Responding to the New Normal: the Self-Represented Litigant Phenomenon

Dr Julie Macfarlane, Faculty of Law University of Windsor
The numbers

• In most family courts in Canada and the US, SRLs now outnumber represented parties

• This trend is spreading to civil and appeal courts

• The growth of self-representation in family and civil courts over the last 10-15 years has been dramatic
Why would anyone represent themselves?

The single greatest barrier to retaining counsel is the cost of legal services.
“It’s not that I think I can do this better than a lawyer, I have no choice. I don’t have $350 an hour to pay a lawyer.”
Not just the poor: study demographics

- 50% had a university degree
- 40% reported income of less than $30,000 a year and 57% less than $50,000 a year
- Almost 20% reported income between $50-75,000, 12% between $75-100,000 and 6% over $100,000
- These results consistent with US studies
THE AFFORDABILITY PUZZLE

Legal costs

Perceived value of legal services

Self-Help culture

Insufficient resources
THIS MEANS THAT IN 2014, SRLs ARE DIVERSE AND COME FROM ALL SECTORS AND STRATA OF SOCIETY
This makes the (historical) distinction between “unrepresented” and “self-represented” litigants unclear - and unhelpful in understanding the SRL Phenomenon
53% of the study sample had begun with a lawyer, but ran out of funds/willingness to pay.

86% of the sample sought legal advice.
“It was far harder than I had ever imagined – it drained me in every way”
Meaningful responses to the SRL challenge

• Challenging the stereotype and relying on empirical data for information

• Working to accepting the “new normal” and developing options to make SRLs more functional in the tribunals and the courts
Including:

- More efficient mobilisation of legal information services
- Form simplification
- SRL orientation and education
- Legal coaching
- On-line resources designed for SRLs
- Emotional support eg McKenzie friends