Evolving Legal Services: Review of Current Literature
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Project Overview and Introduction

Access to appropriate and timely legal services including legal information, advice, assistance and representation is key to enabling people to satisfactorily resolve their legal problems. Research shows that the vast majority of individuals will encounter one or more legal problems in every three year period over the course of their lives and that many are unable to effectively access the required assistance from the justice system. The consequences of this unequal access range from mere annoyance to devastation, depending upon the interest at stake and the person’s situation within society.

The term “legal services” incorporates a broad range of assistance with respect to legal matters. At one end of the spectrum are the most comprehensive models of assistance, perhaps best exemplified by the classic touchstone of full representation by a lawyer or even broadened to include a holistic approach in which individuals can access integrated assistance with both the legal and non-legal dimensions of their problems. At the other end of the spectrum are the least comprehensive models, which include various methods of making legal information and materials available to the public. It is important to begin from a position of recognizing what full legal service is about:

*Full representation might involve a combination of most, if not all, of the following activities: information gathering, legal and other research and analysis, advice and counseling, commencing or defending proceedings; negotiations and mediation; interim proceedings; trials and hearings; law reform and systemic activities; and referrals. Thus legal services involve complex and continuous obligations to clients and we ought to be wary of pressure to isolate elements of these services for the purpose of limited representation models.*

Statistically speaking, most problems with a legal component are resolved without assistance from a lawyer, tribunal, or court. These are often referred to as “everyday legal problems” and in recent times, attention has shifted to ensuring that the justice system pays attention to these problems even though they are less likely to be brought to the formal justice system. However those disputes requiring legal assistance and/or judicial or quasi-judicial attention are often the most complex and have the most severe consequences if left unresolved. It is therefore appropriate to also direct attention and public resources to this category of legal problems.

The Australian Report, *A Strategic Framework for Access to Justice*, includes a number of effective diagrams illustrating the relationship between number of

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disputes and method of resolution.\textsuperscript{2} One of the Australian figures is in the form of a pyramid and illustrates the three tiers or types of disputes and how they are resolved. At the bottom, widest point of the pyramid sits the problems of “everyday justice” which can be handled personally by those directly involved through access to information and measures that build resilience. The middle of the pyramid is dedicated to informal justice and problems that can be resolved through Alternate Dispute Resolution (ADR) and legal assistance with a focus on early intervention to prevent conflict escalation. The small tip of the pyramid represents formal justice, which depends on the courts and external merits reviews, legal assistance and representation to facilitate better decision-making. Part of today’s access to legal services agenda involves making sure that the various components of the pyramid match up – that is, the dispute resolution process and legal services provided are consistent with the nature and intensity of the legal dispute and the characteristics of the parties.

Public legal education and information (PLEI) plays an important role in assisting people to understand and address the legal dimensions of problems they face. In addition to providing general legal education about the justice system and specific legal issues, traditionally, PLEI played a limited but critical role in increasing access to justice for persons with a specific legal problem through the provision of information designed to enable them to understand their legal rights, potential remedies and procedural options. The trend toward increased rationing of publicly-funded legal services has meant that PLEI is required to fill an increasingly larger role in meeting the legal needs of poor people and people with modest means, as well as being a service available to all. Yet we know relatively little about the extent to which PLEI is an effective legal service for different types of clients, for which kinds of legal problems, in which circumstances, and through which delivery mechanisms, it can provide the most robust assistance.

PLEI and other types of legal services delivery programs are subject to regular evaluation. These evaluations, however, tend to focus on the fact of service delivery and some measurement of client satisfaction. Few studies have attempted to evaluate the impact of PLEI on the procedural and substantive outcomes experienced by individuals who receive this form of assistance. There are many unanswered questions concerning in what circumstances PLEI works as a primary, stand-alone resource and where it is more appropriately used as a complementary resource in conjunction with other legal services. A leading American scholar in this field, Russell Engler, has pointed out we must continue to emphasize evaluation in order to encourage experimentation, “but with an eye toward measuring the

effectiveness of the assistance received in terms of case outcome, rather than accepting the mere facts of assistance as sufficient.”

Community Legal Education Ontario (CLEO) has initiated the Evolving Legal Services Research Project (ELSRP) to begin to fill this gap through an empirical investigation of two overarching questions:

*How is PLEI effective in increasing meaningful access to justice and assisting people to address their legal problems?*

*In what circumstances is PLEI effective when provided primarily on a stand-alone or self-help basis, and when is a fuller continuum of legal services including PLEI or full representation required?*

PLEI can be conceived as serving four main important functions:

1) Helping people to understand the law, their legal rights and responsibilities, and how their justice system works.
2) Helping people to learn how to identify and address their everyday legal needs.
3) Helping people to gain an understanding of their legal problems and their options for next steps, including where and how to get more help.
4) Helping people to address their legal problems by gaining an understanding of their legal rights and related legal process issues, and taking some or all steps in the process on their own.

While recognizing the importance of all four functions played by PLEI, the ELSRP proposes to study only the fourth function. The ELSRP research will primarily consider people who have an identified legal problem and are taking active steps to initiate or respond to a formal legal process. For greater clarity, this group includes persons who access PLEI and perhaps other legal services and support but who may not ultimately engage any formal legal processes, for example where negotiated resolutions are arrived at without proceedings being filed or where persons who have accessed PLEI and/or PLEI in conjunction with other legal services do not, for various reasons, take any further steps or action.

Given the central research questions, a threshold issue is how to define “meaningful access to justice”. The Supreme Court of Canada has set the standard for finding a constitutional requirement for state-funded counsel: when legal representation is required to ensure “meaningful and effective access” in cases where fundamental

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interests are at stake. The Court did not define or delineate this standard but linked it to three elements: the capacity of the individual, the complexity of the legal proceeding, and the seriousness of the potential outcome. These factors serve as the beginning of a typology of indicators of when different types of legal services will be required but do not go very far in elaborating what constitutes the standard of “meaningful” access to justice. ELSRP will contribute to an evidence-based conception of meaningful access to justice and the role of PLEI in attaining this important standard.

At the outset of this initiative, CLEO elaborated six specific questions that are likely to be explored through the ELSRP:

- In what ways does PLEI complement, augment or supplement the provision of assistance within the continuum of services in order to help people address their legal problems and increase meaningful access to justice?
- Are there types of legal problems for which exclusive or primary reliance on PLEI meets the criteria of meaningful access to justice and assists people in addressing their legal problems?
- Are there types of legal problems for which exclusive or primary reliance on PLEI does not meet the criteria of meaningful access to justice and does not provide sufficient assistance to help people address their legal problems?
- Are there differences in case outcomes where parties had access to and relied exclusively or primarily on PLEI, those where PLEI was provided in conjunction with other legal services, and those where full legal advice and representation were provided?
- Where PLEI is relied on as a primary form of legal services delivery, what factors or characteristics affect the likelihood of positive outcomes? For example, are there characteristics of cases (e.g., involving deeply personal matters, complexity of legal issue); characteristics of parties (e.g., power imbalance, level of sophistication; resiliency or ability to persevere); or characteristics of the system (e.g., cost, time, formality, bias in favour of the applicant) that affect the likelihood of positive outcomes?
- What are good practices in the provision of various types of PLEI (e.g., stand-alone PLEI, PLEI as part of a continuum of legal services) that enhance effectiveness?

This paper provides a focused overview and analysis of research findings on civil legal needs and the effectiveness of various forms of legal services delivery programs, including PLEI. The focus is on research and reports that assess these services on a rigorous basis, including where possible, outcome-based evaluation, and on the processes and methodologies used in these empirical studies. The purpose is to assist in research design by providing context and background, 

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developing a framework for investigation, and refining the focus and research questions. This literature review will also guide the selection of methodologies and case studies for the ELSRP.

The results of the literature review are presented in five sections. The first section provides a brief overview of the main findings of empirical studies on civil legal needs which have dramatically increased our understanding about the prevalence of civil legal problems, the impact of unresolved legal problems, the steps people take to resolve legal problems and the barriers they face in accessing effective assistance. The second section discusses the approaches and findings of empirical assessments of the need for and impact of legal representation. This literature provides a baseline for the study of the impact of PLEI designed to assist people to directly address their legal problems. The third section discusses the methodologies and findings of research projects designed to evaluate the impact of other types of legal information, advice and assistance. These two research streams are flipsides of the same issue: when is legal representation needed and when will other types of legal services suffice in ensuring meaningful access to justice. The fourth section contains a critical analysis of this body of research. The final section draws together the lessons to be learned from the literature review and proposes elements of a research framework for the ELSRP.

1. Overview of Civil Legal Needs Research

Broad-scale civil legal needs surveys have revolutionized our understanding of the prevalence of legal problems in society and the rarity with which people turn to the formal justice system for assistance in resolving problems for which a legal solution exists. This section provides a brief overview of the Canadian and international survey findings. This data provides important background and context to empirical research on the effectiveness of particular types of legal services.

We now know that civil justice problems are ubiquitous. The Ontario Civil Legal Needs Project defines a “civil legal need” as occurring when an individual or group encounters an issue or experiences a problem that falls within the domain of the civil justice system. The term “civil legal need” incorporates the idea that the problem or dispute someone is experiencing is justiciable (that is, it is capable of being resolved through a legal process.) Other studies have preferred the terms “legal problems” or “justiciable problems”. However defined, it is clear that the

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5 This section is a revised version of a summary prepared by the author for the Action Committee on Access to Justice in Civil and Family Matter, Access to Legal Services in Canada: A Discussion Paper (April 2011).

incidence of civil legal problems is very high and that these problems arise from and affect the everyday lives of people across the socioeconomic spectrum.

Our understanding of civil legal problems and how people handle them has grown exponentially over the past two decades. Empirical research, both quantitative and qualitative, has been undertaken in many jurisdictions around the world. These studies investigate four aspects of civil legal problems and disputing behavior:

1) What types of legal issues people experience;
2) Factors influencing whether a person experiences legal issues – including the demographic factors at play and the impact of particular legal events on the incidence of future events;
3) What people do in response to legal issues – including people who do nothing, those who handle the issue alone and those who seek assistance; and
4) The outcome of legal events.

The Incidences of Civil Legal Problems and their Impact

The survey results concerning the incidence of civil legal problems and their impact are remarkably similar across countries and time. The main findings are:

- Civil legal needs arise frequently, touch upon fundamental issues and can create minor inconvenience or great personal hardship;
- Civil legal problems are a “pervasive and invasive presence in the lives of many”;

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8 Ontario Civil Legal Needs Project at p. 3.
• The disruption caused by unresolved legal problems is significant and can cause cascading problems for individuals and families;

• There is an important connection between unresolved legal problems and broader issues of health, social welfare and economic well-being;

• Age, country of birth, disability status, personal income and education level are statistically independent predictors of reporting legal events;

• In some studies, gender, ethnic/racialized background and Aboriginal status were also shown to influence the experience of civil legal problems;

• Legal problems tend to “cluster”, meaning that problems tend to co-occur and can be grouped together (clusters vary across jurisdictions);

• Legal problems have an additive effect – with every additional problem experienced the probability of experiencing more problems increases and this is especially true for low-income people and members of disadvantaged groups;

• While every group experiences civil needs, the poorest and most vulnerable experience more frequent and more complex, interrelated civil legal problems;

• The vast majority of justiciable problems are resolved outside of the formal justice system; and

• The justice system is poorly understood and/or perceived to be inaccessible by many and this complexity can in and of itself be seen as a barrier to access.

While the findings are generic at some level, it is wrong to conclude that the experience of civil legal problems is uniform. Certain groups are more vulnerable and this vulnerability compounds the effects of unresolved legal problems and makes it more challenging for them to navigate the justice system. In particular, it is important to focus on the level of disruption and consequent effects of civil legal problems not just the fact that they are experienced. For example, the BC and Australian surveys found that consumer disputes were the most prevalent type of legal problem, but this does not mean that they were the most disruptive, since many of these disputes would cause only minor inconvenience. The Ontario survey, in contrast, concluded that disputes over custody of children, wrongful dismissal, eviction from housing, powers of attorney, or consumer debt may affect individuals, families and communities in deep and lasting ways.
The Ontario study identified the following vulnerability factors: income, source of income, gender, age, membership in an equality-seeking community, geographic location, and the type of legal problem encountered. These factors have been found to not only compromise an individual’s capacity and resources to address a civil legal problem, but they also compound the disruption and challenge created by the presence of a civil legal problem. In combination, their effect is complex. The study noted:

> Those who were more likely to have found their legal problem to be extremely or very disruptive included the following: women, those with household incomes of less than $20,000, members of equality-seeking communities (particularly people with disabilities), those who had received income assistance in the last three years, those with multiple legal problems, and those who did not seek assistance for their legal problems. Strikingly, 1 in 7 individuals reported experiencing permanent physical or mental disability. These findings suggest a connection between access to justice and broader issues of health, social welfare and economic well-being.

