Change Family Law
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The good, the bad and the ugly of self-representation

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Toronto - Markham - Vaughan - Mississauga - Oakville

Introducing the self-represented litigant and the concept of unbundling

In this edition of *It's Time For Justice*, I take a big-picture look at the players involved in a separation or divorce proceeding, and what happens to these players, and the system as a whole, when one or both parties is self-represented.

There are so many people without lawyers taking part in the Canadian justice system that we have created a term for them: they are Self-Represented Litigants, or SRLs.

The situation is most dire in family law. As many as eight out of ten Canadians involved in family law proceedings represent themselves.

"Canadians are allowed their day in court, and Canadians are not required to hire a lawyer."

Andrew Feldstein

There are some very real problems with Self-Represented Litigants – and not the problems you would think.

First, not being lawyers, SRLs understand neither the process nor the corresponding paperwork that is required at various stages of separation. This creates frustration for SRLs.

Second, because the role of judges is to uphold Canadian laws and follow the separation process, SRLs cannot be given preference—no so-called "breaks."

Most recently, there have been articles accusing judges of being unduly harsh on SRLs.

Third, when I am in court and I see that the other spouse is self-represented, I know that legal costs will climb because of the lack of understanding of the separation process.

Self-represented parties are a wake-up call to the Canadian judicial system, particularly in family law. They expose and exacerbate all the existing problems, and make it clear the family court system is facing systemic issues.

Overburdened court dockets, a shortage of judges (particularly in certain underserved regions), a lack of technological innovation, an over-reliance on an outdated paper system, and a complex and slow-moving process are only a few of the issues self-represented litigants bump up against.

It all adds up to a lack of professionalism and reflects badly on the Canadian values of balanced justice and fair trials.

If we really care about access to justice, and preventing the harm that self-represented parties currently cause to themselves, their children and the system, we need real, fundamental change.

This Third Edition of *It's Time For Justice* will explore the rise in self-represented parties in family law matters, what this means for the existing family law system, and how the system can change to better accommodate those who cannot afford to retain a lawyer on a full-service basis.

The family court system was built on the assumption that parties will have lawyers. It is ill-suited to accommodating those who do not, or who can only afford a limited amount of legal assistance. That needs to change, and quickly.

The concept of unbundling—sometimes called limited service retainers—is being introduced in courts across Canada. Unbundling means a lawyer provides some but not all of the services a client requires, and the client is responsible for taking the other actions required in a legal matter.

Unbundling is contentious in our profession, but I believe it is much better than no representation at all. Unbundling is referred to throughout this Edition Three of *It's Time For Justice*, and is described most fully on page 19.

Many low and middle income families could afford some legal help, if the system was set up to accommodate those families. We need reform to enable lawyers to assist in an economical fashion.

With simpler, more efficient court processes, and increased availability of limited service retainers, we should be able to greatly reduce or even eliminate the number of litigants forced to go through their case without any legal help at all.

Andrew Feldstein

Andrew Feldstein

Andrew Feldstein is the Managing Partner of Feldstein Family Law Group, with offices in Mississauga, Vaughan, Oakville, Toronto, and headquarters in Markham.

Mr. Feldstein graduated from Osgoode Hall Law School in 1992. Prior to focusing exclusively on family law, Mr. Feldstein had a general legal practice.

One of Mr. Feldstein's fundamental objectives at Feldstein Family Law Group is to help his clients separate and divorce smoothly, efficiently, and fairly; meeting goals mutually set out by him and his clients.

He was honoured in 2010 with an inaugural appointment to the *pro-bono* Dispute Resolution Officer (DRO) Panel for Newmarket Family Court. This appointment was made by the then-Senior Family Justice for Ontario, The Honourable Madame Justice Mary J. Hatton, and the then Regional Senior Judge for the Central East Judicial Region of Ontario, The Honourable Mr. Justice Michael Brown. This panel supports the family law court process by aiding couples in attempts to resolve their issues before their case proceeds before a Judge.

Mr. Feldstein was selected for this appointment because of his vast experience with, and successful ability to resolve, complex family law issues using alternatives to the traditional court methods, including the collaborative family law process.

Mr. Feldstein actively supports students, education, and the profession by volunteering for the Osgoode Hall Law School Mentor Program. His dedication to Osgoode Hall Law School students has resulted in extremely positive student feedback.

He is the Chair of the Articling Committee at Feldstein Family Law Group.

Many media outlets have interviewed Andrew Feldstein. He believes it's important for the public to understand the impact of family law, because all Canadians have all been touched by the effects of separation and divorce.

Mr. Feldstein is a member of:

- The Law Society of Upper Canada
- The Ontario Bar Association (OBA)
- The Canadian Bar Association National Council (2008-2012)
- An OBA committee on family law reform, which made submissions to the Law Reform Commission of Ontario (2009)
- The Canadian Bar Association (CBA)
- The AFCC Public Information Forum Working Group (2009)
- The AFCC Partnership Subcommittee of the Public Information Forum Working Group (2009, chair)
- The York Region Law Association
- The Newmarket working committee to improve the court process

"My overall philosophy is to help our clients get on with their lives, with a minimum of animosity and bad feelings."

Andrew Feldstein

Mr. Feldstein enjoys an active lifestyle, which includes time with his children, skiing, and playing tennis. He loves attending a variety of live sporting events, especially professional tennis, the Toronto Maple Leafs and the Toronto Blue Jays.

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The players in separation and divorce

Family Law Lawyers
Most lawyers in Canada concentrate on one or a few areas of law, rather than serve clients on all types of legal matters. Family law lawyers, often referred to as divorce lawyers, are "members of the family bar" and have usually taken specialized courses and stay up to date on developments in family law through Continuous Professional Development.

All the good family law lawyers I've met in 20 years in the profession are dedicated to family law. Many law firms will say they provide family law services, but the lawyer is not a specialist. It's not a good idea to rely on the lawyer who registered your house purchase to oversee when your children will see each of their parents for the rest of their childhood years.

Family law lawyers can take on one of several roles during the process of separation and divorce.

Traditionally, the only role for lawyers was as advocates, arguing in court for the most favourable outcomes for their clients. This process was obviously based on an adversarial system, often involving a trial, resulting in one winning party, and one losing party.

Thankfully, family law has moved some distance away from this traditional model, and family law trials are increasingly rare.

Family law is ill-suited to an adversarial system. Creating winners and losers out of former spouses, particularly when there are children involved, is not in anyone's best interests.

Seeking resolution, not "victory"
Today, even if a lawyer does represent a client before the court, for example in a case conference or settlement conference, the lawyer and the family court system as a whole emphasize resolution and compromise, in order to help the parties achieve a quicker, cheaper, and more amicable solution to their legal issue.

