multiple response data; percentages are based on the number of judges and lawyers providing comments

2.4 Respondents' Concluding Comments

The final question on both surveys asked judges and lawyers if they had any other comments about self-represented litigants in family law matters or issues of access to family justice in general. Responses were coded and are presented in Table 2.5.[4] Thirteen judges offered 17 comments and 30 lawyers provided 55 comments.

Table 2.5

Judges' and Lawyers' Concluding Comments Regarding Self-represented Litigants and Access to Family Justice

Services	Judges		Lawyers	
	n	%	n	%
Increasing access to various other programs to assist people to resolve family issues would be of assistance	*3*	23.1	*2*	6.7
Financial limits to legal aid should be expanded / incentives should be provided to legal aid roster lawyers	*1*	7.7	*3*	10.0
Addition of duty counsel to family chambers is helpful	*1*	7.7	*2*	6.7
Public education should be undertaken to create awareness of options for lawyers' legal services	*1*	7.7	*1*	3.3
Need a mandatory intake process before a litigant goes before a judge / need a triage process	*6*	**46.2**	--	--
The number of interlocutory applications a self-represented litigant can bring should be limited	*2*	15.4	--	--
Family law matters have no place in the litigation process	*2*	15.4	--	--
Self-represented litigants need early legal advice	*1*	7.7	--	--
Courts favour self-represented litigant to the detriment of represented party / do not require compliance with rules of court	--	--	*9*	**30.0**
Legal expenses of party with counsel are increased when a party is self-represented	--	--	*7*	23.3
Costs against self-represented parties are not awarded	--	--	*4*	13.3
Self-represented litigants are very time-consuming to manage	--	--	*3*	10.0
Self-represented litigants lack civility / are not obliged to act ethically	--	--	*2*	6.7
Need to communicate with self-represented litigants entirely in writing is tiring and expensive / communication from self-represented litigants is excessive	--	--	*3*	10.0
Court requires counsel to perform tasks self-represented litigants cannot / will not perform	--	--	*2*	6.7

[4] Responses to this question have been recoded since publication of the two earlier reports compared in this study.

Services	Judges		Lawyers	
	n	%	n	%
Cases of duty counsel and self-represented litigants should be put to the end of the list in chambers	--	--	*2*	6.7
Male self-represented litigants are extremely difficult / self-represented litigants bully women	--	--	*2*	6.7
Forms that are self-represented litigant friendly have encouraged parties to represent themselves	--	--	*1*	3.3
Self-represented litigants are difficult to negotiate with	--	--	*1*	3.3
Self-represented litigants should be forced to use duty counsel	--	--	*1*	3.3
Self-represented litigants are burning me out	--	--	*1*	3.3
Rules of court and administrative processes continue to be intensified rather than streamlined or simplified	--	--	*1*	3.3
Self-represented litigants are here to stay	--	--	*1*	3.3
I wish there were less self-represented litigants	--	--	*1*	3.3
Expand Dispute Resolution Officer process to ensure mediation is meaningful	--	--	*1*	3.3
Case management programs should be mandatory for cases involving self-represented litigants, case workers should ensure case is moving along	--	--	*1*	3.3
If one party is self-represented, the other party should be encouraged to self-represent also and hire a lawyer on a limited retainer	--	--	*1*	3.3
I sympathize with self-represented litigants and do think that family law lawyers charge too much	--	--	*1*	3.3
Need to promote the role of lawyers in the justice system and the value of legal advice	--	--	*1*	3.3
Legal representation should be readily accessible through private retainers, legal aid and pro bono services	--	--	*1*	3.3

Judges: Total n providing comments = 13
Lawyers: Total n providing comments = 30
Multiple response data; percentages are based on the number of judges and lawyers providing comments

The most frequent of the comments provided by lawyers were that: the court favours self-represented litigants and does not hold them to the same standard as litigants with counsel (30%); the legal expenses for represented parties increase when another party is self-represented, with the represented party bearing a disproportionate share of the overall legal expenses associated with the proceeding (23.3%); and, the courts do not make awards of costs against self-represented parties often enough or in a high enough amount (13.3%).

