



Action Committee on Court Operations in Response to COVID-19

APPLYING THE CANADIAN JUDICIAL COUNCIL'S STATEMENT OF PRINCIPLES ON SELF-REPRESENTED LITIGANTS AND ACCUSED PERSONS:

SPECIAL CONSIDERATIONS ARISING FROM THE COVID-19 PANDEMIC

A Statement from the Action Committee

Our Committee exists to support Canada's courts as they work to protect the health and safety of all court users in the COVID-19 context while upholding the fundamental values of our justice system. These mutually sustaining commitments guide all of our efforts.

THE ISSUE

In many cases, COVID-19 and the resulting restrictions or modifications to court operations have intensified the challenges that self-represented litigants (SRLs) face in accessing justice. Since the start of the pandemic, there has been a boom in virtual hearings, as well as in the use of other online tools such as electronic filing. Rules and procedures have changed frequently as courts have adapted to evolving public health measures and then further refined their modified approaches as they see what works and what does not.

BACKGROUND

As the costs of legal representation have increased over the years, more and more Canadian litigants have found it necessary to resolve their legal conflicts without the assistance of a lawyer. Navigating the court system can be challenging for someone who is unfamiliar with it, and the imbalance of resources and knowledge often places SRLs at a disadvantage, especially when the opposing party has a lawyer. Self-representation increases the burden not only for the individual who comes before the courts, but also on both the court and opposing counsel, who have a duty to ensure that the procedural fairness rights of those without legal representation are respected.

In 2006, in recognition of the challenges that SRLs face, the Canadian Judicial Council (CJC) adopted a [Statement of Principles on Self-Represented Litigants and Accused Persons](#). The Principles, which have been endorsed by the [Supreme Court of Canada](#), are organized under three headings:

A. Promoting Rights of Access

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.

B. Promoting Equal Justice

Judges, the courts and other participants in the justice system have a responsibility to promote access to the justice system for all persons on an equal basis, regardless of representation.



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C. Responsibilities of the Participants in the Justice System

All participants are accountable for understanding and fulfilling their roles in achieving the goals of equal access to justice, including procedural fairness.

Within these three categories, the Principles outline how relationships between SRLs and the judiciary, court staff, and the bar can be managed more effectively. To further support SRLs, in May 2021 the CJC published three comprehensive Handbooks for direct use by self-represented litigants navigating the courts in [Criminal](#), [Civil](#), or [Family](#) matters.

Since the CJC adopted the Principles, the prevalence of self-representation has only increased, with a [2016 Department of Justice report](#) estimating that between 50 to 80% of civil and family litigants are self-represented. And now that the COVID-19 pandemic has disrupted court operations for two years, it is possible that many of the temporary measures that were put in place to address the pandemic will be maintained for the foreseeable, if not the indefinite, future.

SPECIAL CONSIDERATIONS

To ensure access to justice, it is necessary to mitigate the pandemic-related challenges SRLs face in accessing information and services; technology; and procedural alternatives. To this end, the CJC's Principles are more relevant than ever, but additional considerations may be necessary to apply them in light of the altered landscape.

Access to Information and Services

The Challenge

SRLs often rely on staff at the courthouse information desk or registry office to provide them with information on how to proceed with their case, as well as on what resources are available to them. However, closures of, or restricted access to, court buildings have affected access to this crucial point of contact. Disruptions to postal services have also affected the ability of court registries to mail requested forms or information in a timely fashion to individuals located in remote communities.

In response, many courts have increased the amount of information that is available online. On the one hand, this can provide greater access to information by making it available at any time from any place. However, accessing information online is primarily a one-sided experience in which the SRL does not have the opportunity to interact with someone who can help put the information they are finding into context or ensure they are truly understanding it. It can also be difficult for an SRL to find the relevant information if changes to court procedures are spread out through many directives or are not presented in plain language. Moreover, SRLs who could benefit from legal aid, duty counsel, or other support systems, may not seek information about these services because they do not know they exist.