Lawyers have a legal duty, set out in the *Divorce Act,* to advise clients in the divorce process about negotiation options and mediation facilities.

Long after the lawyers are gone, and the courtroom and the judges are a distant memory, couples who are parents must continue to co-parent. Their lives will remain inevitably tied together by their children. A quick and amicable resolution is therefore in everyone's best interests.

Prolonged litigation will only damage the parents' relationship further, to the detriment of their ability to co-parent in the future. Lawyers, and the court system as a whole, therefore seek to bring about a resolution that allows both parents to move on with their lives.

Alternative dispute resolution
Family law lawyers are often able to resolve matters outside of court, through alternative forms of dispute resolution. Lawyers are able to act in a coaching capacity while guiding clients through mediation, arbitration, or a litigation process. When acting as a coach, a lawyer will allow his or her client to participate in the negotiation process and litigation process, only stepping in as needed to provide legal advice and ensure the client's legal rights are retained.

"Family law is ill-suited to an adversarial system."
Andrew Feldstein

Some lawyers also work as mediators or arbitrators themselves in family law, using their specific expertise to mediate or arbitrate issues such as custody, access, property division, and support.

Judges
Contrary to the clichéd Hollywood portrayal of the gavel-banging judge, Ontario family court judges take on several roles in deciding matrimonial matters. When called upon to make a final determination on a matter, judges traditionally weigh written and oral submissions against the balance of probabilities.

However, judges are interested in settling matters before they ever reach trial. As such, parties are required to attend case conferences, settlement conferences, and trial management conferences in front of a case management judge before they can go to trial.

One of the central objectives of these conferences is to facilitate settlement, and a judge in the conference context is present to provide a judicial perspective on matters and to advance settlement talks.

If the parties do end up at trial, the matter must be argued before a different judge. This prevents anything stated in the context of potential negotiation or reconciliation from being prejudicial to either party at trial.

Finally, outside of the courtroom, former judges are highly valued as mediators and arbitrators in matrimonial matters.

The Office of the Children's Lawyer

If requested, representatives from the Office of the Children's Lawyer (OCL is an Ontario government agency. Other provinces have similar services.) can intervene in matters surrounding children's rights.

OCL representatives serve as legal representatives or as clinical investigators. Judges frequently rely on OCL reports when determining custody and access. An OCL lawyer can also be appointed to advocate in court on behalf of the children.

Third Party Experts

The final participants in many separation and divorce proceedings are third party experts: professionals including business and real estate valuators, social workers, education experts, and accountants. These can be hired by one party, or (more often) by both. Outside opinions can be used to ensure fair and neutral evaluations, lessening the amount of contention between the parties, but third-party experts can also offer conflicting opinions and thereby play into existing conflict.

Parenting coordinators can also be hired by one or both parties, to help prevent or resolve conflict over parenting schedules.

Most self-represented litigants do not understand the necessity of experts and are reluctant to spend money hiring them. Lawyers regularly employ experts in matters ranging from property division to child-related concerns, in order to provide the necessary scope of information the family court needs to effectively evaluate competing claims.

" ... a staggering number of litigants — as many as 80 per cent in family court cases in Canada — are trying to represent themselves in a complex, intimidating system that was designed for lawyers, not laypeople."

Lorne Sossin,
Dean of Osgoode Hall Law School,
February 25, 2015,
The Toronto Star

Not all issues require expert evidence; judges have discretion to order parties to obtain neutral assessments where they believe it necessary.

Typically, but with exceptions, the party that hires the experts is responsible for covering their associated fees. When the value of an asset or property needs to be assessed for financial disclosure, the owner must pay for the evaluation.

Experts' fees are usually split between the parties where assets are jointly owned, the matter is child-related, or where they agree to share the cost.

Represented parties (the spouses with lawyers representing them) pay experts' fees directly to the experts or through their lawyers as part of the disbursements in their legal retainer.

Self-represented parties will pay their experts directly or reimburse the other party for covering joint fees. Experts differ on how and when they expect payment. Most experts expect to be paid on a retainer basis.

The newest major family law player: the Self-Represented Litigant

What is a Self-Represented Litigant?
In family law, self-represented litigants, commonly referred to as "SRLs," are spouses who have chosen not to have a lawyer represent their interests in court, but instead have decided to act as their own lawyers.

The Canadian legal system recognizes that everyone is entitled to "their day in court" and acting as your own lawyer is perfectly legal.

This edition of *It's Time For Justice* looks at whether self-representation is wise, depending on circumstances.

Self-represented litigants have become a reality of the family system, and are on their way to becoming the norm, particularly in provincial court. Surveys of lawyers and judges suggest that 50% to 80% of family litigants are self-represented.

"In many of these situations, the reason litigants don't have a lawyer is that no lawyer would agree to pursue their completely unreasonable position, ..."
Andrew Feldstein

Why are people self-represented?

Money
The main reason for self-representation is financial. Lawyers' fees and the high cost of litigation are a problem for many middle-income people.

Many retain a lawyer at the outset of their matter, but run out of funds before even getting to a court appearance.

The very low income threshold of Legal Aid means most low income people don't qualify for Legal Aid. There are limits to the types of cases Legal Aid will take on—Legal Aid is most common in criminal law—and there are situations where Legal Aid has refused to continue with a matter.

Control
There are other reasons that play into self-representation as well. Beyond basic necessity, there is an increased desire for control on the part of litigants, especially in family law. These days, people demand better customer service from their lawyer, and don't want to let a stranger dictate their future family life. Lawyers need to adapt to this reality, and work on treating the family law client as a partner in the litigation.

Lack of trust, animosity to "the man"
There are other, more personality-driven reasons why people choose to self-represent, and these may be harder to address systemically. In family law in particular, clients can become entrenched in their positions, convinced not only that they are right, but that a judge will certainly see that, if only they can tell their story in court.

It can be difficult to accept an outsider's assessment of one's own family situation. In many of these situations, the reason litigants don't have a lawyer is that no lawyer would agree to pursue their completely unreasonable position, yet the client refuses to modify his or her approach.

What often happens to them is that a judge decides they "lose standing," which means their testimony and participation is ignored.

Part of a lawyer's job is to manage clients' expectations and to encourage settlement, or at least negotiation. Clients who are unwilling to do so often find themselves going it alone.

TRUE STORY

I like to do media interviews because it helps people understand the complexity of the Family Law system. I've appeared twice on one particular television phone-in show, and on both broadcasts a question came from the same man, curious about what happened to him in court, because the judge did not act as the caller wished.

In his questions to me and his reaction to my answer, we learned that he had refused many times to provide information the judge wanted. These refusals led to the caller losing standing, and by the end of the second call, he seemed to understand that not following the rules of the court can have very negative consequences.