It is important to distinguish between the needs of low and middle income earners. Members of these two groups tend to experience different types of legal problems. Lower income and disadvantaged groups tend to experience a greater number of legal problems with more disruptive effects. Members of the lowest income groups also tend to rely on non-legal sources of assistance for their problems, in particular friends and relatives.

All of the studies confirmed the depth and impact of poverty on legal needs. Low-income people tend to have more contact with the legal system and government organizations. They tend to experience more civil legal issues and their daily lives tend to be more disrupted by their civil legal issues. Their experience of civil legal issues and particularly the lack of timely resolution increases low-income people’s vulnerability and makes them prone to experiencing negative physical and psychological impacts. The lower the income level of an individual, the more “enveloped by the law” a person’s life is.

It is also important to acknowledge, and some of the surveys do this, that the civil legal needs surveys do not fully capture the needs of certain particularly vulnerable groups, such as the homeless or linguistic minorities. Nor do they take into account the complex range of dynamics of legal needs of particular groups, such as Aboriginal communities.

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9 Equality-seeking communities identified in this survey include the following: Francophones, Aboriginal people, people with disabilities, members of racialized communities, gay men, lesbians, bisexuals and trans-identified persons.
10 Ontario Civil Legal Needs Project at p. 22.
How People Deal with Civil Legal Problems

In addition to describing the prevalence of civil legal problems, these surveys also tell us a great deal about how people deal with these problems. The sources of legal assistance sought are diverse and it is not uncommon for people to seek assistance from more than one source. A cross-jurisdictional review of the literature concludes that while there are some identifiable patterns of help-seeking behavior based on respondent characteristics, the type of problem is usually the most important factor: “problem type tends to swamp other considerations.”

Here are some of the main findings from the recent Ontario and BC surveys:

- Many people, approximately one-third of respondents in the Ontario and BC surveys, preferred to resolve legal problems on their own (but with some legal advice);
- In Ontario, 1 in 10 indicated they had experienced problems with access to legal assistance (depended on problem type – e.g. with family law more said ineligible for legal aid);
- Many people, especially those with lower incomes, seek help from friends and family;
- The vast majority of those who did seek counsel from lawyers in private practice were satisfied;
- The majority of people who seek out other forms of assistance were also satisfied with the advice they receive;
- Among those who sought self-help through the Internet, almost 9 out of 10 found this assistance to be at least somewhat helpful;
- The demand for legal information is high, but people do not seek information from legal sources – usually from non-legal professionals (e.g., most Ontarians are unaware of the online resources available to them from specific justice system stakeholders including the government of Ontario, LSUC, LAO and PBLO);
- In the Ontario survey, of the various problems for which respondents sought legal assistance, the statistics for family law stood out. Of those surveyed who indicated they had experienced a family law problem, 81% sought legal assistance and 30% of that group indicated they had difficulty in obtaining that legal assistance;

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13 This result held true in poll carried out in Alberta as well. See Law Society of Alberta, Ipsos Reid Poll, 2010 8(3) The Advisory.
14 Although this finding does beg the question does the source matter? Does it make any difference if the legal information is picked up at the library or the doctor’s office as long as it is easy to find? Data is lacking on this point.
• In the Ontario survey only 1/3 of those who retained a lawyer paid more than $1,000; but in BC the median spent was just under $10,000; and
• More than 2/3 of people in Ontario said they would not be interested in purchasing legal expense insurance. The main reason cited for their lack of interest was that they did not believe they would need it (56%). Almost 1 in 3 believed that it would be too expensive or that they would not be able to afford it.

In general, the studies found that a significant challenge is to find ways to encourage more people to receive the full benefit of the existing resources available to them. People often don’t get legal help because they don’t know where to look or because they perceive they won’t be able to afford it. In the Alberta Poll, people reported that the difficulties they had in resolving legal problems could be attributed to uncertainty as to rights; not knowing what to do; the problem or situation being too complex or overwhelming; and the belief that nothing could be done.\footnote{Ibid.}

The Ontario and BC surveys confirm the findings of earlier studies that the main reason for not seeking out a lawyer was the perception that legal assistance would cost too much or that they could not afford a lawyer. Additional barriers to seeking out legal solutions to civil legal problems identified in the various surveys include:

• Complexities of legal system;
• Qualification process for legal aid;
• Too little legal aid coverage for civil legal problems
• Lack of knowledge about the legal system and about resources that are available to support individuals, especially knowledge regarding accessing legal aid or affordable legal services and information;
• Fear of becoming involved in the legal system, particularly for those who had had previous experience with the civil or criminal legal system;
• Too stressful to pursue resolution of legal problem;
• Concern about damaging relationships;
• Intimidation by the court system and generally being too afraid to take action;
• Embarrassment and fear of stigmatization about having a legal problem; and
• Fear of loss of privacy.

Specific communities are identified as facing additional barriers in accessing the legal assistance they require to deal effectively with their civil legal problems. The Ontario survey highlights the following groups:

• Francophones;
• Persons whose first language is not English or French;
• Members of equality-seeking groups (particularly persons with disabilities);
• Members of racialized communities;
• People with limited literacy;
• People living in remote or rural communities (particularly in the North);
• Seniors; and
• Women.

Survey Conclusions

The conclusions drawn from civil legal problem surveys are also quite consistent across jurisdictions. The central points that can be drawn out from this body of research as a whole, are:

• Information failure is a significant issue: people do not understand legal events, what to do or where to seek assistance. People do not seek traditional legal advice, but rely on non-professional sources of advice and generally available information;
• People do not generally seek to use courts or formal justice mechanisms as a means of obtaining assistance in relation to legal issues;
• More information should be made available and it is important to find ways to encourage more people to rely on the existing resources that are available to them;
• There needs to be multiple, diverse, and integrated access points and service responses: access to a wider range of entry points is key;
• Access to reliable information and assistance about legal processes and sources of self-help should be made available;
• More tailored legal services are required;
• Additional support to lawyers and paralegals who provide essential services to low and middle income people is essential; and
• Service models and priorities must be targeted, designed, and delivered to meet the specialized needs of these communities.

Relevance to ELSRP

Civil legal problem surveys have enriched our understanding of the experience of civil legal problems and each individual survey provides a snapshot of legal needs in a given jurisdiction at a given time. These survey findings highlight the ways in which the experience and impact of civil legal problems varies across different social groups within a jurisdiction, reinforcing the need to identify the capacity and situation of the person as critical dimensions of meaningful access to justice. These studies are limited in the following ways:

• While very useful at a systemic level, the questions and results are too generic to inform targeted legal services delivery or priorities;
• They rely on subjective assessments by survey respondents;
• Low income and other vulnerable or isolated populations, such as linguistic minorities, may not be proportionally represented in legal needs surveys due to selection;
• They describe prevalence of legal problems quite well; but they are limited in their ability to assess the severity of legal problems; and
• They do not measure long-term impact of legal problems/resolution/lack of resolution.

Furthermore, these general surveys can be misleading in their over-emphasis of the extent to which people want to “manage their own problems.” The surveys address a broad range of problems, noting that in many cases the people experiencing them do not even recognize a legal dimension. In fact, the ability to discern the legal dimensions and potential legal avenues for resolution is itself a step which many people are unable to undertake without legal assistance.

The Australian Strategic Framework Report expressed caution in over-emphasizing the extent that general information can be adequate assistance. Results have to be closely scrutinized:

*It would be wrong to conclude on the basis of the strong rating for the Internet (as well as other sources of information) that direct assistance is less effective. This is because when more than one adviser is used the Internet was rated as the most useful source in 34.6 percent of cases (still a strong outcome) whereas a private lawyer was rated as the most useful in 72.7% of cases – significantly higher than all other sources.*

ELSRP research design should build on this foundation and address deficiencies in the general civil legal needs research by paying attention to the following components in the design of its research framework:

• A focus on particular types of legal problems/legal processes or forums;
• Commitment to ensuring inclusion of disadvantaged groups;
• Development of indicators of the severity of the impact of the legal problem and potential impact on the individual;
• Greater emphasis on the assessments of the effectiveness of legal services;
• Consideration of the longitudinal impact of the provision of legal services.

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16 Australian Strategic Framework, at p. 23.
2. **Empirical Assessments of the Need for Representation**

One priority issue on the access to justice research agenda is to determine, in an empirically sound and rigorous manner, when legal representation is necessary in order to ensure meaningful and effective access to justice. The central question is when is a lawyer really needed? There are three dimensions to this question:

1. **What** - In what types of cases/issues/situations is legal representation required?
2. **Where/When** – In what types of proceedings/at what stage of proceeding is legal representation required?
3. **Who** – Are there personal characteristics that make legal representation more necessary?

There have been a multitude of observational studies of the impact of legal representation in a wide variety of settings in the United States. A recent study by Greiner and Pattanayak of Harvard contains a footnote listing this research that is three pages long. In terms of subject area, the authors note that studies have focused on automobile insurance claims, bankruptcy, disability, educational programs for disabled children, employment (generally, as well as focusing specifically on discharge/discipline, and discrimination), family law (child neglect, custody, divorce, and restraining orders), housing/eviction, immigration disputes of all types, juvenile delinquency, small claims, special education, federal tax (both small claims and general), state tax, unemployment, and welfare. The type of proceeding involved has varied from uncontested, to claims adjustment, to mediation, to arbitration, to various types of administrative adjudications, to court proceedings (including specialized courts of limited jurisdiction). The approach, methodology and findings of these observational studies has been subjected to a critique by James Greiner and his colleagues, discussed below in Part 4.

In addition to the observational studies, a 2001 randomized experiment was conducted in New York City Housing courts. In that study, social scientists worked with the Legal Aid Society of New York to randomly assign tenants facing eviction to

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18 Footnote references have been omitted, but all referenced studies are listed in Greiner and Pattanayak 2011.

19 Footnote references have been omitted, but all referenced studies are listed in the Greiner and Pattanayak 2011.

20 Carroll Seron et al., The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment, 35 Law and Society Review 419 (2001).
one of two groups: tenants in one group received legal representation; tenants in the other did not. The results were striking: courts issued final judgments of eviction against roughly half of the unrepresented tenants, but against only a third of the represented tenants. Because of the study’s randomized design, the researchers were able to conclude: “these differences in outcomes can be attributed solely to the presence of legal counsel and are independent of the merits of the case.”

These studies are one important aspect of the right to counsel movement in the United States. This movement grew out of the “uncontroverted evidence” from the American legal needs studies of the historic and ongoing failure to meet the legal needs of persons of modest means. According to Russell Engler,22 these studies show:

- 70–90 percent of the legal needs of the poor go unaddressed.23
- Many unmet legal needs involve housing, family, and consumer issues.24
- Legal services offices (legal aid) represent only a fraction of eligible clients seeking assistance.25
- In the “poor people’s courts,” one or both parties appear without counsel in most cases. Most family law cases involve at least one party without counsel, if not two.26
- Most tenants, many landlords, and most debtors appear in court without

21Ibid.
22 Engler 2010, at p. 99. [Footnotes in the bulleted list are reproduced from Engler references]
23Legal Services Corporation, Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans (Sept. 2005), http://www.lsc.gov/justicegap.pdf (finding in a 1994 American Bar Association study that virtually “all of the recent state studies found a level of need substantially higher than the level currently provided.”
24Id.
counsel. Unrepresented litigants are disproportionately minorities and are typically poor. People often identify an inability to pay for a lawyer as the primary reason for appearing without counsel. Unrepresented litigants often fare poorly in the courts, which can have devastating consequences.