The most common comment provided by judges was that there should be a mandatory intake or triage process that occurs in advance of a matter going before a judge (46.2%). The next most common comments were that access to programs designed to assist people in resolving family law disputes should be improved for self-represented litigants (23.1%), and that limits need to be applied to the number of applications self-represented parties are able to bring (15.4%).

The benefits of increasing access to dispute resolution programming was the commented on by both judges (23.1%) and lawyers (6.7%). Some judges (7.7%) and lawyers (10%) also agreed that legal aid should be available to more litigants and that lawyers should be encouraged to take legal aid cases. Judges (7.7%) and lawyers (6.7%) agreed that the addition of duty counsel to family chambers has been beneficial.

3.0 SUMMARY AND CONCLUSIONS

This report presented a comparative analysis of two surveys on self-represented litigants completed by judges of the Alberta Court of Queen's Bench and by Alberta family law lawyers. The surveys asked participants a number of questions regarding their experiences with and opinions of self-represented litigants in family law matters and the effects of self-represented litigants on case outcomes. Judges and lawyers were also asked their views on alternatives to the traditional delivery of legal services in family law matters. This chapter presents a summary of the survey findings, the conclusions drawn from these findings and recommendations for further research.

3.1 Summary of Survey Findings

3.1.1 Background Information

- Approximately equal numbers of judges identified as female and male, while almost three-quarters of lawyers identified as female.

- Respondent lawyers had practiced law for an average of 17 years; respondent judges had served on the bench for an average of 10.2 years.

- An average of 39.6% of judges' cases in the past year had involved family law matters; lawyers said that 84.4% of their current practice volume is in family law.[5]

3.1.2 Experience with Self-represented Litigants

- On average, 19.5% of lawyers' cases in the past year involved a self-represented party for *part* of the family litigation process while judges indicated that an average of 47.5% of their family law cases in the past year had a self-represented party for *part* of the litigation process.

- Lawyers said that an average of 13.9% of their family law cases in the past year had a self-represented party for *all* of the family litigation process; judges said that an average of 34.8% of their family law cases had a self-represented party for *all* of the family litigation process.

- The substantial majority of both judges and lawyers indicated that the number of self-represented litigants in the family justice system has increased since 2007.

[5] The survey of Alberta lawyers was targeted to lawyers practicing family law in particular; the Alberta Court of Queen's Bench is a generalist court whose judges are without specialization (Renke, 2003).

3.1.3 Reasons for Self-representing

- The substantial majority of both judges and lawyers believed that litigants are self-represented because they cannot afford a lawyer and are not eligible for legal aid, or that they initially had a lawyer but could no longer afford legal representation.

- Lawyers were substantially more likely than judges to say that parties are self-represented because they think that lawyers will increase the adversarial nature of the process or because they want to directly confront their former partner.

3.1.4 Gender Differences in Self-representation

- Lawyers were almost equally divided as to whether men and women decide to self-represent for different reasons. Only 37% of judges believed that men and women self-represent for different reasons.

- Among lawyers and judges who believe that men and women decide to self-represent for different reasons, the most common explanation is that women do not have the financial resources to hire a lawyer, followed by the opinion that men do not think that they need a lawyer.

- 30.6% of respondent lawyers said that men self-represent because they seek confrontation or to control the litigation process, compared to 10% of respondent judges making the same observation.

3.1.5 Effects of Self-represented Litigants on Case Characteristics

- The substantial majority of lawyers and judges said that in cases where one party is self-represented, the legal expenses of the party with counsel are increased. Only two lawyers and no judges believed this was not the case.

- Most judges and lawyers believed that settlement is less likely in cases where there is a self-represented litigant.