Budgets may exist, but be too small

Many people could also afford some legal services, but either cannot afford a full retainer or feel a lawyer is not a worthwhile investment, at least not with a full-service model.

In an uncontested divorce, the couple works out their own separation agreement, and only needs to have it approved by a judge in order for a divorce to be granted. (And they've lived apart for a year or more.)

Even when the divorce is uncontested, it's a good idea for each of the parties to have a family law lawyer look at the agreement, for at least three reasons.

First, the agreement needs to meet the requirements of the *Divorce Act.* A lawyer knows these rules, so the couple can submit an agreement that complies.

Second, an agreement that's not carefully written and professionally checked may lead to major problems in the future. People forget about pensions, illness and accidents. The lawyer should be able to warn about the future.

And third, as much as each spouse trusts the other, they will sleep better knowing that lawyers checked the separation agreement and the numbers.

Six reasons for self-representation

1/ Cannot afford full fees
2/ Philosophically opposed to paying
3/ Unwilling to accept outside opinions
4/ Can't find a lawyer willing to take the client's case
5/ Insist on being in control
6/ Convinced judge will see their point

Andrew Feldstein

A family law lawyer should not act for both spouses at the same time.

In a full-service model, a lawyer becomes the solicitor of record, and is ultimately responsible for all work on a client's file. All correspondence and court documents go to the lawyer.

Most full service divorce lawyers keep track of their time and charge by the hour. And it is almost impossible to predict how many hours will be involved in a family law matter.

Clients who cannot afford full service from a lawyer, or who prefer to maintain control of their matter and do the majority of work themselves, may still be able to afford legal assistance on a limited service retainer (perhaps better known as an unbundled service model). In that model, clients remain responsible for their own overall cases, but obtain legal assistance for discrete aspects of the case.

Unbundled services can be based on hourly rates or on fixed project prices.

Lawyers need to adapt their practice to provide more limited service retainer / unbundled services.

Learn more about unbundling on page 19.

The bad and the ugly of self-representation

So what happens to those who face the system without legal assistance?
Clients who represent themselves are at a distinct disadvantage, as are their children.

The anecdotal evidence from lawyers and judges is that self-represented litigants face worse outcomes, both financially and in relation to their children, than do represented parties.

Astonishingly, most self-represented litigants don't expect that outcome.

As Nicholas Bala and Rachel Birnbaum discovered in their research on self-representation in Canadian family law cases, "A significant portion of litigants without lawyers do not expect lack of representation to have an effect on the outcome of their case – some even expect to have a better outcome." Unfortunately, that is not the reality.

There are a host of reasons why self-represented parties are less likely to be successful.

TRUE STORY – Many SRLs lose their claims due to simple technicalities in legal procedure arising from lack of knowledge and experience. One litigant lost their case after filing the wrong forms. They were applying for a change in access to gain contact with their son. They filed an application for access instead of the correct motion to vary the current access; a mistake anyone unfamiliar with family law could easily make.

Since the two forms technically ask the court for different things, the judge could not grant an order that was not requested. This technicality cost the person their access claim, despite the fact that there was no legal reason to stop them from seeing their child.

First, the law is complex
Even experienced lawyers, who received years of legal education and are always practising, have to invest time and energy in keeping up on changes in the law.

Dr. Julie MacFarlane, The National Self-Represented Litigants project Identifying and Meeting the Needs of Self-Represented Litigant:

Language is a problem
Canada is a nation of newcomers from all over the world, and the law is complex. When English is hard enough for a newcomer to understand, mix in legalese, and it can become almost impossible to navigate.

TRUE STORY – The lack of English fluency of many self-represented litigants places them at a monumental disadvantage in the legal process. One recent immigrant inadvertently sabotaged his own case by submitting evidence disproving his claim that he could not afford child support. He'd been ordered by a judge to provide a doctor's note supporting his claims that he was unable to work due to disability.

The doctor's note he obtained stated that there was no evidence to substantiate an inability to work. Having very minimal English comprehension and not understanding the note's content, the man submitted it to the court, believing it would help him win.

Time to manage your case is a problem
Most larger family law firms have students or junior lawyers that provide research for a file. Self-represented parties generally don't have this kind of time, and have immense difficulty reading and interpreting the case law even if they do have time to attempt it. It takes most law students several months, if not years, of law school to become adept at reading case law and using it as precedent.

Scheduling matters in a court house is always difficult, and many self-represented litigants find it very difficult to fit in a full time job and court meetings. Hours and hours can be spent waiting for something to happen, for some door to open, or for some particular piece of paper to arrive.

There are no easy answers
Different people interpret the same words quite differently. There is no easy answer to most difficult legal questions.

Self-represented parties often think the system is against them, and are confused when they get conflicting information from various sources,

such as different lawyers or court workers. They report being frustrated that someone doesn't just give them the answer.

But any lawyer can tell you that most issues can go both ways. Without a more nuanced understanding of the law, that reality is difficult to work with or to appreciate.

Emotions can affect judgement

Furthermore, family law is emotionally difficult for clients even when they do have representation. Human beings are not well equipped to evaluate options, make rational decisions, create logical arguments or respond to questions or challenges, when we are very stressed.

And it is natural to be extremely stressed when our children, financial future, family home, and property are on the line.

That stress makes it difficult to present a case in a straightforward and comprehensive manner that a judge can understand, without emotional outbursts. Even self-represented parties who are lawyers themselves find the experience of arguing their own family law case to be extraordinarily difficult.

TRUE STORY – Here's an example where stress and pressure negatively affected a self-represented litigant. A self-represented husband in a child and spousal support hearing ended up accepting a rather bad deal after the judge suggested that he and his wife's lawyer settle the matter on their own.

After nearly four hours alone with the opposing counsel, the husband walked out with an outrageous settlement in his wife's favour. He had agreed to increase his monthly support amount from approximately $1,000 to nearly $2,700. He also committed to paying for the entirety of his child's university tuition and book expenses.

Self-represented litigants don't understand the role and value of third party experts

In a complex matter, if the opposing party has the means, they may hire a variety of third-party professionals (such as business valuators, parenting assessors, or education experts) to help bolster their side. The self-represented party may not have any idea that they should secure such professionals.

If they do know it is a good idea, they don't know where to find these experts and have no idea just how good particular experts are.

And if they can locate skilled experts, they may not be able to afford them.

The judge is then faced with a number of experts on one side, which may then make it difficult for the self-represented party to advance his or her case.

"The consequences of self-representation in family law are just as significant and potentially risky as those in criminal law."