Overview of American Research Findings

Unlike the general civil legal needs research described above, this group of studies focuses on legal needs within the formal justice system – once a legal problem has become a justiciable dispute. One priority of the US research is on “using data to inform line drawing” of where a right to counsel can be shown to be empirically necessary for a fair proceeding. Many reports from across the country explore the impact of counsel in various settings that handle civil cases. Reports consistently show that representation is a significant variable affecting a claimant’s chances for success in eviction, custody, and debt collection cases, as well as administrative proceedings. Rebecca Sandefur’s meta-analysis of studies on the effects of representation reports that: “parties represented by lawyers are between 17

29See, e.g., Two Surveys: (60 percent of the litigants reported that they could not afford counsel); Connecting Self-Representation, supra, at p. 41; 16 For a discussion and analysis of many of the studies showing the impact of counsel on case outcomes, see generally Connecting Self-Representation, supra note 13; Boston Bar Association, Boston Bar Association Task Force on Unrepresented Litigants. Report, 17 (1998), http://www.bostonbar.org/prs/reports/unrepresented0898.pdf (“Most of the unrepresented litigants [in the Boston Housing Court] reported that they wanted an attorney but felt they could not afford one.”); N.H. Sup. Ct. Task Force on Self-Representation, Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire, 2 (Jan. 2004), available at http://www.ajs.org/prose/pdfs/NH%20report.pdf (“A sample of self-represented litigants in New Hampshire showed that most of them were in court on their own because they could not afford to hire or continue to pay a lawyer.”)
30For a discussion and analysis of many of the studies showing the impact of counsel on case outcomes, see generally Connecting Self-Representation, supra.
31 Engler 2010), at p. 115. He references his article Connecting Self-Representation, supra, at pp. 66-73.
percent more likely and 1380 percent more likely to receive favorable outcomes in adjudication than are parties appearing pro se.”

Similarly, Engler’s overview of this research concludes:

Notwithstanding methodological differences, reports consistently show that representation is a significant variable affecting a claimant’s chances for success in eviction, custody, and debt collection cases. That finding also applies to administrative proceedings...

He concludes that, particularly in family and housing law cases, represented litigants are anywhere from two to ten times more likely to procure the relief they seek when they enjoy the benefit of full representation by counsel.

Some of the more detailed findings from the American observational studies are:

**In housing cases:** “Some reports discuss winning generally, showing tenants three, six, ten, or even nineteen times as likely to win if they are represented by counsel, in comparison to unrepresented tenants... Studies providing specific data show that represented tenants default less often, obtain better settlements, or win more often at trial.”

- “The unrepresented tenant faces swift eviction, and with minimal judicial involvement.”
- “Unrepresented tenants are steamrolled by the courts’ operation.”

**In family law cases:** “Despite the analytical difficulties, the presence of counsel is a key variable impacting the outcomes of family law cases.”

- “… parents represented by counsel were more likely to request joint legal custody; not surprisingly, where both parties are represented, the outcome involved joint legal custody 92% of the time, compared to 77% of the time when only one parent was represented.”

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33 Engler, *Connecting Self-Representation, supra*, at p. 39.
34 Engler 2010, at p. 46.
35 Engler, *Connecting Self-Representation, supra*, at pp. 48-49.
37 Engler, *Connecting Self-Representation, supra*, at p. 50.
38 Engler, *Connecting Self-Representation, supra*, at p. 55.
• “... parents were more likely to elect some form of shared decision-making when both parties were represented by counsel.” ⁴⁰
• “Sole custody was awarded to the mother in 54.8% of the cases in which only the mother was represented, compared to 13.4% of the cases in which only the father was represented...” ⁴¹
• “… having an attorney substantially increased the rate of success in obtaining a protection order: 83% of women who had an attorney were successful in getting the order, compared to only 32% of women without an attorney.” ⁴²

*Small claims cases:* “Whether the cases were resolved by settlement or trial, representation played a crucial role in impacting which party obtained favourable judgments, and the size of the award for plaintiffs.” ⁴³

*Appeals:* “Available studies consistently reveal the importance of representation as a crucial variable improving the success rate of appeals.” ⁴⁴

One of the difficulties in this research is that while we know that the presence of counsel can dramatically effect case outcomes, that factor is only one variable. As Engler notes, other key variables include the substantive law, the complexity of the procedures, the individual judges, and the overall operation of the forum. To date, no studies have gone on to evaluate these additional factors.

Sandefur’s meta-analysis concludes that when people are represented by lawyers, they are, on average, more likely to win in adjudication, than people who are unrepresented.⁴⁵ However she also finds that how much more likely they are to win varies greatly across studies and between different types of civil justice problems. One of the main factors identified in her analysis regarding the impact of counsel is the complexity of the documents and procedures necessary to pursue a justice problem as a court case. She hypothesizes that expanded access to counsel would likely increase the rate at which currently unrepresented people win their cases because lawyers’ understanding of procedure would reveal meritorious claims that are currently buried under unrepresented litigant’s confusion about, and misunderstanding of, the legal process.⁴⁶ Sandefur’s study produced the surprising result that representation by a lawyer played the largest role in affecting case

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⁴³ Engler, “Connecting Self-Representation,” supra, at p. 56.
⁴⁶ Id., at p. 78.
outcome, not when the case was more complicated, but rather when a tribunal handled cases in a routine, "perfunctory" manner or often violated its own procedures.47 Sandefur attributes this outcome to the role a lawyer’s presence plays both by requiring the tribunal to adhere to its own rules and predisposing the judge to believe that the client’s case has merit because the lawyer took the case.48

An issue that is often discussed in the analysis portion of these reports as a possible explanatory variable, but not directly evaluated, is the quality of counsel. Engler concludes that the studies show “... the importance of having not just any advocate, but of having a skilled advocate with knowledge and expertise relevant to the proceeding.”49

**Power Imbalance is a Key Variable**

The study data show that the greater the imbalance of power between the parties, the more likely it is that extensive assistance will be necessary to impact the case outcome. Power imbalances can derive from many different aspects of the legal situation:

- the substantive or procedural law;
- the judge;
- the operation of the forum;
- disparities in economic resources;
- barriers such as those due to race, ethnicity, disability, and language; and
- the presence of counsel for only one side can affect the calculus as well.

As Engler points out the dynamic of power imbalances commonly occurs in a variety of cases: “Eviction cases pit vulnerable tenants against powerful landlords. Victims of domestic violence fighting their abusers in custody proceedings are vulnerable as well, particularly where counsel represents the opposing party.”50 He points out that the results from surveys of judges “demonstrate that scenarios pitting an unrepresented party against a represented one are the most difficult for judges to handle.”51 Early reports from triage efforts of self-help centers suggest that these are

48Ibid.
50Engler 2010, at p. 122.
the cases in most need of referrals as well.\textsuperscript{52}

The US studies conclude that the greater the imbalance of power is, the greater the need for a skilled advocate with expertise in the forum to provide needed help.\textsuperscript{53} Engler advocates for right to counsel initiatives and research that maintain “a disciplined focus on scenarios involving power imbalances that reflect a breakdown of our adversary system’s proper functioning.”\textsuperscript{54} Those power imbalances often flow“ from the vulnerability of a family whose basic needs are in jeopardy, as well as the comparative power of an adverse party.”\textsuperscript{55}

**Unexpected Results from One Randomized Study**

There is one study in the civil context that is an outlier to the findings on the effectiveness of legal representation cited above. A Harvard research team designed a study in which the legal services provider was able to “randomize” which of several eligible potential clients would receive an offer of representation.\textsuperscript{56} Randomization creates two groups that can then be compared in a statistically relevant manner: a “treated” group who are offered representation and a “control” group who were not offered the service but which was identical in statistical terms to the “treated” group. An examination of official records for the treated and control groups would allow rigorous measurement of the difference the offer of representation made with respect to the set of outcomes.

Randomized testing has not been the standard approach in the legal services research field because of the ethical concerns involved in not providing a needed service to an individual once he or she is identified as requiring representation. Randomization was deemed acceptable in this context because the demand for legal services outstripped a provider’s capacity, hence many individuals would be denied legal representation in any case. The framework was “provider-centered” rather than by other potential “dimensions of interest” such as legal area (e.g., housing.

\textsuperscript{52}Engler 2010, referencing at footnote 153: \textit{e.g.}, Telephone Interview with Bonnie Rose Hough, Judicial Council of California, Administrative Office of the Courts, San Francisco (June 12, 2006). In identifying the scenarios in which referral to an attorney might be most important, Hough has identified the following triggers: the complexity of the legal issues, language barriers, characteristics of the litigant, and characteristics of the judge.

\textsuperscript{53}Engler 2010, at p. 115 referencing \textit{Connecting Self-Representation, supra.}

\textsuperscript{54}Engler 2010, at p. 125.

\textsuperscript{55}Engler 2012, at p. 122 referring to the work of the Boston Bar Association Task Force discussed below.

family law, immigration, bankruptcy), level of representation (e.g., full attorney-client relationships, lawyer-for-the-day, advice), type of adjudicator (e.g., judge, administrative law judge, and style of adjudication (e.g., inquisitorial, adversarial).

The researchers focused on the offer of representation rather than the actual use of representation explaining:

_We pause to note that an evaluation of whether an offer or actual use of representation affects client outcomes is not the same thing as measuring the quality of a services provider’s lawyering. There could be a variety of reasons why representation (offer or actual use) might not affect measured outcomes despite world-class advocacy, including, for example, (i) that the provider’s outreach and intake system is producing only an unusually competent and motivated client base that does not actually need assistance, or needs it less, or (ii) that the adjudicatory system in which clients are operating is friendly toward pro se litigants, leaving less room for representation to make a difference, or (iii) that the issues to be litigated in a particular area are relatively straightforward (at least for the set of potential clients who seek representation), again leaving less room for representation to make a difference._

The first study in this research program to be concluded consisted of a randomized evaluation of the Harvard Legal Aid Bureau’s representation of claimants seeking unemployment benefits. The quality of HLAB representation in the unemployment context is both high and well-respected.

The research approach is described in these terms:

_The study process worked as follows: a claimant called the HLAB front desk, and HLAB would arrange to conduct its usual screening interview. During the interview, the student-attorney informed the claimant that HLAB was conducting an evaluation and read the claimant a script describing the study before requesting consent to participate. HLAB then transmitted to us a form that verified oral consent and contained basic information about the claimant. We randomized the case (see below) and informed HLAB whether or not to offer representation. If the randomization was not to offer, the student-attorney so informed the claimant by telephone and provided her with names and telephone numbers of other legal services providers in the area who might take her case. Regardless of the randomization result, we sent a letter to the claimant verifying her consent to participate in the study. After a few months, and pursuant to a prior arrangement, we sent the Massachusetts DUA a copy of the oral consent form and the follow-up letter along with an outcome form requesting information on the ALJ ruling, on relevant dates, and on whether the claimant was represented in the first-level appeal. Study intake began in the summer of 2008 and closed in the spring of 2010._

57 Greiner and Pattanayak at p. 5-6.
58 Greiner and Pattanayak at p. 6.
by which time the 207 cases that form the basis of our analysis had cleared intake.\footnote{59}

The results were highly unexpected:

With respect to the claimants reached by the outreach and intake systems of HLAB’s unemployment practice, and with respect to outcomes measurable from official records (which concerned a claimant’s pecuniary interests), the randomized evaluation determined that an offer of HLAB representation had no statistically significant effect on the probability that a claimant would prevail, but that the offer did delay the adjudicatory process.

