

# ACADEMIC LAW LIBRARIES AND SELF-REPRESENTED LITIGANTS\*

By Muriel St. John (Lefebvre)\*\*

## Abstract

*Self-represented litigants are growing in numbers and they are a concern in every sector of the legal community. These citizens use public institutions to do their legal research. In this article, I focus on academic libraries and academic librarians offering services to this clientele, a form of university outreach to the community. Academic law librarians play an intermediary role between self-represented litigants and the legal information they seek.*

## Introduction

As a law firm librarian in Edmonton in the 1990s, I was in charge of assisting articling students with their legal research. One day, one of the students said to me, “Muriel, I don’t know how anyone can afford these billable hours. I know I couldn’t afford them.” Later on, working at the University of Manitoba Law Library, these words came back to haunt me. And from what I have experienced, this articling student’s comment was not an exaggeration.

I recall in the 1980s there was a great deal of discussion about the implementation of “Legal Care” in Canada for all (like our healthcare coverage), and a special insurance for companies who needed legal advice on an ongoing basis. We hear nothing of this at the moment. But what we do hear about is the increase in *Pro Bono*:

While the unmet legal needs of the poor and the middle class increase dramatically, and legal aid budgets remain besieged, the focus of access initiatives has shifted to *pro bono* organizations. The creation of public interest organizations such as Pro Bono Students Canada (1996), Pro Bono Law Ontario (PBLO) (2002), Pro Bono Law British Columbia (2002), and Pro Bono Alberta (2007) has served as a catalyst for *pro bono* profile and activities throughout the country.<sup>1</sup>

In recent years, several provinces have established centres to provide assistance to self-represented litigants. These centres offer easy-to-use form packets, information on how to fill out court forms and which forms to use, online access to court information and in-depth information on family law and small claims matters. Examples of these programs are Alberta’s Law Information Centre or LInC,<sup>2</sup> British Columbia’s Supreme Court Self-Help Information Centre<sup>3</sup> and Nova Scotia’s Family Law Information Centre.<sup>4</sup> We also read about senior counsel at Calgary Legal Guidance acting as Duty Counsel for self-represented litigants and working closely with members of the Court of Queen’s Bench in Calgary’s family law chambers.<sup>5</sup>

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<sup>1</sup> Lorne Sossin, “The Public Interest, Professionalism, and Pro Bono Publico” (2008) 46 Osgoode Hall L.J. 131 at 141.

<sup>2</sup> Online: Law Information Centres (LInC)

<<http://www.albertacourts.ab.ca/CourtServices/LInCLawInformationCentres/tabid/275/Default.aspx>>.

<sup>3</sup> Online: BC Court Self Help Information Centre <<http://www.supremecourtselfhelp.bc.ca>>.

<sup>4</sup> Online: Nova Scotia Family Law Information Centre <<http://gov.ns.ca/just/FLIC>>.

<sup>5</sup> Michelle Christopher, “Unrepresented Litigants in Family Courts” (2003) 28:3 Law Now 45.

Furthermore, we read today about how the justice system is increasingly inaccessible to average Canadians. Self-represented litigants are a concern in every sector of the legal community. And we are to keep in mind the principle of the Canadian Judicial Council: “Judges, the courts and other participants in the justice system have a responsibility to promote opportunities for all persons to understand and meaningfully present their case, regardless of representation.”<sup>6</sup> For the purpose of this article, I am writing about academic law libraries generally while focusing specifically on the University of Manitoba Law Library. Also for the purpose of this article, I am using the term “self-represented litigants” or “unrepresented litigants” interchangeably.

The reality is that these citizens have legal problems and are representing themselves as many cannot afford legal counsel. And the fact is that the number of self-represented litigants in Canada is growing and will continue to grow. It is estimated that in some courts more than 50% of proceedings involve one or more unrepresented litigants.<sup>7</sup> We academic librarians who are on the front lines with self-represented litigants must adapt.