Jennifer Blishen,
"Self-Represented Litigants in Family and Civil Law Disputes."
Canadian Family Law Quarterly 25.2
(Jun 2006): 117-130

Court procedures are complex

On top of the challenges of navigating the substance of family law, self-represented litigants face many procedural hurdles. The court system is complex. There are rules about how to file, what to file, when to file. There are also general rules of evidence, which court staff can't explain clearly no matter how hard they try, and which most law students will tell you are very difficult to grasp and apply.

Without a sense of what type of evidence is needed to support their position—and then how to get that evidence before the court—self reps risk being completely unable to prove their case.

Self-represented litigants can also achieve worse outcomes because they are frustrated by the process, impatient to resolve the matter, and inexperienced with the system. They throw up their hands in frustration and say "OK. I give up."

TRUE STORY – In the middle of the second decade of the 21st century, there are still arcane rules about procedures used to communicate between parties, lawyers, and the court. For the most part, computers are not allowed.

When I want to have a case meeting, or ask for a motion to change an order, it is all done in writing on paper delivered physically from one person to another. And the people I write to must write back to me, on paper and delivered.

Distance makes things worse

Jurisdictional issues, when they arise, present an enormous obstacle for those who are self-represented. All the difficulties listed so far assume that the self-rep is facing litigation in his or her home town.

These are all exacerbated when the opposing party lives outside the province and starts proceedings in their jurisdiction, or when the children live in another jurisdiction.

Parties facing a court proceeding in another province or country who cannot retain a family law lawyer in that location face practical concerns, such as travel costs and time requirements.

More importantly, their lack of legal expertise will likely become an insurmountable obstacle in locations where the law differs from back home.

While the divorce law is federal, the division of property varies from province to province, and court procedures vary, too. (For that matter, procedures vary from courthouse to courthouse in one province, and judges inside the same courthouse have different approaches, as well.)

But the problems escalate when you cross national borders. Even experienced family law lawyers face difficulties making sure they understand the other country's rules. When I am working on Canadian cases that extend into the USA, I need to be aware of different rules for different states. I usually ask the client to retain a lawyer in the USA to assist.

Division of property is one of the aspects of divorce that varies from state to state, with California famed for its high settlements when entrepreneurs and athletes get divorced.

In cases with an overseas element, one example of cross-border confusion is whether or not police officers in some countries will follow court orders issued in Canada, regarding sending children back to Canada.

And it can get worse. Often, foreign jurisdictions have very different cultural values than Canada, and a self-represented litigant can find these values very confusing. The "foreign" litigant may be completely lost understanding Canadians rules—no-fault divorce is an example—or the Canadian can be bewildered by the foreign customs.

"A person who is self-represented on an international matter has almost no chance of a fair outcome."

Andrew Feldstein

Many experienced family law lawyers will not take on two-jurisdiction cases themselves simply because they do not feel qualified to do so.

To make matters worse, these cases are likely to be the most pressing for self-represented parties. They include situations where children are abducted, or where one person attempts to gain an advantage in litigation by moving and filing elsewhere. A person who is self-represented on an international matter has almost no chance of a fair outcome.

Displaced costs of self-representation

"Displaced cost" is the idea that while the self-represented litigant may save some money, other people in the divorce process will have to spend more money, or take more time. And time translates to money.

Sometimes, self-represented litigants end up ahead. Sort of.
I've examined in detail many of the difficulties self-represented parties face. Despite these difficulties, in some cases people who are self-represented achieve a positive or at least mixed result. Furthermore, they do save on legal fees, although the legal results are on average worse for them.

Everyone else pays more
However, when we look at the effect of self-representation on the judicial system as a whole, the financial savings of one litigant translates into a huge cost to the system that must be borne by other players, including the opposing party, the judge, court staff, and by extension, the taxpayer.

The resources that self-represented parties require, and even demand, drain resources from an already-struggling system. They harm others' chances of timely access to justice.

Costs placed on the opposing party
In family law, "costs" is usually a financial number, but it also has an aspect of "harm" or "loss" in a social and civil sense.

The additional costs caused by a self-represented litigant can include higher legal bills, and the "moral or social" costs can include tying up courts so other people cannot settle their disputes and get on with their lives.

Costs on an opposing party or the judicial system can include money and social harm.

The most immediate and obvious costs created by the self-represented party fall to the opposing party. Below are just a handful of the most common costs regularly faced by a party opposing a self-represented party.

Increased legal costs
The plain fact is that the legal costs saved by a self-represented party often end up paid by the opposing party to their lawyer. Lawyers report that almost every time the other side is self-represented, it increases costs for their client.

This is not only because the dispute drags on unnecessarily. It's also because the self-represented person's unfamiliarity with the process creates difficulties for the lawyer on the other side. The lawyer ends up doing work for both sides – for example, putting together exhibit books or agreed statements of facts.

> **"Individuals of limited means should not be able to conduct litigation with impunity."**
>
> Justice Sheilagh O'Connell in Burns v. Krebss, 2013 ONCJ 226, at para 19

The lawyer also needs to take more time to explain each stage of the process to the other party. Otherwise, further time will inevitably be wasted if the opposing party does not understand the procedure and therefore misses filing deadlines or fails to provide information.

Sometimes, the self-rep even looks to the other side's lawyer for guidance or legal information that can easily cross the line into advice.

Prolonged litigation
In addition to requiring more work from the opposing side's counsel, cases involving a self-represented party often drag on much longer. Two decades in divorce courts have shown me that settlement becomes less likely when the other side is self-represented.

Lawyers want to achieve a settlement
When opposing lawyers are discussing a case, generally they both want to achieve a settlement. Some self-represented parties and many members of the public have the sense that lawyers increase the level of acrimony in a dispute. But the reality in family law is, in fact, the exact opposite.

Family law lawyers are under a legal obligation, mandated by the *Divorce Act*, to encourage negotiation and settlement.

Self-represented litigants often don't know what is a good settlement.

On a practical level, divorce lawyers have familiarity with the law, and a sense of what expectations are reasonable on the part of their client. They can provide a more grounded sense of how things might play out if the client insists on going to court, and of the costs (financial and emotional) of a trial.

Self-represented litigants have no idea what is standard practice

How much variance is there between the spousal support and child support charts and the actual awards?

Many self-represented litigants have difficulty understanding there's no "punishment clause" in no-fault divorce agreements, and so they keep repeating their complaints, which fall on deaf ears.

Clients with lawyers have a sense of urgency

A party paying for a lawyer knows that for every day of continued dispute, the cost increases. This knowledge provides a powerful motivation to settle.

Self-represented parties often have none of this motivation. Even if they claim they want to settle, they often lack the objective knowledge necessary to understand what a just settlement might look like in their situation.