The main research findings “do not mean that we know that the HLAB offer had no positive effect on a claimant’s probability of success”, however, that any such effect is unlikely to have been large (or else the data probably would have shown it).\footnote{60}

The unexpected results of the HLAB study prompted the researchers “to re-examine the literature purporting to assess quantitatively how much of a difference legal representation makes in civil cases.” Their review led them to conclude that few of the earlier studies were “worthy of credence”.\footnote{61} Unsurprisingly, there was a strong response to this study from other American access to justice researchers.\footnote{62}

The researchers identify three possible explanations for these surprising results that the offer of legal assistance did not affect the probability that the claimant would prevail:

- The win rate overall was very strong and much higher than most first-level appeals, suggesting that the underlying facts made the cases strong and the claimants took the lead in contacting HLAB for assistance suggesting they had personal characteristics that helped them to pursue their cases – “In other words, perhaps HLAB and the other attorneys who assisted clients who had contacted HLAB were helping only those who did not need the help.”\footnote{63}
- The court’s adjudicative style was a mix of “adversarial and inquisitorial” styles of judging including initiation of questioning of all witnesses, the claims adjustor shouldered the initial burden of collecting relevant documents, and

\footnote{59} Greiner and Pattanayak at p. 21. (footnotes omitted)
\footnote{60} Greiner and Pattanayak at p. 6.
\footnote{61} Greiner and Pattanayak at p. 7.
\footnote{63} Greiner and Pattanayak at p. 47.
expert testimony was rarely needed - thus the environment was conducive for unrepresented litigants.\textsuperscript{64}

- The issues were "accessible" in the sense that the proceedings are relatively simple, no expert testimony is required and the matters can be worked up in just a few weeks.\textsuperscript{65}

This analysis underscores "the idea that context matters greatly" and that it is critical to neither over-generalize nor under-generalize the results.\textsuperscript{66}

Other randomized trials by this research team are ongoing in the areas of housing/eviction, Social Security, disability, and divorce. These studies are investigating multiple models of service delivery, from full-time staff attorneys to pro bono referral services to lawyer-for-the-day programs to student-attorneys. They concern administrative adjudications (state and federal), specialized courts, and courts of more general jurisdiction. The preliminary conclusions of the study on unbundled legal services in the housing/eviction context, carried out in concert with the BBA Task Force, are discussed in the next section.

The Greiner and Pattanayak study stirred up a controversy and has led to an important discussion amongst American access to justice scholars. An article summarizing the response and the criticisms of the article reporting the study concludes that part of this controversy is "due in part to the void into which it was proffered" and the findings "compel us to consider more exacting evidentiary standards in making scarcity-driven decisions about when and how to reform institutions.\textsuperscript{67} The critiques focused on: the validity of the study (focus on offer of assistance rather than actual assistance); error of using law students rather than lawyers to provide representation; trial was not grounded in theory (literature review carried out after random trial); poor trade-off to divert service resources to this type of experiment; and legal service programs are so vulnerable they should not be exposed to any type of evaluation that does not clearly demonstrate their value.\textsuperscript{68} The review article comes to a more positive conclusion stating that the Greiner and Pattanayak study potentially demonstrates that there are settings in which effective self-representation is possible with the right types of non-representation assistance.\textsuperscript{69}

\textsuperscript{64} Greiner and Pattanayak at p. 48.
\textsuperscript{65} Greiner and Pattanayak at p. 48.
\textsuperscript{66} Greiner and Pattanayak at p. 49.
\textsuperscript{68} Id., at pp. 49-51 (with cites to published critiques).
\textsuperscript{69} Id., at pp. 51-52.
Other commentators note that randomized studies that explore the impact of representation on outcomes raise as many questions as they answer, in particular with respect to *why* representation did or didn’t matter. For example, where representation had little impact, the randomized study of outcomes provides no information as to the quality or effectiveness of the legal services provided. In addition, the study raises questions as to the proper inferences that can be drawn from statistics that test a “null hypothesis” (here that representation has no effect on outcomes). It is argued that “random design studies that find positive effects from representation and those that find no effect should not be treated as equivalent evidence on opposite sides of the scale”, particularly where more information is needed about the mechanisms (i.e. *why* representation did or didn’t impact outcome) and context of the representation.

**Boston Bar Association Civil Gideon Task Force**

One potential model for ELSRP is the approach taken by the Boston Bar Association (BBA) Civil Gideon Task Force. Greiner also co-authored this study, but (as discussed below) arrives at very different results. This initiative is based on

> ...the basic proposition that where a civil proceeding involves a basic need or right, and nothing short of representation by counsel will preserve that right, counsel must be provided. No one is calling for a lawyer for all litigants in all civil matters. No one is calling for representation by counsel when lesser forms of assistance will do. No one is calling for representation where the rights at issue do not involve basic human needs.

The BBA Task Force has developed a series of pilot projects to empirically demonstrate the scenarios in which counsel is most needed. The Task Force reviewed research and consultations to identify situations in which counsel were most needed. The concept of identifying power imbalances provided one of the “common threads” that emerged in the BBA Task Force’s selection of pilot projects. As the Report explains, some of the pilots flowed from scenarios that were closely analogous to the criminal context—where physical liberty was at stake - while others “involved the potential loss of basic human needs due to a dramatic power imbalance.”

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71 Albistion and Sandefur, *supra* at p.108.
72 Boston Bar Association Task Force on Expanding the Civil Right to Counsel, *Gideon's New Trumpet: Expanding the Civil Right to Counsel in Massachusetts* (September 2008) at p. 2. [BBA Task Force Report]
73 BBA Task Force Report, at p. 7.
The Task Force launched Civil Gideon eviction defense pilot projects, using a staff-based model, in the Quincy District Court and the Northeast Housing Court. The pilot projects were scheduled to run for a year, beginning in May 2009. The projects were supported by forms of evaluation that included analysis of a randomized study, assessment of the court dockets, efforts to follow litigants after the period of the study, and interviews with judges, advocates, and other personnel involved. This multi-pronged methodological approach with its mix of quantitative and qualitative research methods has a strong potential for evaluating the effectiveness of legal services. This initiative includes what is considered to be one of the first “randomized trial testing the impact of attorney assistance on case outcomes”.74

This study recognizes that the effectiveness of unbundled legal assistance can be assessed from at least two perspectives:

1. How much benefit does a potential client receive by being offered limited legal assistance as compared to being compelled (for lack of an alternative) to pursue unassisted self-representation? That is, as compared to a baseline of nothing?

2. What does a potential client “lose” when referred to a limited assistance program as compared to receiving an offer of a traditional attorney-client relationship with a competent lawyer? Or, how does limited assistance compare to full representation?75

This study provides evidence addressing the second question and provides “gold standard evidence” on the question of how closely a limited assistance program can approximate the outcome of full representation.76 It was carried out in conjunction with a number of court and community partners including the BBA Task Force. Two randomized control trials were implemented to test the effectiveness of limited legal assistance one in the Massachusetts District Court and one in the Housing Court (not yet reported upon). In the District Court, the design consisted of a comparison of outcomes realized by randomly assigned treated and control groups of summary eviction defendants, almost all of whom received limited legal assistance in the form of “how to” clinics run by the Greater Boston Legal Services staff attorney. The clinic’s services included assistance in filling out answer and discovery forms. The treated group received an additional benefit of an offer of a traditional attorney-client relationship from a staff attorney; the control group received no such offer. 97% of the treated group took advantage of the offer of representation while 89% of the control group was forced to self-represent. A review of court records, supplemented by a small number of telephone contacts, allowed the researchers to

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74 D. James Greiner, Cassandra Wolos Pattanayak, and Jonathan Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future (draft March 2012). [Greiner, Pattanayak and Hennessy]
75 Greiner, Pattanayak and Hennessy, at p. 4.
76 Greiner, Pattanayak and Hennessy, at p. 5.
discern both legal outcomes (e.g., whether a judgment for possession was entered against a tenant) and some socioeconomic outcomes (e.g., whether the tenant actually lost possession).\(^{77}\)

According to the researchers, the services provided were considered to be of high quality. The service provider recruited study participants via a proactive, timely, individualized, and selective system. Staff or volunteers examined recently initiated summary eviction actions and mailed letters to tenants likely to be eligible for the study, inviting them to the clinics. The assistance included: overviews of the summary eviction process and individualized assistance in filling out forms. The researchers found the forms, which were available online and used by lawyers and self-represented litigants alike, to be particularly useful as they include a check box format for potential defenses and a check box format on discovery issues. The staff attorneys also used the sessions to evaluate whether they thought representation could alter the outcome of the case. Additional participants in the study were recruited by staff present in court on other matters on the basis of on the spot interviews, sometimes carried out on the basis of a referral from the judge. Participants were randomly assigned to either the treated or control group.

In this District Court Study, the differences between the outcomes realized by the treated and control groups were large.\(^{78}\) Approximately two-thirds of the treated group retained possession by comparison with one-third of the control group. In cases of non-payment of rent or serious monetary counterclaims, the members of the treated group were not obligated to pay an average net of 9.4 months of rent per case (relative to what the evictor was due), while the corresponding figure for the control group was 1.9 months of rent per case. The results were statistically significant despite the small size of the study (76 treated and 53 control cases). There was no evidence to suggest that the treated group imposed a greater burden on the judge or the court than the control group cases.

The researchers posit a number of possible explanations of the results (which vary significantly compared to the unemployment benefits study discussed above):

- The proactive, specific, selective, and timely system for outreach, intake and screening meant that the service provider had a stronger informational basis on which to predict whether it could affect case outcomes (by comparison, for example, to only a hotline);
- Complications in applicable law (multiple sources of law, multiple doctrines, evidence) created a greater need for representation;

\(^{77}\) Greiner, Pattanayak and Hennessy, at pp. 6-7.

\(^{78}\) Greiner, Pattanayak and Hennessy, at p. 20.
• The adjudicatory system was more traditionally adversarial and because of the volume of cases there was not much personal judicial intervention in the hearing;
• These cases have a higher need for pre-hearing factual development (e.g. more prep work required)
• The model of service delivery may be particularly effective – specialized experience counsel from a legal aid organization.79

**California Sargent Shriver Civil Counsel Act Pilot Programs**

The California Sargent Shriver Civil Counsel Act Pilot Programs are funded by the California legislature to provide legal services, including direct representation, to low-income self-represented litigants in select areas, including housing, child custody and guardianship. This project has been called “the most ambitious civil right to counsel pilot project”.80 The legislation establishing the $10 million program specifies that an evaluation of the effectiveness of the nine pilots be conducted by 2015 and reported on in early 2016. The report must include an assessment of the benefits and impact of the programs on both the individuals receiving assistance and the courts.

The evaluation methodology has been developed through a participatory process engaging practitioners, policy makers, experts and other stakeholders.81 The first step was to develop key hypotheses to guide the evaluation. Based on these hypotheses, the team developed outcome indicators.

For example, one of the hypotheses is: “In many cases... the parties cannot gain fair and equal access to justice unless they are advised and represented by lawyers.” The related outcomes developed for evaluating the impact of representation in the housing context are:

• Increased ability of litigants to appeal
• More cases voluntarily dismissed

79 Greiner, Pattanayak and Hennessy, see extended discussion at pp. 23-37.
80 Clare Pastore, “California’s Sargent Shriver Civil Counsel Act Tests Impact of More Assistance for Low-Income Litigants” (Shriver National Center on Poverty Law, July-August 2013).
81 Evaluation methodology as a process of mutual understanding: Designing the evaluation for the Center for Families, Children & the Courts (Presentation by Bonnie Hough, Karen Cannata, Don Will, Mike Finnegan, PhD and Juliette Macklin, PhD at the ABA Equal Justice Conference, 2013).

[http://www.americanbar.org/content/dam/aba/events/probono_public_service/2013/05/equal_justice_conference/WS_187_hough](http://www.americanbar.org/content/dam/aba/events/probono_public_service/2013/05/equal_justice_conference/WS_187_hough)
• More cases settle
• Increased housing stability of tenants, include
  (i) More tenants remain in their homes,
  (ii) More time provided for move-out,
  (iii) Better financial outcomes for tenants and
  (iv) Protection of tenant’s credit and ability to rent in the future.
• More reasonable accommodations ordered or stipulated as part of the case resolution.

The second step was to consider which evaluation methodologies should be included in the research design, including by working through examples. The groups consulted recommended that evaluation methodologies be tailored to each site through the following process:

1. Phase/year one involves designing and implementing a system for collecting and analyzing key descriptive data elements in all pilots.
2. While engaged with the pilots on phase one, evaluator will begin the discussion and planning of rigorous comparative evaluation work to take place in phase/year two.
3. A comparative study but not necessarily a randomized control trial is required in all sites.
4. The evaluator will engage all sites in a discussion of using the most rigorous experimental method suited to each site.

The evaluation is being conducted by Northwest Pacific Consulting and was initiated in June 2012. The project involves a process evaluation and an outcome study. Nine sites are included in the process evaluation and four sites will be chosen for the outcome study. Process information will be gathered through a series of key stakeholder interviews, client interviews and client focus groups, as well as through a review of project activity data. Outcome data will be generated through three sources, including documentation of case information (program data), client level interviews, and administrative data extraction.