In some instances there are self-represented litigants who can afford a lawyer but prefer to take on their own case as they may have an interest in the law or have expressed dissatisfaction with lawyers.<sup>8</sup> However, we see only a small number of these cases in our library. We do get the occasional “career” and “recreational” litigant who has enough spare time and energy to conduct lengthy and repetitive litigation.<sup>9</sup> The general complaint with our clientele, nevertheless, is that they would like to have a lawyer but cannot afford one. Some litigants fall into a grey area where they could afford to pay a lawyer but only by incurring debt. The harsh reality is that the cost of full legal services is beyond the reach of many people.<sup>10</sup>

### **Academic Law Libraries**

When I worked at the University of Alberta Law Library in the 1970s, we served the general public, but they were small in number and we assisted them in a very limited way. Now, working at the University of Manitoba Law Library, we spend a great deal of time working with self-represented litigants.

Our primary role, of course, is to provide legal information and reference services to our law students and law faculty. We also serve professors and students from other faculties as law has become increasingly interdisciplinary. Pro Bono Students Canada has a presence in most law schools but provides service only to non-profit organizations. Academic law librarians spend time with these law students helping them with their volunteer legal research projects. This gives us the opportunity to review their legal research skills, and it can be very rewarding for both the student and the librarian.

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<sup>6</sup> Canadian Judicial Council, *Statement of Principles on Self-represented Litigants and Accused Persons*, online: Canadian Judicial Council < [http://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_other\\_PrinciplesStatement\\_2006\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf) >.

<sup>7</sup> Special Committee on Self-Represented Litigants, *Report on Self-Represented Litigants* (Toronto: Ontario Superior Court, 1999) at 1.

<sup>8</sup> Lonny L. Balbi, “Self-represented Litigants from the Mediator’s Perspective: Walking the Line” (2001) 19 Can. Fam. L.Q. 583.

<sup>9</sup> The Honourable Madam Justice Jennifer Blishen, “Self-Represented Litigants in Family and Civil Law Disputes” (2006) 25 Can. Fam. L.Q. 117 at 118.

<sup>10</sup> Anne-Marie Langan, “Threatening the Balance of the Scales of Justice: Unrepresented Litigants in the Family Courts of Ontario” (2005) 30 Queen’s L.J. 825 at 828.

The university law library is a public institution supported by public monies. Members of the public, whom I call ‘Joe and Josephine Public,’ demand access to our libraries. Academic law librarians assist ‘lawyer-less’ litigants because we are both a public institution and a helping profession. In some ways, this can be seen as an ‘outreach’ program to the community, as the university, generally speaking, endeavours to reach out to the community at large.

And yes, helping the general public and helping the self-represented litigant is a form of outreach to the community at large as it may be the only time these citizens ever set foot in our university. Helping self-represented litigants is challenging and time consuming. It is hard work and it is very different from dealing with a faculty member or a practicing lawyer. Self-represented litigants require a great deal of patience and empathy on the part of the research librarian. Many times they just need someone to listen to them.

### **Self-Represented Litigants**

In Manitoba, financial eligibility<sup>11</sup> for legal representation is covered under the *Legal Aid Manitoba Act*,<sup>12</sup> and the *Legal Aid Regulation*,<sup>13</sup> which states,

#### Reasons for Rejection of Application

16(1) An application shall be rejected when an area director determines that

(a) the applicant requires legal services in a representative, fiduciary or official capacity and in this capacity the applicant has sufficient funds or property from which to pay for legal services.<sup>14</sup>

At the University of Manitoba Law Library, my reference assistant and I often deal with self-represented litigants who cannot afford a lawyer. With the continuous reduction in legal aid budgets, many of them do not qualify for legal aid. They usually earn more than the cut-off guidelines for legal aid which in Manitoba is \$14,000 for a family of one, \$18,000 for a family of two, \$23,000 for a family of three, \$27,000 for a family of four, etc., or they earn a low salary and may have assets which disqualify them from Manitoba Legal Aid.<sup>15</sup>