Furthermore, for SRLs who do not have reliable access to the internet, who are unfamiliar or uncomfortable with technology, who have trouble communicating in English or French, or who have disabilities that limit their access to information, it may be difficult to find this online



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information. Others may have access to the internet, but lack the skills to separate official information from less reliable sources.

Finally, while litigants who have legal counsel can rely on their lawyers to stay abreast of quickly changing rules of practice by reading notices to the profession or knowing how to contact court staff efficiently, SRLs may not be familiar enough with court procedures to know where to seek this information.

Relevant CJC Principles

Promoting Rights of Access

Principle 3: Information, assistance and self-help support required by self-represented persons should be made available through the various means by which self-represented persons normally seek information, including for example: pamphlets, telephone inquiries, courthouse inquiries, legal clinics, and internet searches and inquiries.

Principle 4: In view of the value of legal advice and representation, judges, court administrators and other participants in the legal system should: ... (c) refer self-represented persons to other appropriate sources of information, education, advice and assistance.

Promoting Equal Justice

Principle 4: When one or both parties are proceeding without representation, non-prejudicial and engaged case and courtroom management may be needed to protect the litigants' equal right to be heard. Depending on the circumstances and nature of the case, the presiding judge may: (a) explain the process; (b) inquire whether both parties understand the process and the procedure; (c) make referrals to agencies able to assist the litigant in the preparation of the case; (d) provide information about the law and evidentiary requirements; (e) modify the traditional order of taking evidence; and (f) question witnesses.

Responsibilities of the Participants in the Justice System

Principle 1 for both the Judiciary and Court Administrators: Judges and court administrators should meet the needs of self-represented persons for information, referral, simplicity, and assistance.

Principle 3 for both the Judiciary and Court Administrators: To the extent possible, judges and court administrators should develop packages for self-represented persons and standardized court forms.

Principle 1 for Court Administrators: Court administrators should seek to provide self-represented persons with the assistance necessary to initiate or respond to a case and to navigate the court system.



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Principle 4 for Court Administrators: Court administrators should educate court personnel regarding the importance of public access to the courts and should provide training to court personnel as to how they should assist self-represented persons.

Mitigating Steps and Possible Solutions

- Staff the court information desk, and any other services the court supports, such as legal assistance clinics, remotely. Prominently feature on your website a telephone number and e-mail address where litigants can access these remote services.
- Keep track of the main questions that registry staff are asked in person or on the telephone, and ensure that they are answered clearly and prominently on your website.
- Use plain, user-centred language on your website to help SRLs find the information they need. Review the forms that your court uses, as well as the instructions you provide on completing them, to ensure that they can be understood by SRLs.
- Provide information on your website in a variety of non-written formats, including through videos or webinars.
- Ensure that your website includes clear links to useful materials for self-represented litigants, such as the three Handbooks recently published by the Canadian Judicial Council, as well as up-to-date links to directives issued by any level of government that affect the operations of the courts.
- Make as much of your website as possible available in the main minority languages spoken in your community and provide contact information for obtaining information or assistance in a minority language, either within the court or through external service providers and community associations.
- Include information on your website in formats that are accessible to those with disabilities, and provide contact information to direct persons with disabilities to where they can receive accommodation or assistance.
- Work with relevant community organizations to include a link to the court website on their web pages.
- Ensure that judiciary and staff are aware of how relevant legal and non-legal community service-providers can be accessed during the pandemic, so that they can pass this information on to SRLs.
- Consider developing a standard form letter for all SRLs to acknowledge receipt of their case and provide them with basic information, including on available legal representation services and procedural alternatives.
- Ensure printed materials continue to be available. Consider providing them to health clinics, community centres, libraries or other public spaces where SRLs may go to seek information on how to resolve their disputes.