- Lawyers were more likely than judges to say that self-represented litigants receive very fair treatment from the bench. No judges or lawyers said that self-represented parties receive unfair treatment from the bench.

3.1.6 Challenges Posed by Self-represented Litigants

- The substantial majority of lawyers and judges said that added challenges are posed in cases with self-represented litigants because these litigants have unrealistically high expectations of outcome.

- A higher proportion of lawyers than judges said that there frequently are added challenges in cases involving self-represented litigants as self-represented litigants are less likely to settle. Only one lawyer and no judges believed this was not the case.

- Lawyers were substantially more likely than judges to say that there frequently are added challenges in cases with self-represented litigants because these individuals look to opposing counsel for information and advice.

3.1.7 Alternatives to the Traditional Delivery of Legal Services

- While almost all judges were aware of lawyers providing legal services to clients on a limited-scope retainer or unbundled basis, judges had encountered this practice infrequently and slightly less than two-thirds of lawyers said that they provided legal services on this basis.

- Lawyers providing legal services to clients on a limited-scope retainer or unbundled basis said that they did so in an average of 12% of their family law cases.

- Three-quarters of judges said that they approve of licensed paralegals providing limited legal services in family law cases; only one-quarter of lawyers approved of paralegals providing such services.

- The most common legal services both judges and lawyers said could be performed by paralegals were the drafting of documents and forms, and the organization and preparation of financial disclosure.

- Among respondents commenting on the suitability of paralegals to provide legal services, judges believed that paralegals should be restricted from giving legal advice and providing advocacy services. A fifth of lawyers expressed concerns about the adequacy of paralegals' training, skills and expertise to provide legal services, and almost a third expressed concerns that paralegals provide poor quality services which may delay the conclusion of a dispute or require additional expense to correct.

3.2 Conclusions and Recommendations

Protecting and promoting Canadians', and Albertans', access to justice is one of the most critical issues facing the justice system at present, as reflected in the final reports of the Action Committee on Access to Justice in Civil and Family Matters (2013) and the Canadian Bar Association's Access to Justice Committee (2013). The report of Boyd *et al*. (2014) summarizes the access to justice problem in terms of the complexity

and cost of the system and argues that the problem is particularly acute for self-represented litigants, especially for self-represented litigants involved in family law matters.

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

3.2.1 Conclusions

Judges of the Alberta Court of Queen's Bench and Alberta family law lawyers clearly believe that the number of self-represented litigants has increased since 2007; lawyer respondents were nearly unanimous in holding this view. The reported increase of self-represented litigants in Alberta tracks a trend observed in jurisdictions elsewhere in Canada and in the United States (Gray, 2013; Birnbaum & Bala, 2012; Birnbaum, Bala & Bertrand, 2013; Action Committee, 2013; Canadian Bar Association, 2013; Greacen, 2002). One lawyer respondent offered the comment that:

> *I think self-represented litigants are here to stay. Self-representation was virtually unknown when I started 23 years ago, and has gradually increased every year, for no doubt a variety of reasons – economic reasons, changes in social attitudes and access to legal and other information on line.*

The potential explanations for litigants' self-representation provided by the surveys were either financial, suggesting that a party may have no choice but to represent him- or herself, or non-financial, suggesting that a party may have made the voluntary choice to self-represent. All potential explanations provided by respondents' comments were either voluntary in nature or associated with mental health difficulties.

Substantially more respondents believed that self-representation is involuntary rather than voluntary.[6] Judges (92.2%) were more likely than lawyers (84.2%) to endorse involuntary explanations for self-representation. This pattern was reversed for voluntary explanations, with fewer judges (42.2%) than lawyers (52%) endorsing such explanations for self-representation. Although more study is required, possible explanations for this discrepancy in the views of lawyers and judges may include:

- Lawyers' sensitivity to widespread negative public attitudes about the profession (Fernandez, 2007) and the criticism implicit in some explanations of voluntary self-representation (for example, "lawyers will increase the adversarial nature or

[6] These findings are consistent with Professor Macfarlane's conclusion that "the primary reason for self-representation is financial" in her recent study of self-represented litigants in Alberta, British Columbia and Ontario (Macfarlane, 2013).

complexity of the court process" and "lawyers will increase the time and cost of resolving the dispute").