TRUE STORY – One self-represented woman stubbornly dragged what should have been a 5-day divorce trial into a 21-day long nightmare. She caused significant delays with her overall behaviour and inadequate trial preparation by frequently interrupting proceedings, arguing petty facts and constantly revisiting already settled issues. In her adamant pursuit of the 'truth'—which had already been established by documented evidence—she cross-examined her husband for nearly two weeks in a pointless fishing expedition. So feckless was this exercise that the husband's counsel withdrew from the proceedings for a week. The wife only stopped when the court could stand no more and finally cut her off.

TRUE STORY – A wife and husband were exchanging offers to settle their custody dispute. Every time the wife and her counsel made a reasonable offer, the self-represented husband responded with a self-righteous counter-offer that did nothing to further settlement.

His refusal to comply with the Family Law Rules caused extra complications for the wife as her lawyer had to take on a significant amount of the husband's work to get the matter to court. In the end, the husband inadvertently increased her legal fees by nearly $10,000.

Costs can extend far beyond the opposing party, too

Ethical difficulties

In a system designed to be adversarial, the self-rep also presents ethical and practical difficulties for the lawyer on the other side. As one Alberta lawyer succinctly stated in response to a survey regarding the rise of self-represented parties in family law litigation, "there is a thin line between being someone's adversary and taking advantage of an unrepresented litigant."

When a self-rep looks to the lawyer on the other side for legal information, it also places that lawyer in a precarious ethical position. Information can often be misinterpreted as advice, or generally misunderstood, resulting in a self-rep blaming the opposing lawyer for misinformation.

As a safeguard against potential complaints to the Law Society lodged by the self-rep, prudent lawyers will communicate with the self-rep only in writing, and keep careful notes of all interaction.

Conversely, lawyers have a mandated duty to do the best possible job for their clients. Letting opponents go off the rails can often be of benefit

to the lawyers' clients. Do they harm their side by helping the other side?

All of these actions take time, and that time must be billed to their own client.

Unpredictable litigation, corners being cut

In addition to complaints, lawyers facing self-represented parties can be exposed to incivility, and unethical behavior on the part of the self-rep (sometimes deliberately, but often simply as a result of ignorance of the rules governing the adversarial process).

Lawyers constantly repeat to their clients the importance of full and honest financial disclosure. They have a professional obligation to respect the rules of the court, and they know the consequences of their clients attempting to hide money from a spouse.

But those who are self-represented do not have this check in place, and often don't appreciate the importance of disclosure.

They can fail to file forms on time, or at all, and can fabricate or grossly exaggerate allegations without necessarily appreciating what they are doing, as their emotions run high.

Each time a self-represented party fails to follow one of the Family Law Rules, the matter must be delayed, and the opposing party must take action.

The Family Law Rules are available online. Just ask Google to search for Family Law Rules Ontario, or whatever province is appropriate.

Self-represented parties are often told they are expected to read and follow the rules, but the rules are long, complex, and so filled with legal terminology that lay people cannot reasonably be expected to absorb them.

The problem of cost awards

Under the Family Law Rules, there is a presumption that the successful party in litigation is entitled to their costs.

Litigation, basically, is the kind of legal action where two parties argue against each other, and a judge (juries are not part of family law) decides on whose views prevail.

Often, there's a sense of one party "winning."

Litigation can be avoided if the parties agree to settle without expensive court proceedings. There are several ways of avoiding litigation but one is more formally established.

"Costs rules are designed to foster three important principles:

1/ to partially indemnify successful litigants for the cost of litigation
2/ to encourage settlement
3/ to discourage and sanction inappropriate behaviour by litigants."

Andrew Feldstein

Collabortive Law

Called Collaborative Law, it requires that both parties and their lawyers agree they will not escalate to court, and each lawyer agrees not to represent the client if the case moves to court. I'll write more about Collaborative Law in a future Edition of *It's Time For Justice.*

Costs

Costs mean reimbursement for the legal bills and related expenses of the successful party, paid by the unsuccessful party.

The court can also award costs if one party is being difficult (resisting disclosure, or refusing to file material on time), wasting court time and resources. In Serra v. Serra, the Ontario Court of Appeal confirmed that costs rules are designed to foster three important principles:

1/ to partially indemnify successful litigants for the cost of litigation;
2/ to encourage settlement; and
3/ to discourage and sanction inappropriate behaviour by litigants.

With no chance of a costs award against

one or either party, these incentives disappear. With parties who are representing themselves, however, these incentives can disappear, because some judges are hesitant to award costs in cases involving self-represented parties.

It is true that it seems unfair to award costs against a party who already cannot afford their own lawyer.

But without the risk of court sanctions, it is difficult for the court to impress upon the self-represented party the importance of respecting the rules and proper process.

TRUE STORY – Self-represented litigants may fail to realize that their own conduct can have a significant legal impact on the outcome of their case. One man with an annual income of $36,000 was ordered to pay his wife's costs of $40,000 which resulted from his unreasonable behavior in forcing the matter to trial. He had turned down a number of very reasonable offers to settle, believing he could do better in litigation. Despite being given much leeway at trial, his complete lack of preparation constantly stalled the proceedings. In the end, the judge's final order was much worse than the offers the self-represented litigant turned down.

Costs placed on judges

Many of the difficulties experienced by lawyers facing a self-represented party exist for judges as well. The matter takes longer, is less predictable, demands special treatment, and presents cost award challenges.

Lack of counsel is almost guaranteed to make it difficult for clients to get a fair trial and have their issues considered on their merits. If both parties are self-represented, many of the costs listed above as falling on the opposing party fall instead squarely on the case judge.

For the judges, more time will likely be devoted to any matter in which one or both parties are self-represented. Parties will be less prepared, are less likely to have filed all relevant documents on time, and are less able to settle. The judge is left to shepherd the parties through the system and provide the information and guidance that would have come from a lawyer. This additional burden on the judge's time (and the court docket) results in increased costs to the taxpayer.

"A self-represented litigant is vulnerable, frequently angry, sometimes volatile, and usually the less-informed person in the room."

BC lawyer Chelsea Caldwell, quoted in "Self- representation in court common nuisance" by John Schofield.
The Lawyer's Weekly, 26 August 2011

Perhaps more importantly, it used up time that could have been spent looking after the needs of other parties in other divorces.

If self-represented parties end up at trial, the judge is faced with a number of ethical and practical difficulties. It is a matter of individual discretion how much to prompt self-represented parties for relevant evidence, how much leeway to give them on procedural rules of the court (for example, letting them file materials late, bring evidence to trial that they have not filed) and how much time to take explaining the procedure and legal vocabulary to confused litigants.

What does "quantum" mean, for instance? In family law, it generally means a sum or amount that is paid from one party to another. The "quantum" of child support, for instance.