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Inspiring Practices

- Many Canadian courts have developed materials to support self-represented litigants in navigating the court process:
- The [website](#) for the **Courts of Nova Scotia** includes a plain-language page entitled *Representing Yourself in Court*, which features links to key resources for SRLs, including the Canadian Judicial Council's Resources for Self-Represented Litigants; information about a Small Claims Court Navigators project; and Questions and Answers (in English and French) on self-representation in probate court.
 - The **Ontario Court of Justice** has developed a number of guides for self-represented litigants, including a [Guide for Self-Represented Family Litigants during COVID-19](#), which provides specific information on matters such as what to do if you require an interpreter during a teleconference or videoconference, and how to prepare to attend an in-person hearing.
 - The **Prince Edward Island Court of Appeal** has prepared plain language booklets to support self-represented litigants in both criminal and civil matters. These booklets are available in printed format at the courthouse, as well as on their [website](#), which also provides information on legal representation services in the province.
 - The [website](#) of the **Court of Appeal of Quebec** includes a range of tools for SRLs, including an aide-mémoire that provides complete information in plain language and with schematics of the steps of the appeal process, an "FAQ", a glossary of terms, and templates and checklists to support SRLs in ensuring that they have completed all of their court documentation properly. They have also published a list of resources, including the names of relevant community organizations with hyperlinks to their websites.
 - The **Saskatchewan Court of Appeal** has developed a [Guidebook for Appellants](#) and a [Guidebook for Respondents](#), as well as process flow charts for both [Appellants](#) and [Respondents](#). The Registry commonly mails out hard copies of the Guidebooks as well as the Court of Appeal Rules, along with template documents (notice of motion, affidavit, affidavit of service) to SRLs.
- Throughout the pandemic, the **Court of Queen's Bench of Alberta** has taken advantage of remote tools and support for SRLs. This has included using [Language Line](#) remote interpretation services to assist SRLs who do not speak English in Chambers and Docket Court. Legal Aid Duty Counsel have continued to provide services (including information, advice and referrals) in [Family Docket Court](#) remotely, and the [Amicus Pro Bono Program](#) has also continued to provide remote assistance to SRLs in Justice and Masters Chambers.
- The **British Columbia Civil Resolution Tribunal** writes all of its information at a sixth-grade reading level and validates it with a readability tool before publication.
- The **Court of Appeal of Newfoundland and Labrador** provides written information packages and annotated Criminal Codes to penitentiaries across the province, to ensure that inmates, who often have limited opportunities to use the internet, have access to legal information.



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- To prevent crowding at courthouses during the pandemic, the **Supreme Court of Newfoundland and Labrador** developed an [online system](#) for court users to book timed appointments with Registry staff. The Court used the same webpage to highlight the Public Legal Information Association of Newfoundland and Labrador (PLIAN) as a source of legal information for self-represented litigants. The court ensured PLIAN had up-to-date information on court forms and procedures so that court users had multiple ways to find relevant information.

Access to Technology

The Challenge

In response to the health risks associated with the COVID-19 pandemic, courts across Canada quickly adopted technological solutions so that information could be accessed, documents could be filed, and hearings could proceed, all while people remained physically distanced. The general consensus in the justice sector is that many of these reforms were long overdue, and that maintaining them after the pandemic will be an important element of improving efficiency and ease of access to the courts.

There are many situations in which SRLs will benefit from these technological innovations, which can decrease the costs and time associated with appearing before the court. However, SRLs are also at risk of being disadvantaged if they do not have the tools, resources, or technological literacy necessary to use this technology effectively or to deal with challenges that may arise in the course of their remote hearing.

For example, an SRL who doesn't have access to adequate equipment or network connectivity may find that it is difficult to hear and see a remote proceeding, and will therefore be unable to follow what is happening. Alternatively, an individual who is trying to simultaneously look at electronically-filed documents and appear in a virtual hearing on a single mobile telephone, or who doesn't have access to a quiet space to participate in their hearing, may not be able to present themselves as professionally or effectively as someone who has access to multiple devices and dedicated video-conferencing technology. This, in turn, can create or exacerbate power imbalances between the parties, and possibly affect the decision-maker's assessment of the reliability or credibility of the party or witness.

Alternately, an SRL without a personal computer or home internet may incur heavy mobile data costs to attend court hearings remotely. Other SRLs who relied on the library to access the internet may have had their access cut off during pandemic-related library closures.

Relevant CJC Principles

Promoting Equal Justice

Principle 1: Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.



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Responsibilities of the Participants in the Justice System

Principle 3 for the Judiciary: Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.