Who are these self-represented litigants? They cover a broad spectrum of different socio-economic backgrounds, varying levels of education, a wide range of ethnicities and varying expectations.<sup>16</sup> Many come from rural areas; we get phone calls from rural Manitoba and they make appointments with us for the next time they are visiting Winnipeg. The telephone call includes questions like the location of the library and the parking possibilities. Parking is at a premium at the university and they think they can run into the library and run out with the form needed or with the answer to their legal problem within minutes.<sup>17</sup>

Some self-represented litigants have hired a lawyer in the past and when their money ran out, they ended up doing it themselves, just before their trial date. Some are not familiar with computer technology, so we end up using our print sources as opposed to the web. This means

<sup>11</sup> Gord MacDonald, “Duty Counsel and the Self-Represented Litigant” (2001) 19 Can. Fam. L.Q. 497 at 510.

<sup>12</sup> R.S.M. 1987, c. L105.

<sup>13</sup> Man. Reg. 225/91.

<sup>14</sup> *Ibid.*, s. 16(1)(a).

<sup>15</sup> Online: Legal Aid Manitoba <<http://www.legalaid.mb.ca>>.

<sup>16</sup> Amy Hale-Janeke & Sharon Blackburn, “Librarians and the Self-Represented Litigant” (2008) 27:1 Legal Ref. Serv. Q. 65 at 73.

<sup>17</sup> *Ibid.* at 74.

that they will not be able to access the websites of CanLII, ACJNet, Justice Canada and other free legal websites.

Many show up at our Reference Desk at the law library as a last resort for legal help. They tell us they have been given the “run-around” elsewhere. The first challenge is to explain to them that we do not give legal advice, only legal information.

Like many of our students who are used to the concept of instant gratification that our society promotes in fast food, instant messaging, and seven day extended hours shopping centres, some self-represented litigants have the same attitude.<sup>18</sup> And like some of our students, some self-represented litigants may be surprised to find out that their legal problem may take many hours of research as opposed to twenty minutes.<sup>19</sup> We schedule our law classes in 50 minute segments as this is generally considered the maximum attention span of students; the same is true for self-represented litigants who do not understand that an extended attention span is important for doing legal research.

Like some of our students who come to us at the last minute before a research paper is due, some self-represented litigants come to us just before their trial is to begin or a form has to be filed with the court. All of the above factors can make self-represented litigants even more agitated and angry than they were already. They do not understand that the legal process can take months or years, not days or weeks. They also do not understand that the law is extremely complicated and that there may not be an obvious statute, regulation or case on point that deals with that issue. Some of them have been watching American law-related programs like “Judge Judy” or “Law & Order”<sup>20</sup> or the CNN News regarding American criminal matters where American criminal law is different than Canadian criminal law.

Many self-represented litigants are disabled, either physically or mentally, and require empathy and patience on the part of the law librarian. On the other hand, we see citizens with mental illnesses who show aggressive behaviour and even paranoid behaviour. They can be verbally abusive and very demanding and disruptive.

Legal proceedings can ruin some self-represented litigants’ lives and often affect themselves and their families. Their cases can go on for months or years and a great deal of empathy is needed. For many self-represented litigants, English is a second language. We have a list on our library’s website of language services available by our librarians. We also have a translation service in the province to which we can refer clients.

Some self-represented litigants ask to see the professor who teaches in the area of their legal problem. I need to explain to them that the professors are generally not members of the practicing bar and their role is teaching, not providing legal advice to self-represented litigants. Some self-represented litigants are vexatious litigants. “Vexatious litigants persistently and habitually engage in legal proceedings, without having a legitimate claim requiring resolution. The vexatious litigant may sue in order to annoy, harass, or financially punish other people.”<sup>21</sup> Fortunately, in our library, the extremely difficult self-represented litigants are in the minority.<sup>22</sup> As mentioned previously, we are a helping profession and as a helping profession we can experience ‘compassion fatigue.’

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<sup>18</sup> *Ibid.* at 73.

<sup>19</sup> *Ibid.* at 74.

<sup>20</sup> *Ibid.* at 67.

<sup>21</sup> Law Reform Commission of Nova Scotia, *Vexatious Litigants: Final Report* (Halifax: Law Reform Commission of Nova Scotia, 2006) at summary.

