
CRIMINAL DEFENCE & CITIZEN PARTICIPATION SYSTEMS

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COURT APPOINTED COUNSEL AND *AMICUS CURIAE*

- There is no general right to a state funded counsel or court-appointed lawyer in Canada, however the right to a fair trial under s.7 and 11(d) of the Charter of Rights and Freedoms in Canada, enables the accused to apply for state-funded counsel in certain circumstances.
- The Saskatchewan Court of Appeal in *R. v. Rowbotham*, relied on s.7 and 11(d) to find that where there is a lack of financial ability, the seriousness of case, and other factors, you may make an application to a judge (a “Rowbotham Application”) to halt (stay) the case under s.24(1) of the Charter, unless the Government funds a lawyer for you (through Legal Aid). This was upheld by the Supreme Court of Canada.
- The case of *R. v. Rowbotham*; *R. v. Roblin*, 1994 CanLII 93 (SCC), [1994] 2 SCR 463 can be found at:
<https://www.canlii.org/en/ca/scc/doc/1994/1994canlii93/1994canlii93.html>
- In Saskatchewan this principle has been greatly expanded and Legal Aid Saskatchewan now administers a Court Appointed Counsel program to manage the sheer volume of files that Judges have appointed counsel for.
- Additionally, the judge, in certain circumstances, may appoint a lawyer to act as a friend of the court (*amicus curiae*) to ensure a fair trial.
- To qualify you must show you:
 - 1. need a lawyer but cannot afford one;
 - 2. have been denied legal aid, and exhausted all avenues of appeal of the legal aid denial;
 - 3. face a serious criminal charge(s); and
 - 4. face a complex criminal proceeding.

CANADIAN JUDICIAL COUNCIL PRINCIPLES FOR SELF-REPRESENTATION

- The Canadian Judicial Council is committed to fostering access to justice and equal treatment under the law of self-represented litigants.
- *Statement of Principles on Self-represented Litigants and Accused Persons*, can be found [here](#).



CJC PRINCIPLES CONTINUED

PRINCIPLES:

- 1. ACCESS TO JUSTICE FOR SELF-REPRESENTED PERSONS REQUIRES ALL ASPECTS OF THE COURT PROCESS TO BE, AS MUCH AS POSSIBLE, OPEN, TRANSPARENT, CLEARLY DEFINED, SIMPLE, CONVENIENT AND ACCOMMODATING.
- 2. THE COURT PROCESS SHOULD, TO THE EXTENT POSSIBLE, BE SUPPLEMENTED BY PROCESSES THAT ENHANCE ACCESSIBILITY, INFORMALITY, AND TIMELINESS OF CASE RESOLUTION. THESE PROCESSES MAY INCLUDE CASE MANAGEMENT, ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCEDURES, AND INFORMAL SETTLEMENT CONFERENCES PRESIDED OVER BY A JUDGE.
- 3. INFORMATION, ASSISTANCE AND SELF-HELP SUPPORT REQUIRED BY SELF-REPRESENTED PERSONS SHOULD BE MADE AVAILABLE THROUGH THE VARIOUS MEANS BY WHICH SELF-REPRESENTED PERSONS NORMALLY SEEK INFORMATION, INCLUDING FOR EXAMPLE: PAMPHLETS, TELEPHONE INQUIRIES, COURTHOUSE INQUIRIES, LEGAL CLINICS, AND INTERNET SEARCHES AND INQUIRIES.
- 4. IN VIEW OF THE VALUE OF LEGAL ADVICE AND REPRESENTATION, JUDGES, COURT ADMINISTRATORS AND OTHER PARTICIPANTS IN THE LEGAL SYSTEM SHOULD:
 - (a) inform any self-represented parties of the potential consequences and responsibilities of proceeding without a lawyer;
 - (b) refer self-represented persons to available sources of representation, including those available from Legal Aid plans, pro bono assistance and community and other services; and
 - (c) refer self-represented persons to other appropriate sources of information, education, advice and assistance.

CJC PRINCIPLES CONTINUED

TWO NOTABLE PRINCIPLES INCLUDE:

GOVERNMENT DEPARTMENTS WITH OVERALL RESPONSIBILITY FOR COURT ADMINISTRATION SHOULD PROVIDE LEGAL AID PLANS WITH SUFFICIENT RESOURCES TO PROVIDE A PROPER RANGE OF REQUIRED SERVICES FOR FINANCIALLY ELIGIBLE PERSONS, INCLUDING: EDUCATION, SHORT-TERM INFORMATION AND ADVICE, AND REPRESENTATION.

IN ADDITION TO PROVIDING REPRESENTATION, LEGAL AID ORGANIZATIONS SHOULD BE ENCOURAGED TO CREATE FLEXIBLE OPTIONS AND MODELS FOR ADDRESSING THE CHALLENGES OF SELF-REPRESENTED PERSONS, INCLUDING PROGRAMS PROVIDING EDUCATION AND SHORT-TERM INFORMATION AND ADVICE.