Principle 4 for the Judiciary: The judiciary should engage in dialogues with legal professional associations, court administrators, government and legal aid organizations in an effort to design and provide for programs to assist self-represented persons.

Principle 1 for Court Administrators: Court administrators should seek to provide self-represented persons with the assistance necessary to initiate or respond to a case and to navigate the court system.

Mitigating Steps and Possible Solutions

- Consider designating space in the courthouse or another community location for video-conferencing facilities that individuals without access to adequate technology can use for their remote proceedings, preferably with access to the appropriate IT support-persons to address any technological problems that may arise.
- Create a courthouse IT Help Desk to assist SRLs with connectivity issues such as dropped calls or videoconference connections.
- For remote hearings, request that all parties blur their backgrounds, or offer background templates for use to SRLs to level the playing field in terms of the appearance of parties' respective surroundings. Include information on how to use these effects in your virtual hearing user instructions.
- Provide remote hearings by telephone, as well as online, whenever possible: this provides an alternative if a participant is having trouble accessing a virtual hearing, or if they are located in a remote community that may have access to the telephone, but not to reliable internet.
- Consider applying the “equality of symmetry” principle by ensuring all parties are able to appear before the court in the same manner (i.e. if one party cannot manage video technology, all parties should appear by telephone to avoid the perception of unfairness or unconscious bias). If it is not possible for an SRL to participate on equal footing in a remote hearing, make best efforts to permit the hearing to take place in person in a manner that will respect all health and safety requirements.
- If designing custom-made mobile court tools, consider their suitability for individuals who will be accessing them only through a single mobile device or through adaptive technology, and integrate accessibility considerations into the design of all technological tools.
- When integrating technological solutions into court reforms, ensure that there are still alternative options for accessing information and filing documents. For example, if you plan to make e-filing mandatory for legal counsel, consider retaining the option for SRLs to file in paper format.



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- When it is possible for persons to attend the court registry in person, provide access to internet stations and a help phone with appropriate ventilation and cleaning protocols to allow SRLs to complete their e-filing when they have access to in-person assistance from registry staff.

Inspiring Practices

- Many courts, including the **Court of Queen's Bench of Alberta**, will accommodate various means of participation (such as in person, by video, audio or telephone conference, depending on the nature of the hearing) to enable a hearing to proceed.
- The **Provincial Court of British Columbia** and the **Court of Appeal of Newfoundland and Labrador** are both prepared to [switch from video to teleconference](#) so that a hearing can proceed even if one of the parties is having trouble using the video conference platform.
- The **Supreme Court of Prince Edward Island** set up a room in the courthouse where self-represented litigants without access to technology could attend virtual hearings during the COVID-19 lockdown.
- When it is not possible for a SRL to access effective technology to proceed remotely, the **Court of Appeal of Quebec** has allowed on some occasions for hybrid hearings in which the SRL will appear in person, while the opposing party, who has access to appropriate technology, will present their arguments virtually.

Access to Procedural Alternatives

The Challenge

Courts in Canada have made significant progress in encouraging individuals to resolve their disputes outside of the courtroom – most jurisdictions have procedures for mandatory or optional alternative dispute resolution, and some provide judicial dispute resolution to resolve some or all of the issues in dispute before going to trial. Courts have also adopted a range of approaches to case management, in which judges or other judicial staff work with litigants to narrow issues and make sure they are prepared before the case proceeds to trial.

While some of these procedures are mandatory, especially in the family law context, in other cases they are triggered only if requested by one party. Even before the pandemic, SRLs were at a disadvantage due to a lack of knowledge about these alternatives, and therefore at risk of missing opportunities for early resolution. In the current environment, as well as in the likely post-pandemic world in which virtual hearings are more common, that risk may increase: it can be more difficult for a judge to ascertain the extent to which an SRL understands the procedure in which they are engaged, as well as their alternatives, when they are not face-to-face.



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Relevant CJC Principles

Promoting Rights of Access

Principle 1: The court process should, to the extent possible, be supplemented by processes that enhance accessibility, informality, and timeliness of case resolution. These processes may include case management, alternative dispute resolution (ADR) procedures, and informal settlement conferences presided over by a judge.