- Lawyers' experiences of litigants who are prepared to represent themselves in face of a party represented by counsel, and who may be more aggressive or more willing to take more risks.

- Judges' experiences of self-represented litigants that, unlike lawyers' experiences, include cases in which no party is represented by counsel and negative motivations for self-representation (for example, "they want to directly confront their former spouse" and an unwillingness to accept legal advice) may be less prevalent.

Respondents generally do not support the view that men and women self-represent for different reasons; lawyer respondents were evenly split on this question, and most judge respondents (63%) stated that there was no difference between the reasons men and women self-represent. However, among respondents holding the view that gender is a factor, most believed that women were more likely to be impelled to self-representation for financial reasons (respondent judges 50%, respondent lawyers 69.4%). The comments of three respondents are characteristic of this view:

> *More often women are made impecunious by the divorce or separation and cannot afford the cost of counsel.*
>
> *Women tend to decide to be self-represented mainly due to the high cost of hiring a lawyer. Men tend to be self-represented for other reasons, such as thinking they are smarter than a lawyer and can handle it themselves or thinking it will lessen the time and expense of the process.*
>
> *Women are doing it because they have no other option (can't afford a lawyer and don't qualify for legal aid); men do it as they believe they can do a better job and want to confront the system directly.*

These opinions are consistent with the disproportionate negative financial impact separation has on women than men (Wiegers & Keet, 2008; Crowley, 2008). One well-known American study, for example, found that only 25% of men living in poverty during their marriages remained in that state after separation, while 75% of women living in poverty remained in poverty after separation (Bianchi, Subaiya & Kahn, 1999).

Among judge and lawyer respondents holding the view that gender is a factor, the next most common explanations for self-representation are that men are more likely to decide to self-represent because they believe they don't need counsel or seek confrontation (respondent judges 30%, respondent lawyers 66.7%). The following three comments are representative of this view:

More men than women think they can do it as good or better than the lawyers they have considered, so self-represent though able to afford it.

[With] women it is more driven by finances. [With] men [it] is more often driven by arrogance and wish for confrontation.

Men like to think they can do it better and get off cheaper, usually by being bullies.

One potential explanation for the differences between the views of judges and lawyers on the role of gender in self-representation may involve judges' contact with parties in the exclusive context of litigation and lawyers' contact with individuals as both clients and opposing parties, in a range of legal contexts that include litigation as well as negotiation and mediation, and in matters that do not require the commencement of proceedings.[7] Lawyers may, as a result, have a somewhat broader experience dealing with unrepresented parties and a more intimate understanding of the circumstances of their clients.

This explanation may also provide a reason for the differences between judges and lawyers on the questions of whether represented parties' legal expenses are increased where a party is self-represented and whether settlement is less likely where a party is self-represented:

- The large majority of lawyer and judge respondents believed that where a party is self-represented, the legal expenses of parties with counsel increases. Most (89.7%) judge respondents supported this view, with the remainder saying that they did not know. Among lawyer respondents, 97.2% stated that the expenses to represented parties increases, with the remainder saying they did not.

- On the question of the likelihood of settlement, judges' views were more polarized than those of lawyers: 26.7% of judge respondents stated that settlement was *less* likely and 60% said settlement was *much less* likely in cases involving a self-represented litigant; an equal number of lawyer respondents (44.4%) stated that settlement was *less* or *much less* likely.

Lawyers are more likely than judges to be precisely aware of how clients' legal expenses increase when the opposing party is self-represented, and will be involved in the settlement of matters that have never been the subject of court proceedings as well as those which have.