Third party professionals

If the other party has hired a number of third-party professionals to provide evidence in their favour, and the self-represented party has not been able to do the same, the judge can be faced with one-sided presentation of evidence, which may make it difficult to arrive at a balanced decision.

Many judges find that only if they provide special assistance to self-reps will self-represented

parties have a chance of having their cases adjudicated on their merits. Treating parties the same would actually result in a distinct advantage to the represented party.

What's the balance? If judges do not assist the self-represented person, there is a real risk of miscarriage of justice. But if they assist too much, the represented side can allege bias. Allegations of too little help, or too much help, raised by the self-rep or by the opposing party, then take further court time and resources to address. This creates a difficult balancing act for even the most experienced judge.

With court dockets already overloaded, the additional time taken with self-represented parties throws off an already tight schedule, resulting in matters being bumped, and additional delays for other cases before the court that day.

"How much time should judges take explaining court procedures to confused litigants?"

Andrew Feldstein

Costs placed on court staff

Much of the difficulty self-represented parties have is with paperwork; what forms to complete, what information is required, how to file and serve the completed forms. The court system is a confusing maze of paperwork even for lawyers and clerks, and for those who are self-represented, it is a nightmare.

Court staff bear the brunt of self-reps' confusion in this regard. Court staff are usually not lawyers, and therefore can't offer actual legal advice, beyond explaining the processes.

Yet they face self-represented litigants who want to know not only what form to file, but how to fill in the blanks. They are looking for support that cannot be provided, either within the law, or practically.

Court staff feel badly that they can't help, but realize that the lineups need to keep moving.

TRUE STORY - Court staff are often caught in the middle of the chaos and drama arising from the frustration and stress of self-represented litigants.

In one instance, a self-represented wife with health problems received permission from the judge to lie down on the floor in the middle of her court proceeding, and the case continued on. In another, the husband came to court with an acquaintance who threatened the other lawyer to 'take it outside.'

One woman even had a shouting match with the filing clerks after being informed she was trying to file the wrong forms for her specific claims.

While the difficulties self-represented litigants experience are worthy of sympathy and are understandable, dealing with their dissatisfaction and aggravation is a burden that can waste the already overtaxed time and resources of court staff.

Are Band-Aid solutions better than nothing?

Earlier in this Edition, I presented an overview of some of the struggles self-represented parties face, and the reasons they often have worse outcomes than parties with legal representation: stress, emotional turmoil, difficulty with the law, confusion about procedure, impatience, inability to negotiate in an informed manner, and jurisdictional complications, to name a few.

Given these problems, the existing forms of assistance offered to self-represented parties range from quite useful for cooperative couples in an uncontested divorce to sadly inadequate when the divorce is contested and the parties are hostile.

Duty counsel is not enough

Duty counsel (court-employed lawyers), for example, can provide brief sessions of legal advice (a 5-10 minute session, depending on the lawyer, the court, and how busy the courthouse is that day). Just trying to find a duty counsel lawyer in a busy courthouse can be a real challenge.

"Clogging the court with amateurs is costly."

Philip Slayton,
"Top Court Tales:
The self-representation problem."
Canadian Lawyer Magazine, June 2008

This short session may help the person understand their basic rights and obligations under the law, or learn the meaning of some legal phrases. The lawyer might advise them on what a reasonable position would be in their situation, and suggest how to present their position.

But imagine how much of this information an extremely stressed, anxious and emotional litigant is likely to absorb, when the lawyer is speaking quickly (because of time constraints), in unfamiliar vocabulary, using legal jargon and terminology, about a system the self-represented person likely does not even grasp.

This is akin to expecting a very ill and scared patient to understand the diagnosis of a medical specialist, given in medical terminology, in a rushed manner, with little time for questions, and no opportunity for a follow-up visit. Increasing duty counsel availability may give each person an extra few minutes with a lawyer, but won't help dispel the lingering confusion with which these parties are left.

The web can be useful, but beware

The same problem of comprehending and acting under stress occurs with legal information provided online. To suggest that someone can understand the law, apply it to their own situation, and overcome the emotional hurdles involved in self-representation thanks solely, or even in large part, to free information on the internet is naïve at best.

Online information is better than nothing.

Governments are good sources

Free information can be of assistance in some stages of the process. The Ontario Government has published guides that provide information on filling out certain specific forms, and has recently added a "Forms Assistant" that will walk parties through the process of completing an Application, Answer, Parenting Affidavit, and a handful of other forms.

These are very helpful, as far as they go. For uncontested divorces, consent motions, and certain other matters that will not necessitate a court appearance, this manner of assistance might help keep self-represented parties from needing other, extensive, assistance from the court.

But government web-based information will not solve the problems of self-representation for contested, complex matters, nor should it be relied upon for people at risk of losing custody of, or access to, their children.

Lawyers' web sites

Many law firms have web sites with good information about more than their own firms. The separation and divorce process is explained in various degrees.

My Firm has three web sites we've worked

hard to pack with information.

Separation.ca has articles, blogs and videos on all aspects of divorce.

FamilyLawHelp.ca goes into even greater detail. Before a person decides to become a self-represented litigant he or she should spend a few hours looking in depth at FamilyLawHelp.ca and decide if they are up to coping with the complications we explain.

ItsTimeForJustice.ca has this paper and the two previous editions.

The Family Law Rules, court forms

The Family Law Rules were simply not designed for self-represented parties. They are not comprehensible to lay-people.

The Family Rules Committee has attempted to make some superficial vocabulary changes to help self-represented parties. For example, they now refer to "a case" rather than "an action," "interim orders" are called "temporary orders," and "variation motions" have been changed to "motions to change."

I doubt whether any lay reader of these Rules would say those changes have made any difference in their ability to navigate court procedure.

The same is true of the court forms. There are multiple forms required for any action, they are used differently by different court houses (despite there being one uniform set of Rules), and they are difficult to distinguish from one another.

Paralegals are not up to the task

Another solution that is unfortunately little more than a Band-Aid solution is the suggested expansion of paralegals' practice areas to include family law.

Paralegals are a legitimate part of the legal system. They are (as of 2007) regulated by the Law Society of Upper Canada, and they can represent parties in some areas of law, such as small claims, traffic tickets, and evictions. These are all relatively straight forward.

Family law was, upon last review, considered an inappropriate area of law for paralegals. Many commentators suggest that allowing paralegal to practise family law would offer an easy fix to some of the struggles of self-represented litigants. Julie McFarlane, in The National Self-Represented Litigants project, is one of many commentators to have suggested this.

In reality, the answer is not that simple. Much of what lawyers and other players accomplish in family law is to narrow the conflict, and help facilitate negotiation and agreement. This requires much more training, knowledge, and overall finesse than does supporting parties in the existing conflict.