Proposed Evaluation of Representation in Civil Eviction Cases

In 2009, the Northwest Justice Project & the Civil Right to Counsel Leadership and Support Initiative commissioned Northwest Pacific Consulting to develop a research study designed to investigate the costs and benefits of providing attorneys in civil eviction cases. The purpose of the proposed study is:

The study will answer the following research question: What are the costs and benefits that result from providing an attorney to tenants in eviction cases? Specifically, we will examine whether representation leads to any difference in short-term case outcomes (such as orders of eviction) as well as in longer term outcomes (such as homelessness and usage of publicly funded support services)
for the litigants. The results of this study will provide policy makers with information about the costs of civil representation programs, as well as the expected outcomes and the related cost savings of such programs.\textsuperscript{82}

The proposed study would be guided by a logic model that identifies the intervention and the key short- and long-term outcomes related to the intervention.\textsuperscript{83} Outcome measures are set out in five categories and relate to the impact on the individual/family, the justice system, and society:

**Legal Case Outcomes**
- Order of eviction
- Judgment for repairs
- Judgment for rent abatement
- Judgment for extended move out
- Order requiring payment of fees/damages
- Dismissal

**Court Efficiency Outcomes**
- Mode of resolution
- # of court appearances
- # of motions
- Length of case

**Housing Outcomes**
- # of house changes
- Homelessness/transience
- Change in neighborhood quality

**Mediating Outcomes**
- Employment changes
  - Job loss
  - Income changes
- Family changes
  - Divorce/separation
  - Child custody changes
  - Child school changes

\textsuperscript{82} Northwest Pacific Consulting, *Civil Right to Counsel Social Science Study Design Report* (Submitted to: Northwest Justice Project & the Civil Right to Counsel Leadership and Support Initiative, April 2009) \url{http://www.npcresearch.com/Files/Civil_Right_to_Counsel_Design_Report_0409.pdf}

\textsuperscript{83} Ibid, at p. 5.
**Long-Term Health and Functioning Changes**

- Physical health
- Mental health
- Substance use
- Criminal justice involvement
- Child functioning

The proposed project would provide funds to legal service agencies in selected jurisdictions to offer representation to a randomly selected group of tenants in eviction cases. Thus, the project involves both the creation of the intervention as well as the evaluation of that intervention. In order to determine the costs and benefits associated with attorney representation in eviction cases, tenants will be randomly assigned either to attorney representation or to a control group at each study site.

Phase II of the project consisted of a needs assessment of two pilot sites (Philadelphia, PA and Pierce County [Tacoma], WA) to gather information about the unmet legal needs and legal contexts of these two areas. The project also identified relevant cost elements for inclusion in the future full study and established cost estimates and proxies when feasible and plans for how to measures costs in the actual full study.\(^{84}\) This work was completed in March 2010. The full pilot study has yet to be initiated.

### 3. Assessing the Effectiveness of Other Types of Legal Services

Today, in addition to PLEI, there is a range of services provided to assist individuals to resolve their legal problems without the benefit of legal representation including: telephone hotlines, self-help centers, advice-only clinics, and various forms of duty counsel (court-annexed limited legal services programs all assist unrepresented litigants in the courts). The mix and availability of services varies greatly between and within jurisdictions. While initially devised to provide public legal education and additional information, these services are increasingly geared toward providing assistance to litigants who would otherwise have no help at all. This section provides a brief overview of evaluations of PLEI and legal advice and assistance programs and a more in-depth description of outcome-based evaluations of these legal services. It also includes a summary of the approaches taken to outcome-based evaluations of legal aid programs in England and Wales and Australia.

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\(^{84}\) Northwest Pacific Consulting, *Civil Right to Counsel, Phase II Pilot Study: Needs Assessment and Cost Elements* (Submitted to: Northwest Justice Project & the Civil Right to Counsel Leadership and Support Initiative, June 2010)  
[http://www.npcresearch.com/Files/Civil_Right_to_Counsel_Phase_II_Pilot_Study_06_10.pdf](http://www.npcresearch.com/Files/Civil_Right_to_Counsel_Phase_II_Pilot_Study_06_10.pdf)
Canadian Evaluations of PLEI and Legal Advice/Assistance Programs

Most publicly funded services are subject to some form of evaluation, generally geared toward measuring level of effectiveness and usually as a requirement for continued funding. At the same time, limited funds and expertise are available to undertake this important work. An annotated bibliography on evaluations of PLEI concluded that: "there are very few reports that directly evaluate PLEI programs, services or materials." It made the following findings:

1. **The Challenges of PLEI Evaluation**
   - Lack of skills, resources, money
   - Insufficient definitions of PLEI and evaluation

2. **Connections between Goals of PLEI and its Evaluation**
   - Many of the goals and objectives of PLEI projects cannot be measured by quantitative means

3. **Challenges of funders’ evaluation requirements**
   - Without stable funding PLEI providers are dissuaded from engaging in extensive evaluation efforts
   - Different emphasis and goals between funders and PLEI providers leads to distinct methods of evaluation and misinterpretation of findings

4. **Evaluation Methodologies**
   - Most common forms: questionnaires and surveys, semi-structured interviews, call back/follow up; pre/post-testing; focus groups

5. **Research and Knowledge Gaps**
   - No mention is made as to how evaluations, assessments or quality reports should be used by the program or organization under evaluation
   - Similarly, there is no discussion about how findings or recommendations of evaluations conducted and transcribed can be used by other PLEI agencies and organizations.

Interestingly, the 2003 study found that the capacity for evaluation in the PLEI field had not changed dramatically since 1986, the last time such a national review had been carried out.

In most cases, evaluation takes the form of “counting events and activities and measuring client satisfaction.” In Canadian evaluations the counting aspect of

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85 Lindsay Cader, “Evaluation of Public Legal Education and Information: An Annotated Bibliography” (Department of Justice Canada, 2003).
86 *Ibid.* (no page numbers in online version)
87 *Ibid.* (no page numbers in online version)
88 Erol Digiusto, “Effectiveness of public legal assistance services – A discussion paper” (Law and Justice Foundation of New South Wales, Justice Issues Paper 16, October 2012), at p. 4. [Digiusto 2012]
evaluation is often referred to as the “reach” of PLEI materials and in particular whether the materials reach the particular target audience. A recent Australian literature review on the concept of “effective” legal services concluded that:

*Such activity counts can be acceptable as valid proxy measures of outcome effectiveness, but only when reliable evidence is already available which shows that those activities do, in fact, reliably deliver the desired outcomes. Such evidence is often scarce in the Australian legal assistance sector.*

In many cases, PLEI and other types of legal services have not been designed to replace legal representation. The aim of these types of interventions are developed to meet other types of outcome goals such as increasing knowledge of legal rights and responsibilities, increasing knowledge of appropriate procedures for redressing rights and fulfilling responsibilities, assisting an individual to decide what to do in relation to their legal problem and to be aware of the availability of legal advice, assistance and dispute resolution services and how to access them, as well as attaining greater understanding of court processes with which they might need to comply.

Evaluations are designed to measure the effectiveness of the PLEI materials relative to these objectives and generally do not seek to evaluate the impact of the materials on legal or social outcomes. Often the issue is framed in terms of whether an individual found the materials to be “helpful”, although in some cases specific feedback on how to improve materials is sought. For example in the evaluation of the Ontario Family Law Education for Women project, effectiveness of the PLEI materials were assessed on two levels: (a) is the material easy to understand? (b) does the information enable women to better understand their legal rights and options in a practical and useful manner?

Canadian PLEI providers have used a number of methodologies to evaluate the services provided. Justice Canada provides an overview of these evaluation methodologies:

- Interviews
- Focus groups
- Surveys with users of services and justice system stakeholders
- Online evaluations
- Feedback cards distributed along with resources; analysis of returned cards

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89 Digiusto 2012, at p. 4.
90 Digiusto 2012, at p. 5.
91 See “A Snapshot of Evaluations from PLEI Groups in Canada” (Compiled by PLEI Coordination and Resource Unit in 2010 and updated). [Snapshot]
92 Evaluation Report for FLEW Project Phase II (Catalyst Research and Communications, January 24, 2011) at p. 16.
• Tracking distribution, tracking usage and traffic patterns for online services.\textsuperscript{93}

A 2006 evaluation of the BC Self Help Centre focused on providing a description of the services offered and gathering user-satisfaction data.\textsuperscript{94} An evaluation of Law Help Ontario provides similar information, although this study also inquired into “What outcomes are clients achieving as a result of the services they receive?”\textsuperscript{95} The study reports that 52\% of Law Help Ontario clients whose cases were completed reported they had received favourable rulings from the court and 64\% felt the justice system had treated them fairly.\textsuperscript{96} 100 clients of the Centre were interviewed following the resolution of their matter and between 64\% and 80\% agreed “completely” or “somewhat” that they were able to achieve short-term positive outcomes.\textsuperscript{97} Similarly, reviews of duty counsel services have not generally extended to outcome-based evaluations.\textsuperscript{98} There are some exceptions, including an evaluation of expanded duty counsel for Legal Services Society BC, which concluded that assistance led to some immediate resolutions and assisted people to achieve resolutions (although the report was unable to conclude that the duty counsel assistance alone led to the resolution).\textsuperscript{99}

CLEO undertook an in-depth assessment of effective formats and delivery channels for reaching low-income and disadvantaged communities in Ontario with information about their legal rights.\textsuperscript{100} The report noted the many barriers people experience in effectively accessing and utilizing legal information and concluded that the very best approach is a multilayered response tailored to individual needs.

\textsuperscript{93} See Snapshot, supra.
\textsuperscript{94} John Malcolmson and Gayla Reid, BC Supreme Court Self-Help Information Centre Final Evaluation Report (August, 2006).
\textsuperscript{96} Law Help Ontario Evaluation, at p. 7.
\textsuperscript{97} Law Help Ontario Evaluation, at p. 7.
\textsuperscript{100} \textit{Public Legal Education and Information in Ontario Communities: Formats and Delivery Channels} (CLEO: August 2013).
A recent evaluation of the Family Law New Brunswick Website was designed to measure the following project outcomes:

- The success of the Project in creating public awareness of the Family Law NB Website, toll-free line and other family law resources.
- The effectiveness of the Family Law NB Website and resources (e.g. annotated forms) in assisting self-representing litigants in finding the information needed and otherwise ‘navigating’ the legal system.
- The extent to which the Project has helped to lessen the strain on the family justice system and court registrar by providing a referral resource to deal with the education, information and assistance needs of SRLs.
- The satisfaction expressed with the website by other stakeholders, such as the Family Bar, the Law Society and other relevant community agencies.\(^{101}\)

The evaluation framework developed a ‘mixed methods’ approach to collecting data, notably:

- A review of the Family Law NB Website utilization data for one year;
- A baseline and follow up survey questionnaire designed to collect data from a wide spectrum of stakeholders including: Family Court staff, Family Law Solicitors, and Family Court Judges within the province;
- A series of interviews and/or focus groups conducted with Advisory Committee members, project stakeholders, court staff, Family Law Solicitors, and, to a limited extent, SRLS who have used the Family Law NB Website.