In answer to two related questions, a significant majority of judges and lawyers said that additional challenges *usually* or *sometimes* arise because self-represented

[7] Lawyers may additionally be more sensitive than judges to the criticism of the profession implied in some of the explanations given for men's decisions to represent themselves.

litigants are less likely to settle, which likely relates to respondents' beliefs that self-represented litigants *always* or *usually* have unrealistically high expectations as to outcome. Respondents' answers to these questions reveal another interesting difference in the views of judges and those of lawyers:

- 48.4% of judges said that challenges arise because self-represented litigants are *sometimes* less likely to settle, while 35.5% said that they are *usually* less likely to settle. In contrast, 23.9% of lawyers said that said that challenges arise because self-represented litigants are *sometimes* less likely to settle, while 62.7% said that they are *usually* less likely to settle.

- The same mirroring of opinion is apparent in respondents' views as to whether challenges arise because of self-represented litigants' unrealistic expectations of outcome. Two-thirds (68.8%) of judges said that this is *usually* the case and 21.9% said that this is *sometimes* the case, while 61.2% of lawyers said that this is *usually* the case and 28.4% said that it is *always* the case.

In both cases, the views of judges are more moderate than those of lawyers. Possible explanations for the polarity of judges' and lawyers' views on the expectations of self-represented litigants may involve lawyers' general hubris and conviction in the correctness of their positions, and the evaluation bias arising from their role as advocates; judges, as neutral arbiters, would be better positioned than counsel to objectively evaluate the merits of the parties' positions. An explanation for the differences between judges' and lawyers' views of the challenges arising from a decreased likelihood of settlement may again stem from judges' exposure to only those cases which proceed to litigation and lawyers' broader exposure to the settlement of family law disputes both in and out of court.

Another difference in the views of judges and lawyers is apparent in their answers to the question of whether self-represented litigants are treated fairly by the bench. Three-quarters (77.8%) of lawyer respondents said that such parties receive *very fair* treatment compared to 53.1% of judge respondents, a split that was reversed among those stating that such parties received merely *fair* or *satisfactory* treatment (22.2% of lawyers, 43.7% of judges).[8] It may be the case that judges are more keenly aware than lawyers of the difficulties inherent in their duty to provide assistance to self-represented litigants while remaining impartial and ensuring a fair hearing (National Judicial Institute, 2014), and are thus more critical of their treatment of such litigants. In *Olson v. Yorkton Carpetland Ltd.*, 2002 SKQB 361, Mr. Justice McIntyre characterised this tension as follows:

> *There is always a danger for the trial judge when dealing with self-represented litigants and attempting to explain the process or the applicable legal principles.*

[8] No respondents said that self-represented litigants receive *unfair* or *very unfair* treatment from the bench.

The trial judge has to be careful so as to not cross the line and give the appearance of taking sides in the proceeding.

These findings may also suggest that lawyers are, despite the objections expressed by some in reply to another survey question,[9] comfortable with the extent of the assistance provided by the bench to self-represented litigants.

The most striking differences in respondents' views concern the provision of legal services by paralegals, which was supported by 75.9% of judges and opposed by 74.6% of lawyers. The extent of lawyers' opposition is noteworthy in light of the findings in Bertrand *et al.* (2012) showing that two-fifths of lawyers do not provide services on a limited or unbundled basis, and that those who did provide services on such a basis did so in an average of only 12% of their family law files.[10]

Each survey asked respondents to comment on the services they believed paralegals could provide; many respondents answered this question as asked, others, however, answered this question in terms of their concerns about the services paralegals could or should provide, and the conditions or limitations which should perhaps be imposed on paralegals' provision of services. Both modes of reply yielded interesting data.

