

Self-Represented Litigants and Family Violence: Making a Difficult Experience Even Worse

Supporting the Health of Survivors of Family Violence in Family Law Proceedings

Please think about the traditional lands you are currently situated on and join us in **acknowledging and thanking the generations of Indigenous peoples** who have cared for these Lands and in celebrating the continued strength and spirit of Indigenous Peoples. The ongoing work to make the promise of truth and reconciliation real in our communities and in particular to bring justice for murdered and missing Indigenous women and girls across the country should inform our discussions in this webinar and beyond.



Welcome to our webinar!



Julie Macfarlane
Director, National
Self-Represented
Litigants project

**The Honourable
Mary Jo Nolan**

**The Honourable
Lynda C. Templeton**

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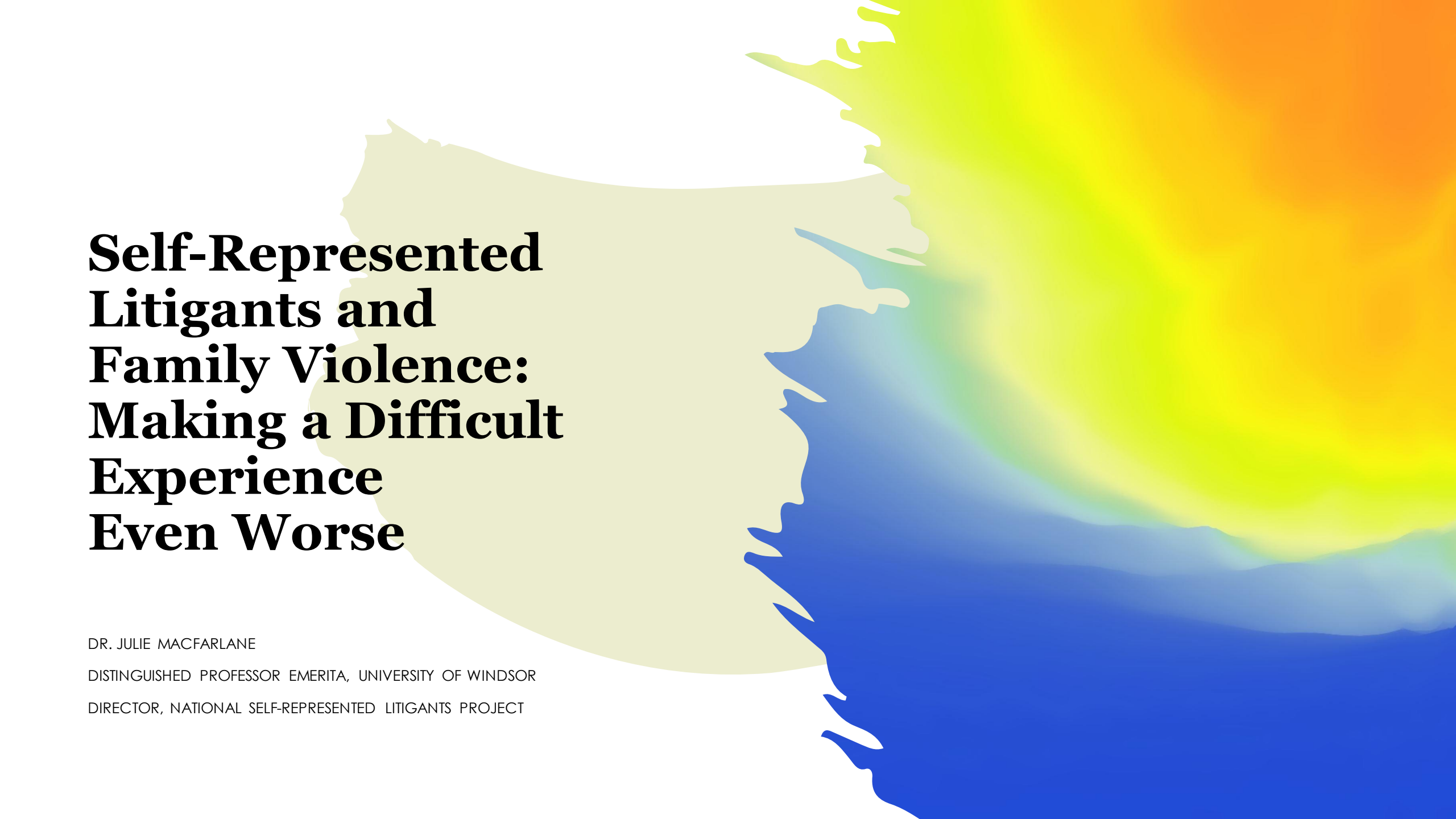
Before we start:

-  All attendees are **muted** during the webinar.
If you are **experiencing issues**, please type into the chat box.
-  If you have a **question** for the webinar speakers, please type into the **Q&A box** and we will spend 15 mins near the end on Questions and Answers
-  There will be an **evaluation link in the chat box at the end** of the webinar, please fill out the form as your feedback will guide our future webinars.
Once you complete the evaluation form, you will be directed to a website where you will be prompted to enter your full name and email address. **A certificate of attendance will be generated and emailed to you.**
-  **Presentation slides are posted on our website**, there will be a link in the chat box.
The webinar recording will be posted on our website within the next few days
-  **Code of conduct** is in the chat function

Julie Macfarlane

- Distinguished Professor Emerita, University of Windsor
- Director, National Self-Represented Litigants Project





Self-Represented Litigants and Family Violence: Making a Difficult Experience Even Worse

DR. JULIE MACFARLANE

DISTINGUISHED PROFESSOR EMERITA, UNIVERSITY OF WINDSOR

DIRECTOR, NATIONAL SELF-REPRESENTED LITIGANTS PROJECT


The SRL Phenomenon by the numbers



- Family court: more than half filing self-represented, up to 80% in urban centres
- Civil and appellate courts up to 40%
- An exponential rise over the past 20 years, often tracking declining Legal Aid

**The National Self-
Represented
Litigants Research
Study 2011-13,
ongoing Intake
Reports :
selected relevant
results**

- Of 283 interviews with 259 SRLs, 60% were with family litigants
- 57% had an income under \$50,000
- Over 60% (53% in the 2013 Study) had previously or at some time retained a lawyer to help them
- Circa 50/50 male/ female



Some evidence of gender stereotyping in decision-making

When Judges See SRLs, Do They See Gender?
Observations on Gendered Characterizations in Judgment
(Macfarlane & Shushani, 2018)

Women as schemers

Women as attention-seeking and dramatic

Women as unreliable reporters

Women behaving emotionally

Women expecting to “live off” their husbands

Women described as treating litigation like “shopping”

**BY FAR THE MOST IMPORTANT
REASON FOR INCREASING SELF-
REPRESENTATION IS LACK OF
FUNDS TO PAY FOR
LEGAL SERVICES**



CANADA (2013)
US (2016)
AUSTRALIA (2000)
UK (2011)
NEW ZEALAND (2015)

The Cost of Legal Access

A single person must earn less than \$19,000/year in Ontario to qualify for legal aid for family / civil

YET

Lawyer fees average \$360/hour and up

The SRL phenomenon also reflects a rapidly changing public culture around legal services



NSRLP data shows approximately equal male/ female SRLs, but also some evidence of gender stereotyping in decision-making

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“I have no choice but to represent myself. It’s not that I think that I can do this better than a lawyer, I have no choice. I don’t have \$350 an hour to pay a lawyer.”

“I chose to represent myself because I am on a fixed income (disability) and can no longer afford counsel. I have spent all my life savings and more on a five-year divorce process.”

Parties without expert assistance face multiple challenges in the legal system (levels of knowledge, skill, & emotional comfort, outcomes)



Outcomes are significantly worse for SRLs

- NSRLP summary judgments data (2016): 96% of SRLs lose
- Loom Analytics: 88% of SRLs lose in motions applications, 75% at trial (Ontario Superior Court, 2012-2016)
- Forthcoming NSRLP SRL Case Law Database, Fall 2021

Parenting outcomes in cases involving family violence included significantly fewer protections (orders, no contact access) where the party was self-represented