Some of the key findings were:

- 22% of respondents said that time spent assisting SRLS had been reduced but 16% said that time had not been reduced;
- 23% of respondents said that there were changes that suggest that SRLs are better prepared to deal with legal issues and processes, but 31% said there were no changes in this regard (the evaluators posit the explanation that this might be because the overall number of SRLs continues to grow).\(^{102}\)

As a result of these findings, the report concludes:

\textit{The results indicate that some SRLs are showing some evidence of improved ability in searching out/determining which forms are needed, and obtaining and}


\(^{102}\text{FLNB Evaluation, at p. 14.}\)
completing the needed forms. There is less evidence that they are better prepared regarding the legal and/or court processes.\textsuperscript{103}

The report concluded that there was good awareness of the website and resources and that these were seen as important and valuable. Beyond that, the quantitative data did not allow for firm conclusions concerning the outcomes of usage of the website and materials. The researchers were unable to conclude from the quantitative data that there had been a resultant reduction of demand on people’s time and workload, although the qualitative comments did support a positive impact on reducing the workload of front-line staff. The qualitative data also indicated that “… there continues to be a major gap despite the website and its resources and tools. In the view of these respondents, the most pressing need for SRLs was more access to legal services, mediation services, and educational support.”\textsuperscript{104}

Legal Services Society of BC carried out an evaluation of its range of family law services from September 2011 to March 2012.\textsuperscript{105} The evaluation focused on “service outcomes” for 783 clients utilizing a telephone survey. The primary objectives for this study were to determine:

- Types of issues that clients of the six services were seeking to resolve, the extent to which and the form in which they achieved resolution, and their satisfaction with the outcome.
- The types of services clients used to address their issues, how helpful they were perceived to be and referrals made to other services.
- Whether the issues re-emerged after appearing to be fully resolved, and how these re-emerged issues were then dealt with.
- Whether new related family legal issues arose, and how they were dealt with.
- Whether clients gained new confidence, knowledge or reassurance as a result of the legal services they received.\textsuperscript{106}

The researchers noted that there was only a 36% response rate, which did not permit a representative sample of cases, and they saw a trade-off between using more “aged” cases resulting in fewer pending cases and the attrition rate of survey respondents with this older sample of cases.\textsuperscript{107} The majority of clients reported that their legal issues had been resolved and being satisfied with outcomes,\textsuperscript{108} although

\textsuperscript{103} FLNB Evaluation, at p. 15.
\textsuperscript{104} FLNB Evaluation, at p. 16.
\textsuperscript{105} Focus Consultants, \textit{Evaluation of Family Legal Services, Legal Services Society} (Final Report, May 1, 2012). [LSS Family 2012]
\textsuperscript{106} LSS Family 2012, at p. 3.
\textsuperscript{107} LSS Family 2012, at pp. 9-10.
\textsuperscript{108} LSS Family 2012, at pp. 38-44.
the survey also found that for many clients legal issues re-emerged at a later date.\textsuperscript{109} Clients used an average of 2.4 different LSS services and 21\% also used services provided outside of LSS.\textsuperscript{110} Aboriginal Community Legal Workers and Legal Information Outreach Workers had the most positive client responses concerning satisfaction with outcomes. The study states: “It is important to emphasize that more than one service may have contributed to these satisfaction results.”\textsuperscript{111}

Regarding the longer-term impact of the legal assistance, the survey found:

*When asked to respond to four statements pertaining to their knowledge and confidence about dealing with legal problems in the future, respondents were most positive about knowing where to go to get legal assistance in the future. They were slightly less positive about their confidence in recognizing the legal component of a family matter or of knowing their rights. They were the least positive about being sure their rights would be adequately addressed in a similar case in the future.*\textsuperscript{112}

The evaluation concludes that this methodological approach provides LSS with “a solid basis of understanding about client usage of family legal services, which in turn could help LSS to appreciate the impacts that changes might have on clients, and how best LSS services might respond to client needs.”\textsuperscript{113} It also concludes that: “The consistent gathering of client consents and contact information from as early a date as possible in the life of an LSS service (or LSS-funded service) is critical to successful outcome studies.”\textsuperscript{114}

**Outcome-Based Evaluations of Legal Advice Services in Other Countries**

**The impact of debt advice in England and Wales**

One of the few empirical studies utilizing a randomized trial method and focusing on the connection between advice service and outcome is a study carried out by the Legal Service Research Centre in England and Wales on the topic of debt advice.\textsuperscript{115} This study found that providing advice by telephone and in writing to a group of clients about how to manage their debt problems did not significantly increase their knowledge about financial issues or reduce their debt problems, in comparison with a group of clients who were not given advice. The participants were drawn from 16

\textsuperscript{109} LSS Family 2012, at pp. 19-20.
\textsuperscript{110} LSS Family 2012, at pp. 21-22.
\textsuperscript{111} LSS Family 2012, at p. vi.
\textsuperscript{112} LSS Family 2012, at p. 57.
\textsuperscript{113} LSS Family 2012, at p. 60.
\textsuperscript{114} LSS Family 2012, at p. 61.
Job centres (welfare offices) in 13 areas of England and Wales. In all, 402 participants were included in the trial at its outset; 234 participants remained in the trial at the 20-week follow-up. The study found no significant difference in the rate at which intervention and control group respondents had resolved their debt problems at the 20-week follow-up. There were some positive outcomes from the legal assistance (but these fell short of statistical significance):

- Those who received assistance were significantly more likely to describe their financial position as “better” than at baseline.
- There was also evidence that they became more knowledgeable about their financial circumstances, more focused on dealing with priority debt, and more optimistic about their future prospects, relative to control group counterparts.  

The researchers also highlight the difficulties of applying experimental methods in a social setting. They conclude that one lesson drawn from the difficulties encountered in running this trial is that “take-up is likely to be low for some forms of pro-active advice for sensitive problem types experienced among disadvantaged communities.”

Interestingly, the overall evaluation of debt advice in the UK carried out by the same research team, utilizing a number of methodologies in addition to the randomized study, concluded that the advice was effective. The other approaches were: a follow-up study of advice agency clients, analysis of data from the 2004 English and Welsh Civil and Social Justice Survey (CSJS), and follow-up qualitative interviews with respondents to the 2004 CSJS.

**US comparative study of five hotlines**

One US study carried out an in-depth evaluation and assessment of the outcomes of five hotline information services over a three-year period. The third phase of the assessment involved researching whether clients understand the advice they are given by hotlines, whether they follow up on it, and whether they realize a satisfactory resolution of their problems. This study was completed in 2002 but is

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116 Debt advice evaluation, at p. 660 and 667.
117 Debt advice evaluation, at p. 670.
118 Debt advice evaluation, at p. 651.
considered to be have been “pioneering” in the field and to have “withstood the test of time” in terms of identifying key issues.\footnote{Roger Smith, “Telephone hotlines and legal advice: a preliminary discussion paper” (Legal Aid Group, January 16, 2013) at p. 1. (Unpublished paper on file with the author.) This draft discussion paper compares the findings of studies on hotlines from the US, Australia, the UK, and British Columbia). [Smith 2013]}

The study methodology included:

- Generating samples of callers at five legal hotlines that were representative of the total universe of clients served at legal services programs;
- Conducting telephone interviews with 2,034 callers three to six months after they contacted the hotlines and eliciting their general reactions to the hotlines, as well as the specific outcomes of their cases;
- Having experienced legal services lawyers generate both factual and evaluative assessments of outcomes, which were based on a review of case files and interview notes, including verbatim responses to questions about legal outcomes; and
- Analyzing the resulting data set to produce profiles of callers across the five sites and outcome patterns with special attention to the client, case, and advice characteristics of cases with favorable and unfavorable outcome patterns.\footnote{US Hotline Assessment, at pp. 3-9.}

The key findings were:

- \textbf{Where an outcome could be determined, Hotline cases were almost evenly split between successful (48%) and unsuccessful (52%) outcomes.}

- \textbf{When callers understand what they are told to do and follow the advice they are given, they tend to prevail.} Only 6 percent of all clients received unfavorable results because they did not prevail after following the advice of Hotline workers. In contrast, 13 percent failed because they did not understand the advice that was given, and 9 percent because they lacked the time, initiative, or courage to try to do what the worker suggested.

- \textbf{Most clients who do not act fail to understand the advice they are given or are too intimidated or overwhelmed to attempt the recommended action.} Three to six months after phoning the Hotline, 21 percent of callers had not acted on the advice they received. About a quarter of the no action cases were attributed to clients not understanding what they were supposed to do, another 25 percent were too afraid to try or lacked the time or initiative, and an additional 10 percent were told to hire a private attorney and reported that they could not afford or find one.
• Many Hotline cases result in outcomes that cannot readily be classified as successful or unsuccessful. Success could not be gauged for many clients because they had a matter that was still pending three to six months after phoning the Hotline (19%) or their responses to questions about their cases were so unclear that PFEJ lawyers were unable to determine outcomes (9%).

• Certain types of Hotline services are more apt to result in favorable outcomes. Brief services yielded the highest favorable outcome ratings, followed in order by coaching clients on how to deal with a private party; providing written legal information, and coaching clients on how to proceed pro se in court. Favorable assessments were still lower when clients were instructed on dealing with a government agency or were referred to another agency.

• Clients who were told to hire a private attorney had the worst outcomes and were the most dissatisfied. Only 11 percent of clients who were told to hire an attorney achieved favorable case outcomes and 52 percent rated the Hotline as unhelpful. Of clients who were advised by hotline workers to hire a private attorney, only 18 percent did so.

• Outcomes for housing and consumer cases are most apt to be rated favorably, while family cases are most apt to be pending. Housing and consumer cases had the highest rate of favorable outcomes, while family cases were lowest with many still pending when clients were interviewed. The findings for housing cases may reflect the fact that many unsuccessful housing clients had moved and were not reachable for an interview.

• Hotline clients with the best and worst case results had distinct demographic characteristics. Clients with outcomes that were rated most favorably were significantly more likely to be white, English-speaking, educated at least to the eighth-grade level, and have a marital status other than being separated from a spouse. Clients who received the least favorable outcomes were Spanish-speaking, Hispanic, individuals with the lowest education levels, those who reported no income, and those who were separated and lived apart from their spouse.

• Many clients face barriers that may affect their ability to follow through on hotline advice. Many Hotline callers disclosed problems that may affect their ability to handle their legal problem such as: a family disability or a serious health problem; serious transportation problems; depression or fear of an ex-partner or current household member; inflexible work, school, or daycare schedules; or problems reading or speaking English well enough to complete forms and other legal paperwork. While clients with disabilities fared no worse than the average, the other barriers listed above were associated with outcomes that were significantly less favorable.
• **Some types of follow-up actions by the Hotline may boost the chances of callers experiencing favorable results.** Higher favorable outcomes were associated with getting a letter or other written material, a follow-up phone call from the Hotline, or help from someone other than the Hotline worker.

• **Clients rated their experiences with Hotlines favorably.** Nearly half (41%) characterized the Hotline as “very helpful” and 28 percent as “somewhat helpful.” Two-thirds of clients at every site credited the Hotline with helping them make better decisions, feel more confident about their abilities, and keep the problem from escalating.

• **Disappointed Hotline callers typically said there was nothing anyone could do or that they wanted a lawyer to do more for them, although a small fraction of callers complained about being treated rudely.** Approximately 2 percent of callers complained about disrespectful and uncaring treatment by hotline workers.

• **User satisfaction ratings are associated with Hotline outcomes, but the relationship is not perfect.** While 63 percent of clients with favorable outcomes gave the hotline a “very favorable” rating versus only 19 percent of clients with unfavorable outcomes, a third (32%) with unfavorable outcomes rated the Hotline as “somewhat helpful.” A quarter of the clients who did not follow the Hotline’s advice or did not prevail rated the hotline as “very helpful.”

In his recent draft discussion paper on telephone hotlines, Roger Smith, a leading legal aid scholar and solicitor in the UK, compares seven studies and draws a number of tentative conclusions about hotlines as a means of providing legal advice. He highlights the fact that hotlines vary substantially and “cannot really be measured against each other.” He also suggests that studies show: “The benefit of the hotline expands with the depth of services offered. The best results are obtained when the hotline is the ‘front end’ of a system that can extend through assistance to full representation.”