In terms of the services paralegals could perform, most respondents agreed that paralegals could prepare and draft documents and court forms (judges 40%, lawyers 28.9%). All other potential services received far less support, with the next most frequent comments agreeing that paralegals could: organize financial disclosure; help with or provide information about court processes; gather information for or provide information about affidavits; and, file documents in court. Lawyer respondents tended to propose services that are largely mechanical in nature and require no or a minimal exercise of discretion, such as helping with procedural tasks, appearing in court on uncontested simple matters and preparing disclosure. Judge respondents, on the other hand, tended to propose services demanding the exercise of a greater degree of discretion, such as assisting with out-of-court dispute resolution processes, helping with court processes, calculating property division, providing research and preparing access schedules.

The nature of respondents' comments expressing concern about paralegals' potential services partially explain the positions taken by judges and lawyers. The comments provided by judges tended to support an expansive role for paralegals'

[9] The final question of the Survey on Experiences with Self-represented Litigants asked whether lawyers had any concluding comments regarding self-represented family law litigants or access to family justice.

[10] According to the Boyd *et al.* (2014) study, all respondent judges were aware of lawyers providing services on a limited or unbundled basis but they experienced litigants using lawyers' services in this manner only *sometimes* or *rarely*. These findings accord with the observation in the Macfarlane (2013) study that "Relatively few [self-represented litigants] were successful in accessing legal services on [an unbundled] basis despite a sustained effort."

services, save that they should not advocate, provide legal advice, appear in court or mediate, and perhaps should be supervised by a lawyer. The inclusive approach of judges is typified by one respondent:

> *With respect, perhaps the better questions might be what types of services should they not be permitted to perform? Why?*

Lawyers' comments largely focussed around two themes: concerns about the quality of paralegals' services, which lawyers generally believed to be poor, delay and expense occasioned by paralegals' errors and the need to correct inadequate or incorrect materials prepared by paralegals; and, concerns that the training received by paralegals is inadequate and that they do not have the skills, experience or expertise to provide legal services. The remarks of three lawyer respondents are characteristic of these concerns:

> *Paralegals are not lawyers and do not have the education or expertise to properly advise someone on all aspects of the law.*

> *They do not have the training. … [They] do not properly apply the law. [They] are not taught how to read cases and do not have the duty to keep up with changes in the law.*

> *They are not qualified to provide legal services and in most cases wind up costing clients more money because they are not qualified.*

The differences between the views of judges and those of lawyers may be explained by judges' sensitivity to the increasing number of self-represented litigants and a desire that they have at least some help navigating their way through the system, even if that help does not come at the high standard offered by counsel. As it was put in the report of the Family Justice Working Group to the Action Committee on Access to Justice in Civil and Family Matters (2013):

> *We see the mounting pressure of unmet family legal need on our courts where increasingly large numbers of self-represented litigants struggle to use a system designed for highly trained professionals. At the same time, research makes increasingly clear the cost and suffering, in the form of additional legal, social, health and financial problems that result from the failure to resolve family law issues at the first instances.*

Lawyers, on the other hand, may be more attuned to the nuanced and highly circumstantial nature of family law and its special intricacies. Quoting again from the report of the Family Justice Working Group:

> *Disputes arising out of family separation … typically involve complex interpersonal relationships, highly charged emotions, vulnerable family members, and outcomes that are particularly consequential to the lives of all involved.*

Many of the lawyer respondents clearly believe that the provision of family law services requires an amount of training and skill unlikely to be possessed by paralegals, and, likely as a result, see the utility of paralegals as lying primarily in areas which are not demanding of that training and skill, and can be delegated to paralegals without significant risk of adverse consequences to the client.

Finally, respondents were asked if they have any further comments regarding self-represented litigants and access to justice. Their observations clustered around two subjects: procedural changes that would assist self-represented litigants; and, concerns and complaints about the impact of self-represented litigants in the litigation process.