Promoting Equal Justice

Principle 1: Judges and court administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.

Principle 3: Where appropriate, a judge should consider engaging in such case management activities as are required to protect the rights and interests of self-represented persons. Such case management should begin as early in the court process as possible.

Responsibilities of the Participants in the Justice System

Principle 1 for the Judiciary: Judges have a responsibility to inquire whether self-represented persons are aware of their procedural options, and to direct them to available information if they are not. Depending on the circumstances and nature of the case, judges may explain the relevant law in the case and its implications, before the self-represented person makes critical choices.

Mitigating Steps and Possible Solutions

- Consider encouraging case management for SRLs to ensure that they are aware of all of their options, and use a flexible approach to case management tailored to the particular needs of self-represented individuals.
- Consider prioritizing SRLs when deciding which matters will be heard in person, rather than virtually.
- If SRLs are appearing virtually, set aside a designated time slot to pre-triage their matters and provide any required procedural assistance before proceeding with scheduled appearances or hearings.
- Review the dispute resolution options available to family law litigants (e.g. case conferences; mediation; conciliation; etc.) to identify ones that may be adaptable to the civil law context.
- Consider the possibility of partnering with legal service providers to provide legal assistance to SRLs, as this can be a useful opportunity for SRLs to learn about applicable court processes, including procedural alternatives.



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Inspiring Practices

- The **Court of Queen's Bench of Alberta** has taken a number of steps to support access to procedural alternatives for SRLs during the pandemic, including:
 - increasing the use of brief/early Case Conferences and Pre-Trial Conferences, in lieu of more formal and resource-intensive judicial case management, to more effectively resolve issues, manage litigation and address case backlogs;
 - with the introduction of [Family Docket Court](#) at the outset of the pandemic, converting its Case Management Counsel into Resolution Counsel as an additional means of providing half-day family mediation/litigation planning for SRLs;
 - implementing Family Chambers Resolution Counsel to assist SRLs with resolution/litigation planning in Family Chambers; and
 - commencing the [Alberta Debtor Support Project](#) in Calgary to provide pro bono services (including information, advice and negotiation) to SRLs with mortgage default and consumer debt proceedings.
- In the **British Columbia Court of Appeal**, all self-represented civil and family litigants are referred to a pro bono program on direct referral from the Court Registry. They are guaranteed an opportunity to meet with a lawyer who has familiarity with the appeals process and can advise them of the merits of their case or refer them to other resources.
- The **Court of Appeal of Newfoundland and Labrador** offers status hearings for SRLs in criminal matters. These hearings are held monthly and intended to ensure the matter continues to move through the appeal process.
- In light of the fact that many litigants in family law appeals are self-represented, the **Court of Appeal of Quebec** subjects all family appeals to case management. A letter is sent to litigants as soon as the file is opened, outlining the documents to be filed and the requisite deadlines.
- The **Barreau du Quebec's** Booklet on [Representing Yourself in Court in Civil Matters](#) includes a chapter on dispute resolution methods, to ensure the individuals who are using the guide are aware of the options available to them.
- Case management is optional, though encouraged, for civil litigants who are represented by counsel before the **Supreme Court of Yukon**. Self-represented plaintiffs and petitioners, on the other hand, are [required to participate](#) in case management. This ensures that there is still progress towards resolution for these litigants, who may not have the knowledge to proactively manage their case on their own.

MOVING FORWARD

The CJC Principles state that, “*access to justice for self-represented persons requires all aspects of the court process to be, as much as possible, open, transparent, clearly defined, simple, convenient and accommodating.*” While the COVID-19 pandemic has caused new



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challenges for self-represented litigants, it has also started a process of reform: faced with a period in which very few in-person hearings were possible, coupled with the knock-on effects of increased backlogs and delays, courts have been innovating. For example, procedures and forms have been simplified, and courts have started new processes of triaging cases to identify candidates for case management or other interventions such as early dispute resolution, whether judicial or extrajudicial. If retained, these steps have the potential to benefit all court users, and especially SRLs, as they seek a fair and just resolution to their legal problems.