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Learnings from the Demographic Data on Litigants Without Counsel

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The demographic information on litigants without counsel available to date reveals a number of interesting patterns: most litigants appear to be 40 years old and older, and people in that age range are involved in litigation at rates far higher than those in younger age groups; although most litigants have lower incomes, a significant number have incomes around or exceeding the average income; and, litigants' often high incomes match their educational achievements, which often exceed the average. All of this information strikes me as potentially useful when designing services and reforming processes for litigants without counsel.

In her 2013 report [*Identifying and Meeting the Needs of Self-represented Litigants*](#), Julie Macfarlane obtained demographic data from 230 litigants without counsel in Alberta, British Columbia and Ontario. The [Nova Scotia Department of Justice](#) surveyed 58 litigants without counsel for its 2004 report [*Self-represented Litigants in Nova Scotia*](#). For their 2005 report [*BC Supreme Court Self-help Information Centre Initial Evaluation Report*](#), John Malcolmson and Gayla Reid surveyed about three hundred of the centre's users.

Age

In Alberta, British Columbia and Ontario, litigants without counsel belong disproportionately to the 40 plus age group. In Nova Scotia, the 35 to 44 year old age group is disproportionately represented among litigants without counsel:

- In the Macfarlane report, 45% of the litigants surveyed were 50 and older. 32% were age 40 to 50 and 14% were age 30 to 40.
- In the Malcolmson and Reid report, 27% were 50 and older. 41% were age 40 to 49 and 25% were age 30 to 39.
- In the Nova Scotia report, 13% were age 55 and older. 19% were age 45 to 54 and 45% were age 35 to 44.

Here's a chart comparing the percentage of litigants without counsel in each age group with [Statistics Canada](#) census data from [2006](#) and [2011](#) on the percentage of the general population in each age group.

	Macfarlane	AB/BC/ON 2011	Malcolmson and Reid	BC 2006	Nova Scotia	NS 2006
30 to 39	14%	13%	25%			
35 to 44				15%	45%	15%
40 to 49	32%	15%	41%			
45 to 54				16%	19%	16%
50 plus	45%	35%	27%			
55 plus				27%	13%	29%

(I could only find the 2006 data in mid-decade age cohorts, and it's a bit difficult to compare the findings in the Malcolmson and Reid report with the census data as a result).

Income

Although the lion's share of litigants without counsel have incomes that are lower than average, the studies to date show that a significant number have incomes that are toward the middle and high ranges:

- In the Macfarlane report, 40% of the litigants surveyed earned less than \$30,000 per year. 17% earned \$30,000 to \$50,000, and a whopping 31% earned \$50,000 or more.
- In the Malcolmson and Reid report, 61% earned \$24,000 or less per year. 22% earned between \$24,000 and \$36,000, and 16.7% earned in \$36,000 or more.
- In the Nova Scotia report, 60% earned \$29,999 or less per year. 28% earned \$30,000 to \$59,999 and 10% were had incomes in excess of \$60,000.
- In [An Evaluation of Alberta's Parenting After Separation Seminars](#), a 1999 report by the [Canadian Research Institute for Law and the Family](#), 1,180 participants were surveyed. 40% earned less than \$33,754 per year in 2014 dollars. 31% earned between \$33,755 and \$60,757, and 29% earned more than \$60,758 per year.

Here's a chart, from Statistics Canada's [Table 202-0407, Income of Individuals by Sex, Age Group and Income Source](#), showing the average income by age group in 2011 dollars for: Alberta, British Columbia and Ontario combined; Alberta; British Columbia; and Nova Scotia.

	AB/BC/ON	AB	BC	NS
25 to 34	\$41,100	\$49,800	\$39,000	\$34,600
35 to 44	\$53,233	\$59,700	\$49,900	\$44,700
45 to 54	\$58,666	\$68,700	\$46,600	\$47,300
55 to 64	\$49,600	\$55,100	\$43,900	\$40,300
65 plus	\$34,333	\$31,700	\$32,400	\$28,500

(Note that the average incomes will likely vary between urban, rural and remote communities.)

Educational attainment

The reports also suggest that litigants without counsel tend to have taken more schooling than most Canadians:

- In the Macfarlane report, 73% of the litigants surveyed earned had attended college or university. 16% had completed or partially completed high school.
- In the Malcolmson and Reid report, 65% had attended college or university. 35% had completed or partially completed high school.