The comments of all judge respondents and a minority of lawyer respondents concerned innovations such as creating or expanding programming to assist self-represented litigants, expanding legal aid services and eligibility, and changing court processes. Judges most commonly commented on the need for mandatory triage or other intake processes. The comment shared by most judges and lawyers concerned the need to provide additional services to self-represented litigants, such as early access to dispute resolution options other than court. The comments of three judges are representative of these concerns:

> *The system must recognize and accommodate [self-represented litigants] by providing significant resources to educate, assist and direct the parties to [alternative dispute resolutions processes] etc.*

> *There needs to be a triage system – having [self-represented litigants] come directly to court or chambers is as inefficient as having them walk into the operating room to explain their medical problem.*

> *No [self-represented litigant] should be permitted before a judge without having gone through a mandatory intake process – similar to that provided by [Family Justice Services] in family provincial court.*

Two judge respondents also commented that the adversarial litigation process may not be the process best suited for the resolution of family law disputes:

> *Family law has no place in the litigation process.*

> *Court with the basis of (1) adversarial system and (2) "win on the balance of probabilities" is a lousy place to determine family law matters. Family problems should be dealt with in a similar way as landlord and tenant problems … A*

government funded board and educational/mediation/decision making institution should be instituted and put in a problem solving environment and out of the courts but for appeals and property matters.

The comments of most lawyer respondents addressed complaints and concerns about the impact of self-represented litigants. Lawyers most commonly commented that judges appear to favour self-represented litigants and extend to them a leniency not afforded to lawyers. One respondent said:

It is frustrating to deal with persons who are not held to the same standard as you are and it is difficult to explain to your clients why they have to pay to have things done correctly and the other side does not and in not doing costs your client additional money for extra [court] appearances etc.

Lawyers' next most common comments concerned the increase in their clients' expense resulting from the self-representation of an opposing party, and a perception that costs are not awarded against self-represented litigants as frequently as they should be, or in high enough amounts:

My sense is that that self-represented [parties] do not get assessed with court costs in the same frequency as lawyer represented clients in any contested application, whether because the lawyer is not requesting or the court is using its discretion in dealing with self-represented [parties].

The court should be more willing to put costs against [self-represented litigants] if they are bringing applications that are without merit.

Almost half of lawyer respondents offered comments complaining generally about self-represented litigants or about specific concerns such as self-represented litigants' civility and approaches to conflict, the added effort and time required to deal with self-represented litigants, and the difficulty of negotiating with self-represented litigants.

The difference between judges' general comments on self-represented litigants and access to justice and those of lawyers is likely attributable to the different roles judges and lawyers play in the justice system. Lawyers, being responsible for the day-to-day management of their clients' legal disputes, from routine correspondence to the negotiation of dates for court appearances to the resolution of disputes not warranting applications to court, have much more contact with self-represented parties than judges, and this contact usually occurs in less formal and less restrained circumstances than court. As a result, lawyers are thus more likely to: be exposed to the vicissitudes of conflict and compromise with self-represented litigants; be personally blamed by self-represented litigants for the demands of legal processes and adverse outcomes; and, be intimately familiar with the toll taken by litigation and conflict on clients' wellbeing and

financial security. A degree of disgruntlement is perhaps to be expected, and may explain some of lawyers' less temperate comments:

> *It makes my blood boil when unrepresented litigants get free legal advice from the judge deciding their case!!!*
>
> *My challenge with my current 3 files with [self-represented litigants] is how to contact them: all in writing is tiring and expensive. It's hard to negotiate and yet be so careful to not "bully" or do anything they'll find uncomfortable.*

Judges, on the other hand, do not have the same frequency and varied scope of contact with self-represented litigants, and interact with such litigants almost wholly in the context of hearings, trials and other formal appearances in court. As a result of this and judges' larger responsibility for the administration of justice generally, judges' comments largely reflect a systemic perspective and their concerns tend to focus on ways that court processes and programming could be improved or adapted to better facilitate self-represented litigants' transit though the justice system and moderate their consumption of judicial and other resources.

