# Self-Represented Litigants - Addressing the Challenge

## Introduction

The number of self-represented litigants (SRLs) is significantly increasing in courtrooms. Litigants choose to self-represent for reasons such as inability to afford professional representation; the belief that lawyers will only complicate simple and uncontroversial cases; and the perception that the lawyer’s fee is not proportionate to the value of the dispute. In acknowledgement of the rising number of SRLs, Rosemary Hunter in her publication explain that there are real challenges associated with SRLs. In the first instance, by virtue of not being lawyers, SRLs have no understanding of the processes and corresponding paperwork needed at different stages of the proceedings, which results in frustration. On the other hand, courts are charged with the responsibility of upholding laws and adhering to legal procedures of providing assistance or advice to the litigants. Therefore, the increasing number is linked to the challenges the public faces in accessing justice as it contributes to and supports the slowing down of court procedures, increases costs for representation and is associated with judicial stress and burnout. This paper discusses how SRLs and court proceedings have negative and cyclic effects on each other with particular emphasis on the adversarial court system.

## The Self-Represented Litigant Challenges to Courts

It was noted in both *Baziuk v Dunwoody*, and *Cachia v Hanes* that unrepresented parties are increasingly becoming a problem to the courts mainly because of their unfamiliarity with the law and court procedures.With specific regards to an adversarial court system, the courts play considerably passive roles whereby they rely on the parties to bring forth all the relevant materials that will facilitate decision making. Under common law, lawyers in the adversarial system represent parties before an impartial judge or jury who, in turn, endeavor to establish the truth and give judgment accordingly. However, in the SRL scenario, SRLs are typically not qualified legal practitioners and will not possess the requisite expertise to offer the court assistance that a qualified lawyer would. Therefore, the absence of expert assistance will delay the courts in discharging their role and arriving at decisions that the disputing parties could not make on their own.

Self-represented parties have exposed overburdened court dockets in the Australian justice system featuring a complex and slow-moving process; a shortage of judges and over-reliance on outdated paper systems; and a lack of technological innovation. A specific example is the family court system that was created and developed on the assumption that the parties will be represented by professional lawyers. In that context, the family court is inherently ill-suited to accommodate parties that do not have lawyers or cannot afford more than an insignificant degree of legal assistance. With reference once more to the adversarial court system, courts may not be able to deliver the full benefits of justice to SRLs or ill-represented litigants.

SRLs are neither qualified lawyers nor officers of the court. Effectively, they are independent of the duties that legal practitioners owe the courts and, as such, are not governed by such duties. It is worth noting that the operations of the court systems depend on such duties which include the duty of disclosure, duty not to distort the administration of justice, duty to avoid abuse of court processes and duty to conduct cases expeditiously. In the SRL scenario, any of these duties may be breached even under oath either deliberately or out of genuine lack of understanding of the duties and their implications. Hence, this is a challenge not only to the legitimacy of the judicial system and ensuing judgment but, equally importantly, also to the SRL.

## The Self-Represented Litigant Challenges to Litigants

Litigants might choose to represent themselves basing on their perception of the value of the dispute against what the lawyers charge as seen in *Kendall v Hunt*.However, despite the justification one gives for choosing to represent themselves, there are significant challenges associated with SRLs. They find themselves dealing with complex legal jargon and procedures, most of which they may perceive as working against their interests.Additionally, lawyers are widely conversant with administrative procedures and the relevant documentation that will be required at various stages of the proceeding. Unlike the SRLs, the lawyers have also developed long-standing working relationships with the court staff, which makes all the administrative hurdles much easier to navigate for them and they can, hence, focus more on the case. However, the SRLs have to handle both the administrative and case aspects on their own, the typical result of which is frustration.

SLRs have been shown to be distinctively disadvantaged owing to the complexity of the law. Therefore, most of them lose their cases simply because of technicalities that are characteristic of legal procedures. When under stress, humans will not properly evaluate their options, present logical arguments and arrive at rational decisions. Under such circumstances, SRLs will not be able to effectively respond to challenges or questions and such situations can cost them their rightfully deserved positions. SLRs on international matters also stand almost no chance of receiving a fair trial and outcome. The lack of legal knowledge implies that they are not always aware of the options available to them or how to respond to the court and other party.Here, limited or complete lack of access to relevant reference material becomes a key disadvantage to SLRs.

The primary role of judges in the adversarial system is to determine the version of truth that is grounded in evidence as presented by the parties rather than what the truth is. Under such circumstances, the legal inexperience of SLRs may result in them not presenting sufficient evidence in spite of their claims being true in themselves.An unavoidable consequence is that the judges will base their judgment on such insufficient evidence with the possibility of denying justice to the litigant.

## Possible Impact of Self-Representation on the Outcome of a Hearing

The implications of outcomes in self-represented cases are mainly in the contexts of fair outcomes and satisfaction of the. As noted, judges in the adversarial system wholly depend on the evidence presented by the parties. Citing inexperience once again, SLRs may either present insufficient or poorly structured evidence, of which the judges will use to make a decision. While it is acknowledged that judges often strive to ensure that hearings are fair, they cannot play the role of advocate to the parties. Hence, depending on the evidence they receive, they will deliver their judgment whether it will be perceived as fair or not by either party. Hence, it is imperative to note that the presence of an SLR as one party (or even in situations where both parties are SLRs) will significantly impact on the final judgment. Equally importantly, the presence of an SLR in a court proceeding contributes to and supports the slowing down of court procedures and is directly associated with judicial stress and burnout. It follow, therefore, that decisions made by stressed and burned-out judges cannot be as sound as those made by judges working under relatively straightforward and stress free circumstances.

## Conclusion

The paper acknowledged that the number of SRLs is increasing in courtrooms and the increase is accompanied by significant challenges to the litigants, courts and court procedures. While litigants have varying reasons to represent themselves, it is more imperative to explore the impacts of such decisions and how they impact on court hearings. A common challenge aced by the litigants, courts and court proceeding is the prolonged time it takes to deliver a judgment and the associated risk of unfair judgment due to insufficient or poorly structured evidence.

## Bibliography

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