Lawyers undergo extensive education, practical experience, testing, and other licensing requirements before they are called to the bar. Many family law lawyers articled with family law firms.

Paralegals, in contrast, can obtain a one-year degree, which may include an on-the-job training component. And by all reports, that prepares them quite well for small claims court and traffic court. However, paralegals cannot practice family law in Ontario as of 2007.

Rather than trying to find cheap, inexperienced people to help families in crises, all family law stakeholders need to find ways to make the process work for families.

The Law Society has stated that it will continue to explore opportunities to expand the practice areas of paralegals, but only after undertaking a "comprehensive review of the paralegal training and examination regime." The LSUC and the Attorney General should not succumb to misguided pressure from outside parties and allow paralegals into this area.

We would be harming self-represented parties and represented ones alike, under the pretense of helping them.

Do not search for cheapness

Ideas like providing self-represented parties access to law libraries, or allowing them to bring support people to court (both suggested by Julie McFarlane in her recent study) are simply not going to solve this problem – they provide superficial support at best, while ignoring the real issues.

Fundamental changes

If we really care about access to justice, and preventing the harm that self-represented parties currently cause to themselves, their children, and the system, we need real, fundamental change.

There are numerous changes we can make to the family court process to make it more efficient and less costly for all involved, including those who are self-represented. I will tackle these changes in the next issue of my White Paper (Edition 4). Here, I offer just a few ideas to specifically address self-representation.

Court programs

Court programs like the Mandatory Information Program, mandatory first appearance dates, and the Dispute Resolution Officer Pilot Program all help to familiarize self-represented litigants with the system, encourage resolution, and ensure that self-represented parties have filed the necessary paperwork.

More programs like these are needed in all family courts.

Simplified, uniform rules

We also need to simplify the rules, and have courts follow them consistently and predictably, across locations.

Recent changes to Criminal Law Rules of the Ontario Courts of Justice (regulating criminal law proceedings in Ontario courts of justice) replaced 32 rules and 15 forms with 5 rules and only 3 forms (Application, Response, Consent).

With these simplified rules and forms, it might be realistic to think self-represented parties in criminal cases can read and understand rules themselves.

Family law is different

As I've stated earlier, the Family Law Rules are different. More than vocabulary changes are required to make our rules and forms accessible. Even experienced lawyers and clerks have difficulty navigating the family court filing process, in part because each court location has a different "interpretation" of the rules, leading to documents that are correct to one court being inadmissible in another. The result is wasted time and resources.

"In order to maintain confidence in our legal system, that system must be, and must be seen to be, accessible to all Canadians."

Supreme Court Chief Justice
Beverley McLachlin,
2006 Canadian Bar Association
Annual Conference,
St John's, NL

Unbundled legal services

The most promising and as yet underdeveloped solution is for more family law lawyers to offer unbundled legal services, also known as limited scope retainers. Most self-represented parties could afford some legal assistance, and want to pay for it, but are unable to afford a full retainer.

Unbundled legal services are a middle ground option between full legal representation and no representation, making it an appropriate solution for middle-class income levels – the vast majority of clients who find themselves unable to qualify for Legal Aid or pay for a lawyer.

Unbundled services would drastically reduce the number of self-represented litigants in the system, and would increase the ability of those who decide to represent themselves.

Parties could obtain coaching or drafting services from a lawyer, but then make an informed decision to save on legal fees and represent themselves in the actual court appearance.

The Law Society of Upper Canada recently changed the Rules of Professional Conduct to offer guidance to lawyers who want to provide services that way. The revised rules give a clear green light to lawyers. They can take on clients on a limited retainer basis, provided they do so appropriately, without risk of courts insisting their representation

go beyond the scope of the retainer, and without opening themselves up to allegations of negligence.

Restrict representation to the retainer's scope
Traditionally, a family law lawyer who accepted a client was responsible for providing full service to that client until the end of the case. The lawyer could not release, fire, get rid of, terminate the client, regardless of the behaviour of the client, or the client's inability to pay the lawyer's fees, without the client's consent or a court order if the matter was in court.

With unbundled services, it is possible to define what services will be performed, and how payment will be made for those services. And the lawyer will be able to decline doing other work, unless payment arrangements are made.

There's no fear of a judge saying, "That's your client. You must represent that client, whether or not fees will be paid to you."

More lawyers in Ontario need to respond to the Law Society's invitation and begin offering unbundles services, and other provinces' law societies need to follow Ontario's example.

Personally, I would much rather help a dozen clients for a few hours each, on an unbundled basis, than spend weeks representing one client in a drawn-out trial. I am confident many of my colleagues feel the same.

From an access to justice perspective, unbundled services help me greatly increase the number of clients I can assist on any given day or week.

My billable hours remain the same, but they are spread across many clients. There is no down side, from my perspective, to offering unbundled service.

I would rather provide timely and cost-effective assistance to a number of clients who are informed, prepared, and eager to resolve their issues than devote billable time to going back and forth on behalf of a client who has no intention of compromising.

These are just a few ideas I believe are promising. There are many more out there, and I will expand on the ideas I set out here in our next edition when I also tackle the more systemic challenges facing the family courts today. In the meantime, I encourage you to send me your own suggestions, and your thoughts on my ideas.

Only by working together can we truly improve access to justice.

"Personally, I would much rather help a dozen clients for a few hours each, on an unbundled basis, than spend weeks representing one client in a drawn-out trial. I am confident many of my colleagues feel the same."

Andrew Feldstein

Details about the divorce process
We have created FamilyLawHelp.ca It is a very broad and deep web site providing a great deal of easily understood information about the separation and divorce process in Canada, especially in Ontario.

FamilyLawHelp.ca provides the information that will guide unhappy spouses in understanding what faces them if they decide to separate and divorce.

And it provides the information needed to decide where engaging a lawyer who provides unbundled legal services is a good idea, and which types of services should be used.

Access to justice is the responsibility of every Canadian politician and journalist

The complete list of stakeholders in the world of family law is long, and includes everyone in Canada.

Are there any politicians and journalists who do not know many Canadians who are separated or divorced?

Ask yourself if these people are being treated as fairly as married couples. Are politicians and journalists serving the large population of Canaidnas who are separated or divored?

And the impact of separation and divorce extends far beyond the couples themselves.

Canadians affected by divorce

- the couples themselves
- their children
- family law lawyers
- judges
- court officials
- federal civil servants
- provincial civil servants
- immigration lawyers
- criminal lawyers
- estate and wills lawyers
- accountants
- employers
- school teachers
- bankers
- social workers
- police officers
- friends and neighbours
- teachers of children involved in divorce
- mediators
- grandparents, uncles, aunts, cousins
- step-parents

Particularly important stakeholders are federal and provincial politicians, directly involved in laws regarding divorce, and municipal politicians responsible for the safety, welfare and education of children.