It is clear that the trends evident in jurisdictions such as Ontario and British Columbia are also present in Alberta. More litigants are representing themselves in family law matters and their sometimes unrealistic goals and expectations, combined with their unfamiliarity with the law and court processes, are negatively impacting on the resolution of these cases short of trial, the expenses incurred by litigants with counsel, and the costs incurred by the court system.

Alberta judges and lawyers agree that the number of self-represented litigants in family law matters is increasing, that cases involving self-represented litigants are less likely to settle without trial, and that a party's self-representation increases the legal expenses of parties with counsel. Although they agree that self-represented litigants usually have unrealistically high expectations as to the outcome of their cases, they also agree that self-represented litigants are treated very fairly by the bench. Where the views of judges and lawyers differ substantially, the differences may usually be attributed to judges' exclusive contact with self-represented litigants in the context of litigation, compared to lawyers' contact with such litigants in a variety of contexts other than court.

Alberta judges and lawyers have the most important differences of opinion in relation to the potential role of paralegal services. Almost the same proportion of judges support the use of paralegals' services in family matters as lawyers who oppose their use. Judges' support for the use of paralegals appears to be curative in nature and aimed at providing some help, any help, to unrepresented litigants, and many of the judges in favour of the increased use of paralegals are prepared to give them a substantial role in the resolution of family law disputes which includes the exercise of

discretion and judgment traditionally within the responsibilities of counsel. Lawyers' opposition to the use of paralegals is largely predicated on concerns about paralegals' training and competence, and the delay, cost and injury unskilled services could potentially wreak upon clients. Likely as a result, the services lawyers envision paralegals providing are largely mechanical tasks requiring little discretion and thus occasioning minimal risk to the client.

3.2.2 Recommendations for Further Research

A number of recommendations for addressing the needs of self-represented litigants and their increasing involvement in the family justice system arise from the results of the surveys of judges and lawyers:

- To what extent do people voluntarily self-represent because of negative attitudes about lawyers? If voluntarily self-representation for this reason is commonplace, the Law Society of Alberta and Canadian Bar Association Alberta should attempt to remediate public perception of family law lawyers and provide education on the services lawyers provide.

- To what extent do people voluntarily self-represent in order to control the process, to confront their former partner or to otherwise gain a tactical advantage that would be unavailable if represented by counsel? Would public legal education efforts provide litigants with a better understanding of the legal system and reduce this motivation for self-representation?

- To what extent do people self-represent as a result of mental health issues? Could a triage process assist in identifying such individuals? Could court processes, such as early and continuous case management, or social services, such as counselling or litigation support, be adopted to better accommodate such individuals within the court system?

- Do women involuntarily self-represent for financial reasons more often than men? If so, and if the difference is significant, Legal Aid Alberta should investigate eligibility criteria that would result in representation being provided for more women.

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

- Does the provision of legal services by limited scope retainers improve self-represented litigants' access to justice? Does it improve the speed and efficiency with which their cases are resolved? Is it cost effective and profitable for counsel? If so, the Legal Education Society of Alberta should undertake professional

education regarding the benefits of this model of legal service delivery, and the Law Society of Alberta should consider revising its rules and code of conduct as necessary to facilitate the provision of limited scope services by lawyers.

- Research should be conducted into the experiences of other jurisdictions, such as British Columbia, which have expanded the services of paralegals. Are their services effective in increasing access to justice? What is the rate of negative outcomes for cases involving paralegals compared to cases in which similar work is provided by counsel? If the use of paralegals improves access to justice, the Government of Alberta should establish a pilot project to determine whether the use of paralegals, working under the supervision of lawyers, is effective in reducing legal expenses and improving access to legal services as recommended in the report of the Law Society of Alberta's Alternative Delivery of Legal Services Committee (2012).

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GLOSSARY

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

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

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

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

Range: The lowest and highest responses to a question.

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

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