**Recent US Empirical Studies of Unbundled Legal Services**

The vast majority of legal aid services currently provided are unbundled legal services, also known as limited scope services, in various combinations and permutations. In the United States in particular, legal services programs champion unbundled services as a middle ground between the small percentage of cases that

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123 US Hotline Assessment, at p. i-iii of the Executive Summary and pp. 65-68.
124 Smith 2013, at p. 9.
125 Smith 2013, at p. 10.
receive full representation and the vast majority of case those with "zero representation" on the belief that "half a lawyer is better than no lawyer at all."126

Evaluation of these services is comparatively new and evaluation techniques are less refined.127 Assessments of the effectiveness of other types of legal services have generated more mixed results by comparison with the studies of the impact of representation on case outcomes. Studies show that clients receiving other types of services have a high level of satisfaction with the services received but it is more difficult to gauge the effects on case outcomes.128 Furthermore, programs involving unbundling of lawyers' services and limited scope representation render more complicated evaluation and comparison of services. Despite the difficulties, these comparative evaluations are particularly important for program development purposes. As Engler points out, the successes we discover with other types of legal services in providing meaningful access “will have a direct impact on the scenarios in which full representation seems to be the only meaningful form of assistance.”129

Scholars and practitioners at the forefront of the unbundling movement have routinely cited the need to evaluate the model and determine its impact on cases and clients.130 Yet, until recently, there were only two published empirical studies--

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127 Engler 2010, at p. 124.
128 Engler, Connecting Self Representation, supra, at p. 39.
129 Engler 2010, at p. 124.
130 Steinberg 2011, at p. 471, referencing at footnote 81: Laura K. Abel, “Evidence-Based Access to Justice”, 13 U. Pa. J. Law and Social Change 295 (2010); Russell Engler, “Approaching Ethical Issues Involving Unrepresented Litigants”, 43 Clearinghouse Review 377, 379-80 (2009) (“The trend toward increased delivery through unbundling should continue, but with careful monitoring and assessment.”); Deborah Rhode, “Access to Justice: Connecting Principles to Practice”, 17 Georgetown Journal of Law and Ethics 367 (2004), at p. 397 (assailing the insufficiency of data concerning the satisfaction of clients, the quality of assistance, and its impact on the individuals and communities served, and asserting that "[u]nless we know more about what happens to clients who receive different forms of assistance . . . we cannot make rational choices about program design."); McNeal, Redefining Attorney-Client Roles, at p. 338 (suggesting that the legal community should engage in research before promoting unbundled legal aid to evaluate whether this lawyering model enhances access to legal systems, secures successful results, and operates to prevent imminent legal problems); Working Group Report, supra note 14, at 1821 (urging assessment and evaluation of unbundled legal services methodologies and pointing out that "there is no baseline data on the success of . . . limited legal assistance models, and no shared vision of how one might measure success"). For a proposed research agenda to determine the efficacy of unbundled legal services, including inquiry into whether the assistance produces
one measuring client satisfaction and one measuring the effect of advice-only on settlement outcomes--that exist to assess the efficacy of the model.131

According to Jessica Steinberg, the lead researcher on a recent California study of the impact of unbundled services, Michael Millemann et al. authored the first, and most widely cited study of unbundled legal aid in 1997.132 The study evaluated the provision of information and advice to 275 low-income litigants who received advice from clinical law students at the University of Maryland and the University of Baltimore related to divorce, child support, and child custody matters. The Millemann project assessed the efficacy of unbundled legal aid by measuring client satisfaction with the one-time information and advice they received. The study made two interesting findings. First, clients were quite satisfied with the aid they received.133 Second, client satisfaction was highest when the legal problem they faced was largely a matter of what Millemann calls "mechanical justice,"134 meaning that the case was simple and there was no question that the litigant was entitled to the legal remedy sought.135 As Steinberg points out, "the study was not designed to capture information about outcomes and how, if at all, the services provided affected litigants."136

The second study by the Empirical Research Group at UCLA School of Law studied the outcomes achieved by litigants who received aid at a court-based, self-help center in Los Angeles County in 2001.137 Steinberg describes the study:

Volunteer attorneys staff the center and are charged with providing one-time information and advice to any litigant seeking assistance in any civil matter. The evaluation focused, in large part, on comparing outcomes in eviction cases for fifty center-assisted tenants and fifty tenants who had no legal assistance at all. First, it looked at how tenants resolved their cases (by trial, settlement, or default judgment). Second, it evaluated the settlement outcomes achieved by both assisted and unassisted tenants (trial outcomes and other court judgments were not evaluated). For the litigants who settled, the study found that center-assisted tenants achieved no better outcomes than their unassisted counterparts. The

131 Steinberg 2011, at p. 471.
132 Steinberg 2011, at p. 472.
134 Steinberg 2011, at p. 472.
135 Steinberg 2011, at p. 472.
136 Steinberg 2011, at p. 472.
authors explained the lack of favorable impact by concluding that most tenants likely did not have meritorious defenses and, thus, unbundled aid could not necessarily be expected to improve substantive outcomes.\textsuperscript{138}

\textbf{Outcome-Based Evaluation of Unbundled Services in Eviction Matters – California}

A recent California study carried out an in-depth evaluation of unbundled legal services in housing-related cases. As lead researcher Jessica Steinberg points out, the move to limited scope representation is based on the untested assumption that “unbundling actually helps poor litigants and is worth the reform of centuries-old notions about the role a lawyer should--and must--play in advancing a client’s interests.”\textsuperscript{139} The California study was designed to test this proposition.

The empirical study tested the impact of two specific forms of unbundled legal aid provided by the Legal Aid Society of San Mateo County ("Legal Aid") on the case outcomes of indigent litigants facing eviction. The purpose of the study is described as:

\textit{not to reach incontrovertible or generalizable conclusions about the provision of unbundled legal services, but instead to use the resources available, and an ethically-feasible methodological design given the jurisdiction in which the author was located, to make a preliminary assessment of the efficacy of one iteration of the unbundled model, and thus to generate hypotheses for future research and offer at least some evidence-backed information about its impact on procedural and substantive justice for litigants.}\textsuperscript{140}

The study tracks outcomes for nearly 100 tenants facing eviction in a single California trial court, all of whom received "unbundled" help drafting a responsive pleading ("ghostwriting"), and half of whom also received one-time assistance negotiating with their landlords at pre-trial settlement conferences. Case results achieved by the tenants who received unbundled legal aid are compared to those obtained by two other groups: (1) more than 300 tenants who received no legal assistance at all, and (2) twenty tenants who, received full representation through Stanford’s Community Law Clinic. Steinberg notes that her study "is the first published experimental study to evaluate comprehensive outcomes from tenants who receive unbundled legal services and to make comparisons to both a control group receiving no legal assistance and a secondary treatment group receiving full representation."\textsuperscript{141}

The outcomes assessed in this study were both procedural and substantive in nature. The findings indicate that the San Mateo Legal Aid’s unbundled legal

\textsuperscript{138} Steinberg 2011, at p. 473.
\textsuperscript{139} Steinberg 2011, at p. 455.
\textsuperscript{140} Steinberg 2011, at p. 457.
\textsuperscript{141} Steinberg 2011, at p. 474.
services program was successful in furthering procedural justice, but that its impact on substantive case outcomes was quite limited. The study’s overall conclusion was:

While the unbundled aid provided did afford initial access to the justice system for low-income litigants, both by preventing default judgment and helping the unrepresented formulate valid defenses, the findings of this study suggest that unbundling did not secure more actual relief for its client population than unassisted pro se tenants in the same jurisdiction achieved without ever consulting a lawyer. These findings support a hypothesis that the unbundled services model might not provide benefit to all assisted clients in all circumstances, as has been presumed, and they illuminate the need for rigorous evaluation of the model, in its various forms and in numerous contexts, if we aim to understand where—if at all—rendering less than the “full bundle” of assistance can maximize favorable outcomes for indigent litigants.¹⁴²

The research questions were:

1) Does unbundled legal aid produce substantive outcomes for litigants that are more favorable than litigants could have achieved without any attorney involvement?
2) Does unbundled aid facilitate access to the courts for poor litigants and, therefore, advance procedural justice?
3) Do distinct forms of unbundled aid impact cases differently? and
4) What are the implications of the Study in crafting a future research and policy agenda?

Steinberg concludes that “the study cannot provide conclusive data; yet, the findings challenge long-held assumptions about the utility of unbundled legal services and, thus, the study provides a valuable jumping off point for promoting further public discussion of the unbundled model and future study of its impact.¹⁴³

Facets of the legal situation considered to be important to an understanding of the legal context and needs of litigants:

- Extraordinarily fast-paced litigation that defines an eviction;
- Documented barriers to asserting one’s rights as a tenant; and
- Numerous studies demonstrate that tenants who are fully represented by expert counsel throughout the proceedings fare many multiple times better than unrepresented tenants.¹⁴⁴

Two services were evaluated in this study: “ghostwriting assistance” and one-time

¹⁴² Steinberg 2011, at p. 457.
¹⁴³ Steinberg 2011, at p. 474-475.
¹⁴⁴ Steinberg 2011, at p. 476.
negotiation assistance. Ghostwriting assistance consists of a legal aid or volunteer lawyer drafting a responsive pleading on the basis of a single one on one diagnostic interview.

In crafting appropriate legal defenses, the lawyer would rely solely on the tenant’s recitation of facts and the lawyer’s own review of the face of the complaint. In keeping with the traditional unbundling model, the lawyer would not typically undertake additional fact investigation prior to ghostwriting the responsive pleading on behalf of the tenant.¹⁴⁵

Once the ghostwritten pleading was prepared, the tenant would sign it, receive instructions on how to file it in court, and be advised on how to prepare for the remainder of the eviction proceeding and what to expect.

The second type of assistance evaluated in this study was one-time negotiation assistance. In San Mateo County, landlords and tenants who request a jury trial are required to participate in a settlement conference held at the courthouse the week prior to a scheduled eviction trial. Often, the settlement conference is the first time the landlord and tenant will meet face-to-face to discuss a potential resolution to the eviction lawsuit. Settlement conferences are held at the courthouse only once a week and all tenants and landlords with upcoming trials must appear at court on that date and time. A judge nominally presides over the settlement conferences, but takes a passive role. Upon arrival, the parties and their lawyers are banished to the courthouse hallway to discuss settlement informally. Those parties that reach accord re-enter the courtroom and read the contents of their agreement into the court record. Those parties that fail to reach a deal advise the judge accordingly and confirm their upcoming trial date.

Legal Aid lawyers attended these mandatory settlement conferences approximately twice a month during the study period and offered day-of negotiation assistance to tenants who had previously received assistance at a Legal Aid housing clinic. That is, Legal Aid lawyers would stand in the courthouse hallway and negotiate with landlords and their counsel on behalf of as many tenants as possible. If Legal Aid’s negotiation assistance yielded a settlement, the lawyer would help to reduce the terms to writing; however, the tenant would appear before the judge without counsel to read the terms into the record together with the landlord.

The comparison was with full representation provided by law students at the Stanford Community Law Clinic. Students performed all legal tasks relevant to the eviction matter with close supervision from Stanford clinical faculty. The representation included most or all of the following elements: an initial diagnostic interview, ongoing client counseling, preparation of pleadings, motions, and settlement agreements, negotiation with the landlord or opposing counsel, discovery (including depositions), oral advocacy in court, and representation at

¹⁴⁵ Steinberg 2011, at p. 477.
trial. Full representation of tenants is challenging and time-intensive.

The methodology followed was a review and analysis of all of the evictions filed in San Mateo County over a four-month period (474 files) plus 20 eviction cases handled by the Stanford Community Law Clinic between September 2007 and May 2009. A few types of files were excluded from the analysis leaving a study sample of 421 residential eviction files. Based on file review (which contained activity logs maintained by Legal Aid), the study identified that 96 had received one of the forms of limited assistance and 305 had received no assistance at all, while the 20 law clinic files had received full representation.

The following information was recorded for each file:

- the date that the eviction complaint was filed
- the claims raised by the landlord
- the amount of rent, if any, that the landlord claimed was owed;
- the "holdover damages" figure (the per-day value of the unit, used to assess what the tenant owes in back rent if he is ultimately evicted);
- the defenses, if any, raised by the tenant;
- the method by which the case was resolved (settlement, default judgment, trial, dismissal, etc.)
- the date on which the case was resolved;
- whether the tenant retained possession;
- the tenant’s move-out date (where the tenant lost possession);
- whether the tenant was forcibly evicted by the sheriff;
- whether the resolution of the case required the tenant to make a payment to the landlord, and the amount of any payment;
- whether the resolution of the case required the landlord to make a payment to the tenant, and the amount of any payment and
- whether the landlord was represented by counsel.

The focused research questions were designed to measure the impact of different levels of legal assistance on both substantive and procedural outcomes.

1. Outcomes related to possession: Did the landlord or tenant retain possession of the premises? If the tenant lost possession, how many days, from the filing of the complaint, did the tenant have to move out?
2. Outcomes related to the exchange of money: Did the case resolve with a court order or agreement requiring either the landlord or the tenant to make a payment? If there was an ordered or agreed-upon payment, how much was the payment? If the tenant had to make the payment, was the payment less

146 Excluded from the study are all commercial evictions (n=46), all evictions in which the case file indicated that the tenant had retained other counsel (n=26), and one eviction in which the tenant was a long-term guest at a hotel.
than, or in excess of, the tenant’s maximum liability (calculated by adding the nonpayment alleged in the complaint, if any, to all holdover damages).