<sup>22</sup> Debbie A. Yungwirth, “Self-Represented Litigants, the Lawyer’s Perspective” in *Dealing with Unrepresented Litigants* (Edmonton: Legal Education Society of Alberta, 2006) at 25.

What is compassion fatigue? It is defined as: “a form of work-related distress that is derived from *experiencing the stress of others* and wanting to *help relieve* their suffering in some way.”<sup>23</sup> So, academic law librarians who deal with self-represented litigants need to guard against compassion fatigue by managing their stress levels.

We may appreciate more dealing with the lawyer, the law professor or the law student who are aware of the law and legal terminology. They are comfortable with us and may even be friends.<sup>24</sup> Unlike the self-represented litigant, we all speak a certain language and understand terminology. However, there are tangible benefits for law librarians working with self-represented litigants. One benefit is that the interaction forces us to consider in a fresh way the steps that we take in doing legal research and why. As well, we interact with these self-represented litigants and we see how they persevere in light of their present difficult situations. They want to resolve their issues and move on in their lives. This can be inspirational to a law librarian.<sup>25</sup>

### **Services Offered**

What is it that we do for these self-represented litigants? Well, first of all, we treat the self-represented litigant with the utmost respect ensuring that our tone is consistently professional and respectful. Self-represented litigants deserve, of course, the same respect we academic law librarians give to our law professors and our law students.<sup>26</sup>

Secondly, we ensure that we maintain a level of personal control when dealing with the self-represented litigant. Only through demonstrating the necessary degree of control will we be able to keep our frustrations to a manageable level.<sup>27</sup>

The role of the librarian is to provide access to legal information as well as to teach people how to use the information effectively. In doing so, we show them how to conduct basic legal research and step back and allow the self-represented litigant to work. In teaching legal research to these patrons, it is important for them to understand that thoroughness is required and how time-consuming legal research really is and how frustrating it can become at times. Some may change their minds about representing themselves; that is, the few who come to our library who can afford to change their minds. We have citizens in our library who are so angry about their case, and yet they realize that time, money and their own emotional well-being is at stake and they end up abandoning their case. In the final analysis, the self-represented litigant has to conclude his interaction with the law librarian feeling much better equipped to understand what is necessary to undertake legal research.<sup>28</sup>

As well, the information given to us by the self-represented litigant is as confidential as it is when the lawyer or the professor gives us their legal problem. I recall doing legal research for lawyers while working with LAWSEARCH in Edmonton in the 1980s. In many cases, I had, as clients, lawyers acting for both parties. The opposing lawyer may have taken an entirely different

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<sup>23</sup> Charles Figley, “What do YOU Want? The Hidden Problem of Compassion Fatigue” (Invited presentation at the AALL Annual Meeting, St. Louis, Mo., 2006) [workshop outline], online: Florida State University <[http://mailer.fsu.edu/~cfigley/documents/Handouts\\_AALL\\_2006\\_StLouis.pdf](http://mailer.fsu.edu/~cfigley/documents/Handouts_AALL_2006_StLouis.pdf)>.

<sup>24</sup> Catherine Christopher, “Dealing with Unrepresented Litigants from the Perspective of the Unrepresented Litigant” in *Dealing with Unrepresented Litigants* (Edmonton: Legal Education Society of Alberta, 2006) at 20.

<sup>25</sup> *Ibid.* at 22.

<sup>26</sup> *Ibid.* at 7.

<sup>27</sup> Carol Cochrane, “A Family Law Practitioner’s Guide to Dealing with the Self-Represented Litigant” (2006) 25 *Can. Fam. L.Q.* 131 at 135.

<sup>28</sup> Hale-Janeke & Blackburn, *supra* note 16 at 69.

approach to the legal issue, but this was never divulged. Confidentiality is an important aspect of our work, and it is also a factor in dealing with the self-represented litigant.