- In the Nova Scotia report, 71% had attended college or university. 29% had completed or partially completed high school.
- In the Canadian Research Institute study, 47% had attended college or university. 52% had completed or partially completed high school.
- A survey of a small number of litigants for the 2009 [Calgary Judicial District report](#) of the [Alberta Legal Services Mapping Project](#) found that 50% had attended college or university and that 30% had completed or partially completed high school.

According to Statistics Canada's 2011 [Education in Canada: Attainment, Field of Study and Location of Study](#) report, 64% of Canadians have a post-secondary qualification of some nature, 23% have graduated high school and 13% have neither. Here's a chart from the 2011 census showing the educational attainments of people age 25 and over for: Alberta; British Columbia; Ontario; and Nova Scotia.

	AB	BC	ON	NS
No diploma, certificate or degree	15%	14%	16%	20%
High school diploma	24%	25%	24%	21%
Post secondary certificate or degree	61%	61%	60%	59%

(Note that this data shows only *completed* diplomas, certificates and degrees, and thus excludes people who took a year or two of post-secondary education before leaving school. Note also that the average level of educational attainment will likely vary between urban, rural and remote communities.)

A few preliminary conclusions and a few tentative suggestions

The reports' findings on age are interesting. First, according to the Statistics Canada data, Canadians' peak earning years are between 45 and 55. This is probably helpful for people involved in a court proceeding, as the bubble of litigants noted by the Macfarlane and Malcolmson and Reid reports falls right in the midst of this age group. However, given that the reports also show that the significant majority of litigants without counsel are unrepresented because they can't afford to hire a lawyer, it seems that these particular litigants cannot afford to retain counsel *even at their peak earning years*.

Second, the data on age suggests that some adjustments may be required on the part of public legal education groups, who may want to retool their publications to accommodate the declining visual acuity of their prime markets in their web and print offering. Further, as the baby boomers work their way through Statistics Canada's age groups, other issues are foreseeable such as an increased need for public health services relating to competency, the redesign of courthouses to accommodate increasing numbers of people with lower levels of mobility, and an increase in the number of elderly Canadians living in poverty as divorces split fixed incomes. The nice people at [CARP](#) will tell you that the impact of divorce on seniors can be disastrous, particularly for women.

The reports' findings on income also suggest the need to increase the income threshold for the provision of legal aid. To recap, 40% of the litigants in the Macfarlane report earned less than \$30,000 per year, 61% in the Malcolmson and Reid report earned less than \$24,000 per year, and 60% in the Nova Scotia report earned less than \$29,999 per year. However, according to [Canadian Lawyer](#) magazine's 2014 survey of legal fees:

- the average contested divorce costs \$10,406, or as much as \$39,522;
- the average two-day trial costs \$12,769, or as much as \$27,591; and,
- the average five-day trial costs \$26,591, or as much as \$59,700.

Clearly lawyers are unaffordable for the majority of litigants without counsel. Nevertheless, the data also suggests that litigants can afford at least *some* services, and that litigants with mid to high incomes can afford even more. It seems to me that this data argues powerfully for both increasing eligibility for legal aid, so that fewer litigants are left without counsel, and lawyers to consider the unbundling of legal services, providing services at a flat rate or on a barter basis, and exploring other creative approaches to paid legal services than the billable hour. I've [written about the adverse effect of the billable hour](#) model of legal services elsewhere.

Further, given the vicious spiral that self-representation can lead to, which I've also [written about previously](#), one wonders whether increasing the legal aid limits to provide more people with lawyers would in fact increase the rate of settlement, reduce the number of trials and result in a net savings to the justice system as whole. Just a thought.

Finally, the data on educational attainment makes me wonder what has happened to all of the people with high school diplomas or less. The national [Action Committee on Access to Justice in Civil and Family Matters](#) notes in its [final report](#) that only about 6.5% of legal problems ever make it to court, but it is unlikely in the extreme that so many of the people with high school diplomas or less are bundled into the 93.5% who manage to resolve their legal issues outside of court, especially when we know that for people with low incomes, legal issues tend not come one at a time but cluster and multiply into other areas of the law. Are these people simply never entering the formal justice system and abandoning their rights and entitlements? It seems to me that the providers of public legal assistance services need to examine their client population and ask how to better engage people with lower levels of educational attainment.

This post originally appeared on [Access to Justice in Canada](#).

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