Journalists have a special role

Political journalists can report on this story, and tell their readers and viewershow hard politicians are working to improve things.

"All members of parliament have received electronic copies of *The Good, the Bad and the Ugly of Self Representation - It's Time For Justice*"

No excuses for not doing anything

There is no excuse for politicians and journalists to say "we didn't know self-representation of litigants is unfair to Canadians separating or divorcing."

Electronic copies of *The Good, the Bad and the Ugly of Self Representation - It's Time For Justice* have been sent to:

- All Members of Parliament
- All Members of the Senate of Canada
- All Members of the Ontario Provincial Parliament, the province where I practise
- The Premiers of all other provinces and territories
- Selected executives of the Law Society of Upper Canada
- Leaders of the Canadian Bar Association
- A selection of the leaders of the Association of Family and Conciliation Courts, the inter-disciplinary and international association of professionals dedicated to the resolution of family conflict
- Executives of the Ontario Bar Association
- Leaders at the Advocates Society
- A selection of editors, producers, hosts, reporters and columnists in a wide range of Canadian media, across the country, including those I have met in interviews
- The Parliamentary Press Gallery members
- A selection of social workers, mediators, expert witnesses and others with whom I've worked
- Selected colleagues who practise family law, and some educators teaching family law.

Statistics Canada supplies some 30-year divorce rate statistics

The 30-year total divorce rate (TDR-30) represents the proportion of Canadian married couples who are expected to divorce before their 30th wedding anniversary.

For example, a TDR-30 of 40.7 per 100 marriages for Canada in 2008 indicates that 40.7 per cent of marriages are expected to end in divorce before the 30th year of marriage (if the duration-specific divorce rates calculated for 2008 remain stable).

It is difficult to keep track of the pace of change in divorce cases, because the government of Canada has cut the abilities of Statistics Canada. 2008 statistics are the latest available.

- Canada 40.7
- Newfoundland & Labrador 25.0
- Prince Edward Island 31.7
- Nova Scotia 31.1
- New Brunswick 29.7
- Quebec 47.4
- Ontario 42.1
- Manitoba 31.5
- Saskatchewan 30.3
- Alberta 46.0
- British Columbia 37.1
- Yukon 59.7
- Northwest Territories & Nunavut 35.1

The roles of politicians and journalists

Politicians should realize …
Politicians should realize it is their job to ensure Canadians are treated fairly and evenly under the laws they create.

Journalists should realize …
Journalists should realize that keeping track of just how well politicians ensure fair and equal treatment for everyone in court is a big story.

Your role in family law
Improving and smoothing and speeding up family law should be party policy for every political party.

Are you a politician?
If the CBC's Rosemary Barton interviewed you on Power and Politics, what would you say when she asks about separation, divorce, self-represented litigants, and the effects on children?

Are you a journalist?
Journalists are not just people who write down or broadcast the ideas of others. Part of the job of journalists is to think up ways Canadian life can be improved.

The news pages, the feature pages, the comment pages, and the editorial pages, whether print, broadcast or web pages, are all involved.

I'd like Ms. Barton and Chris Hall at the CBC; Don Martin at CTV; Postmedia's David Akin and Drew Hasselback; The Globe and Mail's Sean Fine and Kathy Tomlinson; Tom Clark at Global; Barb DiGiulio at Newstalk 1010; Joanna Smith at Canadian Press; and Steve Paikin at TVO to start asking politicians why Canada has so many self-represented litigants.

And the same goes for journalists in all the communities in all the ridings of politicians who have a vote in the House of Commons and provincial and territorial legislatures.

> **"Journalists should realize that keeping track of just how well politicians ensure fair and equal treatment to everyone in court is a big story."**
>
> **Andrew Feldstein**

Canada needs new or revamped laws, rules
In order for a lot of my ideas from *It's Time For Justice* to come into play, laws must be changed, and that's where politicians come in.

I urge politicians to come into this discussion not as "whipped members" told to ignore family law or with a yea or nay as ordered by a party leader.

Instead, please act as the elected representative, federal or provincial, of the men and women, and the children, of your ridings and of the entire country.

Four actions I would like you to take

Politicians

1/ If you are a politician, please put *It's Time For Justice* on your agenda as a discussion item for meetings with other politicians and public servants.

Read the federal Divorce Act for an overview of the process. Read your provincial act covering division of property.

Talk with your constituents.

Then show initiative.

2/ Politicians should invite a family law lawyer to a public meeting you host, somewhere within your community. Invite the public to tell you stories and ask you to improve the system.

Write down what you learn at the meeting, and determine what you and your party should do next.

Journalists

3/ If you are a journalist, please think about the opportunities to do stories about separation and divorce. Where does divorce fit into the stories you are going to write anyway?

Are you a real estate writer? There's a story waiting for you on the dynamics and economics of splitting a family from one home to two.

Are you an education reporter? Should teachers with "children of divorce" receive special training?

How do kids organize their education when dividing their time between mom's house and dad's?

What should classmates be told, if anything, as a child's parents separate and divorce?

Are you a business writer? What impact does divorce have on an owner-operated business, or a partnership?

Replace self-representation

4/ Journalists, please seek out politicians and civil servants who can improve access to divorce, and who can change laws and Family Law Rules. Report on how self-represented litigants can be replaced with true legal advisers who can cut both the time a divorce takes and the money it costs.

The good, the bad and the ugly of self-representation

Journalists, Politicians:

What are your own thoughts?

Coming up in future editions of *It's Time For Justice*

EDITION FOUR
The steps and stages from thinking about separation to actual separation, to finalized divorce, and then into the future

- Overview
- Child custody
- Child access
- Child support
- Spousal support
- Division of property

EDITION FIVE
How lawyers charge, fees to be expected from other legal industry professionals, administrative charges, and more

- Legal system and court process changes that lead to billing "inside the system"
- Financial arrangements that you need now
- Financial arrangements that can be changed later
- The monitoring process
- An introduction to unbundling

EDITION SIX
Privacy, lack of privacy, criminal law, wills and estates law, business law and related impact on personal life

- Privacy and lack of privacy
- When spousal disputes turn into crime
- Divorce opens doors to fraud
- Legalities of "blending" families
- How family law and wills and estates law fit together

EDITION ONE, EDITION TWO and EDITION THREE are available at www.ItsTimeForJustice.ca

Comments welcome
Please write to us with your comments and suggestions for topics to cover.

Comments@itstimeforjustice.ca

The good, the bad and the ugly of self-representation

It's Time For Justice

EDITION THREE – July 2016

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you would like us to explore,
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