What type of questions do we get from self-represented litigants? Many of our questions are family related involving division of marital property and pension, child custody and access, child support, spousal support, interim spousal support, and variation of orders, in addition to wrongful dismissal and other labour issues, immigration and deportation, personal injuries, criminal law matters, etc. We also get practical questions from the general public regarding making a will, duties of an executor/executrix, and what forms are used for the power of attorney.

The university's catalogue is freely available on the Internet but electronic resources such as HeinOnline, LegalTrac, JSTOR and Proquest are only available to members of the university community. However, members of the public may access these types of electronic resources from public computers in all the university libraries. Reference assistance is readily available to the general public either in person or remotely by email and telephone. Members of the public frequently avail themselves of these services.

We seem to get many female self-represented litigants, not surprisingly, as about 70 per cent of family law legal aid clients are women.<sup>29</sup> We usually refer these women to various resources. For example, there is a Women's Resource Centre in Winnipeg where one can make an appointment for a free lawyer's consultation the first Friday of every month. They also have a free counseling service to take care of women's emotional needs on such issues as women's aging, health, divorce, etc. (they are usually very distraught when they come to us). There is also a Women's Advocacy Program that has an intake worker that helps women fill out the forms for victims of domestic violence.

We get many immigrant women and we refer them to the Immigrant Women's Counseling Centre. As well, there is a Poverty Law Office in Winnipeg to which we refer women who are dealing with C.P.P. Disability Insurance Claims, Long Term Disability Claims, Manitoba Public Insurance Claims, Social Assistance, or Residential Tenancies issues. We receive referrals to our staff from these agencies in turn.

Fortunately, self-represented litigants can find relevant online services through some provincial services like the Manitoba Courts Court Registry System<sup>30</sup> or the British Columbia Courts Service Online.<sup>31</sup> The Manitoba Court House has form packages for divorce as well as brochures on such topics as grandparents' rights, elder abuse, victim witness assistance programs, common-law relationships, legal information for employees, etc.

In addition, the Manitoba Community Legal Education Association (CLEA) has a Law Phone-In & Lawyer Referral Program. The program's two staff lawyers provide legal information, and in appropriate situations, can refer callers to a lawyer or a law-related agency. We have self-represented litigants who need access to the Lawyers' Referral Program where they are given a free one-half hour consultation service to see if they have a valid case. In the past, we have offered legal research sessions to the Community Legal Education Association's lay people who are enrolled in their courses to learn more about the law. Many of these individuals are intermediaries who work with low income, disadvantaged and marginalized citizens and some of these are self-represented litigants. CLEA's mandate is to provide legal education and information programs to Manitobans.<sup>32</sup>

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<sup>29</sup> Legal Aid Review Team, *Review of Legal Aid Services in Nova Scotia: a Report* (Halifax: The Team, 1996) at 25.

<sup>30</sup> Online: Manitoba Courts Court Registry System <<http://www.jus.gov.mb.ca>>.

<sup>31</sup> Online: British Columbia Courts Service Online <<https://eservice.ag.gov.bc.ca/cso/index.do>>.

<sup>32</sup> Online: Community Legal Education Association (Manitoba) Inc. <<http://www.communitylegal.mb.ca>>.

What types of results are achieved? Some self-represented clients are in litigation for years so they become familiar faces. However, some of them do win their case and come back to tell us about it or alternatively their successful case is reported in the newspaper. Some are very grateful for the service and may send chocolates or flowers, while others come back to say that the information pointed them in the right direction or that the information lowered their anxiety levels. Little is known about those that go on to hire lawyers or those who lose their case or eventually abandon their lawsuit. Most we never hear from again.

### **Conclusion**

Self-represented litigants are turning to public institutions, including our academic law libraries and our academic law librarians, for legal information. “Because no one institution can handle every request for help, everyone benefits as we are all able to reach out to the public and build goodwill for our individual institutions in the community.”<sup>33</sup> Academic law librarians play an intermediary role between the self-represented litigant and legal information. We contribute in a meaningful way to help these self-represented litigants.

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<sup>33</sup> Bret N. Christensen, “Public Relations: Takin’ it to the Streets” (2009) 13:7 AALL Spectrum 11 at 11.