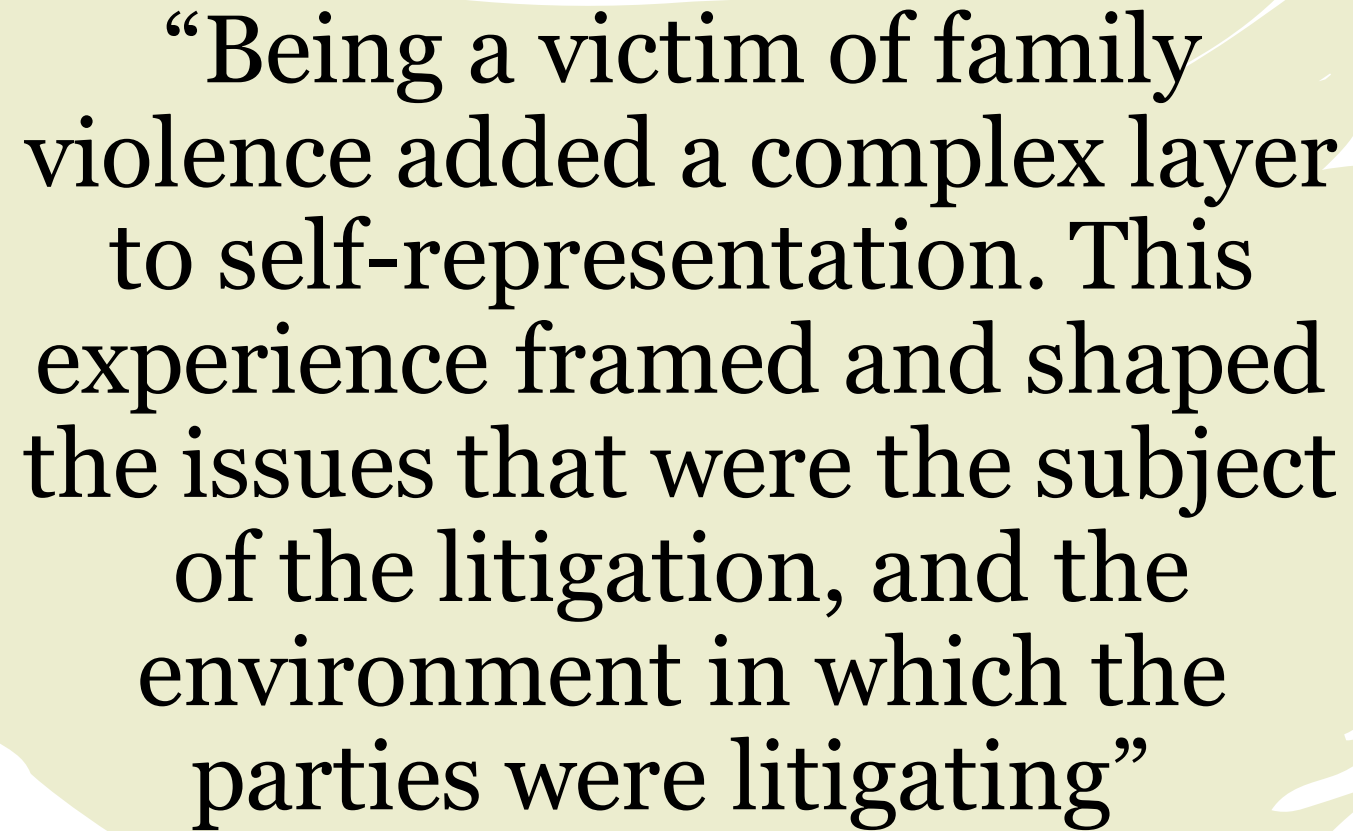
KERNIC, 2016

“IMPACT OF LEGAL REPRESENTATION ON CHILD CUSTODY DECISIONS AMONG FAMILIES WITH A HISTORY OF INTIMATE PARTNER VIOLENCE STUDY”. NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE

“No straight lines”:

Self-represented litigants in family law proceedings involving allegations about family violence (Wangmann, Booth & Kay, ANROWS, 2020)

- 35 interviews with family SRLs, 68 with family legal professionals
- Observation at 100's of family court events (case studies) where both parties self-represented
- Most interviewees/ case studies reported family violence



“Being a victim of family violence added a complex layer to self-representation. This experience framed and shaped the issues that were the subject of the litigation, and the environment in which the parties were litigating”

Issues for family SRLs where there is family violence (1)

- **Completing documentation**
- Both the ANROWS study and NSRLP data show significant problems for SRLs completing documentation and presenting evidence
- **Safety in the courthouse**
- The ANROWS study describes inadequacies in courthouse protective services
- Safety in virtual hearings?

Issues for family SRLs where there is family violence (2)

- **Challenges in the courtroom**
- NSRLP data shows consistently this is the biggest challenge for all SRLs
- Trauma exacerbates these challenges (*“Going Public”* 2020)
- **Personal cross-examination**
- The New South Wales prohibition (2019)
- Alternative means of x-examination
- Who qualifies?

Issues for family SRLs where there is family violence (3)

- **Negotiating an outcome**
- SRLs facing a represented party are anxious about being bullied into an agreement (NSRLP 2013)
- Creating a skill base among SRLs to negotiate effectively
- The real possibility of trading \$ for safety
- **Ongoing litigation and coercive control**
- ANROWS data shows vast majority of those facing ongoing proceedings are women
- NSRLP has documented many instances of litigation (eg variations) used to continuously control and harass survivors of family violence including emotional abuse
- Weaponized litigation

Resources

- NSRLP website: Representingyourselfcanada.com
- “*No straight lines: Self-represented litigants in family law proceedings involving allegations about family violence*” (Wangmann, Booth & Kay, ANROWS, 2020)
- “*Going Public: A Survivor’s Journey from Grief to Action*” Between the Lines 2020

The Honourable Mary Jo Nolan

- Mediator and Arbitrator of Family, Estate, and Civil matters
- Previously served as a Justice of the Ontario Superior Court of Justice and as a Case Management Master in the Superior Court of Justice



The Honourable Lynda C. Templeton

- Appointed and sat in Brampton followed by London until retirement
- Previously served as a family law lawyer and an Assistant Crown Attorney in Hamilton



Malcolm Bennett

- Retired from his practice as a family law lawyer with McKenzie Lake LLP
- Malcolm has continued his mediation and arbitration practice as Bluewater Mediation



Julie Lee

- Senior Family Lawyer at Millars Law
- Previously served as Family Law Review Counsel, Community Legal Services and Western Law, at Western University, London



Questions

Review of questions posted



www.alliancevaw.ca



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