CANADIAN JUDICIAL COUNCIL PRINCIPLES ENDORSED BY SUPREME COURT OF CANADA IN PINTEA

- The Supreme Court of Canada in *Pintea v. Johns*, 2017 SCC 23 [Pintea] endorsed these principles
 - A notable trend has emerged in some cases since October 2018, where courts have reinforced the Canadian Judicial Council (CJC) Principles endorsed by the Supreme Court in *Pintea*.
 - the most notable developments are the two additional court developed limitations on *Pintea*, namely that there is no duty on opposing counsel to assist SRLs, and that the Principles do not confer a special status on SRLs.
- <https://representingyourselfcanada.com/wp-content/uploads/2021/03/Pintea-Report-2021-Final.pdf>

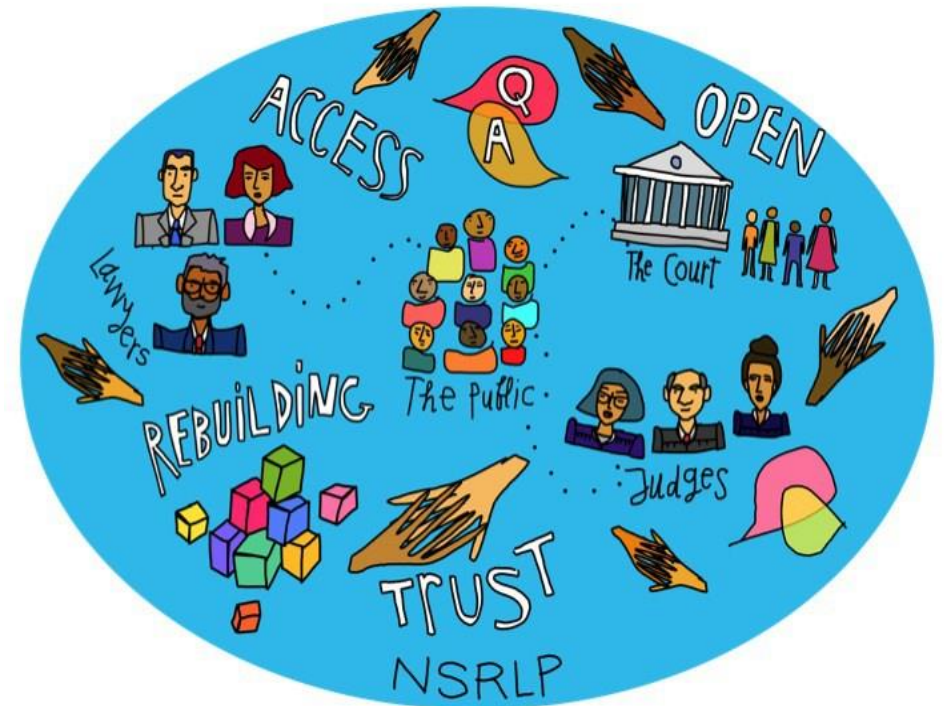
SOURCES OF HELP FOR SELF-REPRESENTED LITIGANTS

LEGAL AID DUTY COUNSEL: In court on the day of proceeding. Most Legal Aid Plans have financial eligibility guidelines, however most duty counsel will offer brief information and guidance to self-represented litigants

PRO BONO CANADA: Most Provinces have a free legal advice clinic where clients who do not qualify for Legal Aid can attend and seek summary advice on criminal matters.

Self-Represented Litigant Project: The National Self-Represented Litigants Project (NSRLP) is committed to advancing understanding of the challenges and hard choices facing the very large numbers of Canadians who now come to court without counsel.

- The NSRLP works to promote dialogue and collaboration among all those affected by the self-represented litigant phenomenon, both justice system professionals and litigants themselves. We regularly publish resources designed specifically for SRLs, as well as research reports that examine the implications for the justice system.



ADDITIONAL RESOURCES

- <https://representingyourselfcanada.com/technology-is-changing-and-so-should-our-approach-to-the-self-representation-problem-artificial-intelligence-for-srls/>
- <https://representingyourselfcanada.com/true-access-to-justice-means-effective-and-consistent-access-to-services/>
- <https://representingyourselfcanada.com/voices-and-visions-of-the-future/>
- <https://representingyourselfcanada.com/inaccessible-justice-a-qualitative-and-quantitative-analysis-into-the-demographics-socioeconomics-and-experiences-of-srls/>
- <https://representingyourselfcanada.com/struggling-for-accommodation-barriers-to-accessibility-faced-by-cognitively-disabled-srls/>



OUR LAS TEAM



THANK YOU!