3. Impact of the two distinct forms of unbundled legal services: Were outcomes more favorable with additional assistance?

4. Procedural outcomes: How was each eviction resolved? How many default judgments were entered against tenants? Did tenants set forth valid defenses to landlord allegations? How did procedural outcomes impact substantive ones?

The study findings were:

Recipients of unbundled aid fared no better than their unassisted counterparts on either possession or monetary outcomes. They lost their homes just as often, faced just as few days to move out, and made payments to their landlords with the same frequency, and in similar amounts. Nor did outcomes improve with increased unbundled legal aid. Tenants afforded negotiation assistance did not fare better than tenants who received ghostwriting-only services. By contrast, tenants who received full representation achieved outcomes far superior to either the unbundled or unassisted tenant groups.

Despite grim substantive outcomes, the provision of unbundled legal services did advance procedural justice. Tenants who received unbundled aid significantly outperformed unassisted tenants in both evading default judgment and in asserting valid, doctrinally cognizable defenses to their eviction actions. Yet, when procedural gains were re-evaluated to test their impact on substantive outcomes, the apparent gains were minimized considerably. Defaulting tenants achieved different, but not necessarily more favorable, substantive outcomes, and tenants who did not assert a single cognizable defense achieved the same outcomes as tenants who articulated meritorious legal defenses on perfectly executed pleadings.\textsuperscript{147}

The specific findings were:

1. The provision of unbundled legal services had no measurable impact on the rate at which tenants retained permanent possession of their homes. (14% of tenants with no legal aid retained possession of their unit, 18% with unbundled legal aid did so and 55% of tenants provided with full representation did so).\textsuperscript{148}

2. Where tenants lose possession, the provision of unbundled legal services had no statistically significant impact on the number of days the tenant has to move out of her home.

3. The provision of unbundled legal services did not improve tenant outcomes related to the exchange of money.

\textsuperscript{147} Steinberg 2011, at p. 482.

\textsuperscript{148} Table 1 at p. 483.
4. The provision of unbundled legal services did not decrease the amount of payments, if any, that tenants made to their landlords.

5. Additional unbundled legal aid, in the form of one-time negotiation assistance, did not favorably impact substantive outcomes for tenants:

*In fact, tenants who received negotiation assistance actually fared worse than those who obtained only ghostwriting assistance, although the differences recorded between the two types of assistance were not statistically significant. Of those in the unbundled group who received negotiation assistance, 93% went on to settle their cases. Therefore, negotiation assistance had a more significant effect on the outcomes achieved at settlement than before a judge at trial. Attorney involvement in the settlement process substantially improved outcomes only when the tenant was fully represented. In the full representation context, more lawyering equaled better outcomes across the board.*

6. Unbundled legal aid reduced default judgment:

*More than half of litigants who had no legal help lost their homes by default judgment. This finding is significant and demonstrates that unbundled legal services may produce procedural, if not substantive, justice for low-income litigants. In other words, the aid provided a crucial point of entry into the justice system for low-income litigants, presumably requiring landlords to present and prove their cases, and eliminating the windfall of an automatic (and potentially undeserved) victory.*

7. Tenants who survived default judgment did not achieve uniform improvements in substantive outcomes.

8. The provision of unbundled legal services greatly increased the rate at which tenants raised cognizable defenses in their responsive pleadings:

*A significant proportion—41%—of unassisted tenants failed to raise a single cognizable defense, whereas only 3% of recipients of unbundled aid did the same. If, as many believe, it is the goal of unbundled legal aid to empower and educate litigants, these data may well be evidence that recipients of unbundled services are better informed about their rights and, perhaps, as a result, better able to navigate future dealings with their landlords.*

9. The assertion of cognizable defenses has no favorable impact on substantive outcomes.

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149 Steinberg 2011, at p. 488.
150 Steinberg 2011, at p. 494.
The study concluded that while further research that is “both more sophisticated and larger in scale” is clearly needed before sound and generalizable conclusions can be drawn, the findings provide some challenge to the commonly-held notion that the provision of unbundled legal services is an effective way of equalizing access to justice for indigent litigants.”\textsuperscript{151} A very sobering conclusion is: “In San Mateo County, all unrepresented or partially represented tenants, no matter what they say in their own defense, seem to fare equally poorly.”\textsuperscript{152}

Steinberg’s study leaves open the possibility that different types of unbundling, or unbundled services directed at different types of legal problems, could prove more effective in bolstering access to justice. Representation may be particularly important in eviction cases, which are described as “fast-paced and procedurally complex” requiring “fact finding, knowledge of evidentiary rules, preparation of witnesses, the ability to propound and respond to discovery, and skill at preparing specialized motions, all at breakneck speed.”\textsuperscript{153} Other areas of law where unbundling might prove to be more beneficial in maximizing favourable outcomes:

- Litigants with less complicated legal matters, particularly those uncontested by an opponent - such as some guardianships or conservatorships.
- Clients whose matters are adjudicated in tribunals without formal evidentiary rules (small claims, public benefits) may be better able to translate simple advice from an attorney into improved performance on the day of a hearing.
- Legal cases resolved on the basis of written submissions, rather than court appearances, might be good candidates for unbundled assistance.\textsuperscript{154}

\textbf{Evaluations of Community Legal Aid in England and Wales}

Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs) were introduced in England and Wales in 2009 and “constitute a new approach to the way that civil legal and advice services are funded, purchased and delivered” in that country. Here is a brief description:

\textit{The new services are set up and funded jointly with local authorities (LAs) and other potential funders, and their overall aim is to provide clients with an integrated and seamless social welfare law (SWL) service, including family law. The core SWL categories include: community care, debt, employment, housing and welfare benefits. The development of CLACs and CLANs is a key component of the Legal Services Commission’s strategy for the Community Legal Service. CLACs and CLANs aim to meet legal needs from diagnosis and information through to}

\textsuperscript{151} Steinberg 2011, at p. 482.
\textsuperscript{152} Steinberg 2011, at p. 495.
\textsuperscript{153} Steinberg 2011, at p. 503.
\textsuperscript{154} Steinberg 2011, at p. 504.
advice and assistance and legal representation in complex court proceedings. The concentration of funding pulls together key services in a geographical area into either a single entity (Centres) or brings together a consortium of providers supplying complementary services (Networks).155

The CLACs and CLANs are the subject of an in-depth review and evaluation project carried out by the Legal Services Research Commission (LRSC) initiated at the same time that this change in approach was taken. The LSRC has developed a research strategy comprising two main elements: a process evaluation and client-focused outcome studies. Together, they are examining the experiences of stakeholders involved in the commissioning, set-up, provision and receipt of services. Four studies have been released to date; together the studies provide a comprehensive review of the initial period of these new service delivery models.156

The LSRC developed a research framework based on four key areas against which the services were to be evaluated: accessibility, seamlessness, integration and tailored services.157 The research questions are:

1. How successful have the CLAC services been in delivering general and specialist help advice?
2. What is the profile of cases that have been delivered via these new services?
3. To what extent have the CLACs been able to provide a full range of services from initial diagnosis through to representation?
4. Is there any evidence that CLACs are providing integrated services to clients, addressing the multiple problems which clients may have?
5. To what extent have the services in CLAC areas differed from services being delivered in other areas?158

One of the performance standards for CLACs is that the outcomes of cases achieve “substantive benefit” for the client. Whether a client has received a substantive

157 M. Smith and A. Patel, Using Monitoring Data: Examining Community Legal Advice Centre Delivery (London: Legal Services Commission, 2010), at p. 5. [Smith and Patel]
158 Smith and Patel, at p. 8.
benefit is based on the outcome reported for the client. For specialist help, generally speaking, from a lawyer, those outcomes which are considered to have a substantive benefit are determined with respect to the outcome codes for reporting closed matters pursuant to the contract for legal services.159 A partial list of these “substantive benefits” is set out in the table below. Examples of categories of legal problem and stipulated outcome benefits include:160

<table>
<thead>
<tr>
<th>Category of Legal Problem</th>
<th>Outcome Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer contracts</td>
<td>The sum owed or liability is reduced</td>
</tr>
<tr>
<td></td>
<td>Goods or services are replaced or repaired</td>
</tr>
<tr>
<td>Community care</td>
<td>Provision of service is secured, or the costs are covered</td>
</tr>
<tr>
<td></td>
<td>A vulnerable person is protected more effectively</td>
</tr>
<tr>
<td>Debts</td>
<td>A debt is reduced or written off</td>
</tr>
<tr>
<td></td>
<td>Affordable payment arrangements are negotiated on client’s behalf</td>
</tr>
<tr>
<td>Employment</td>
<td>The client receives increased periodical payment or a lump sum</td>
</tr>
<tr>
<td></td>
<td>An employer’s [adverse] action is delayed or prevented</td>
</tr>
<tr>
<td>Housing</td>
<td>The client is housed, re-housed or retains home</td>
</tr>
<tr>
<td></td>
<td>Repairs or improvements are made to the client’s home</td>
</tr>
<tr>
<td>Immigration</td>
<td>Humanitarian protection is granted</td>
</tr>
<tr>
<td></td>
<td>Citizenship is granted</td>
</tr>
<tr>
<td>Family</td>
<td>The Client receives a lump sum or property adjustment</td>
</tr>
<tr>
<td></td>
<td>The client’s liability to pay the other side is reduced or avoided</td>
</tr>
</tbody>
</table>

159 The relevant outcomes codes are set out in the 2010 Standard Civil Contract Specification of the LSC section 2.107. The Civil Contract can be found at: [http://www.legalservices.gov.uk/docs/civil_contracting/Sections_1 - 6_December_09.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/Sections_1 - 6_December_09.pdf)

160 This list is reproduced from Diguisto, at p. 6.
In-depth results, illustrated with the use of quotations and case studies, for each of these four areas are presented in the LRSC reports. Methodological approaches included:

- Observation of advice sessions;
- Separate interviews conducted with both clients and advisors immediately following the advice sessions, and through in-depth, follow-up interviews two weeks after observations;
- Field work in some of the centres;
- Face-to-face footfall survey of clients in reception areas of the five operating CLACs and their outreach locations: questionnaires were administered to clients who visited the services during a one-week period, thereby providing a snapshot of CLAC users;
- The development of a reporting tool through a collaborative approach with stakeholders and the implementation and analysis of the reporting tool.

A large amount of data was generated through the research, enabling wide-ranging analysis. The reporting tools are described as follows:

*CLACs provide a monthly summary of the number of matters they have opened by level of work, by funding source and by category. This Controlled Matter Start Sheet (CMSS) provides detail on the opening of all cases in the CLACs and is collated centrally at the LSC. In general, there is uniform availability of case opening summary information for all the CLACs, with the exception of the detail on funding source (LSC or local authority), which is only available for some of them.*

*With regard to closed cases, CLACs are required to report the work they have completed using a Controlled Matter Report Worksheet. The data that is submitted for closed cases differs depending on the level of work, the funder of the work and, in the case of LSC funded work, the fee scheme. The majority of the data fields required for closed matters are the same as those that are already requirements by the LSC for all contracted providers. In time, this overlap will allow more detailed comparison of CLAC performance with provider performance in non-CLAC areas.*

*The data fields of the closed matter worksheet include matter type, stage reached, outcome codes and basic client information, including name and date of birth. These latter two items allow a unique client number to be generated automatically within the data. Where clients are willing to provide information about their ethnic origin and disability it is compulsory to report this information. All matters must be reported within three months of being completed and CLACs have until the 20th of the following month to submit their report.*

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161 Smith and Patel, at p. 7.
The researchers noted that there was significant variation in reporting practices between CLACs and in comprehensiveness of reports.¹⁶²

Of particular relevance for the purposes of this literature review is the analysis of case outcomes. The findings include:

- An analysis of the case outcomes recorded for clients showed that the CLACs were performing well against the target of cases concluding with a ‘substantive benefit’ for clients, with CLACs exceeding their 60 percent contract target by a considerable margin.
- In all the CLACs there are litigators able to assist clients needing representation in court. Outcome data for closed cases suggest that in the housing category in particular, a substantial share of cases conclude with representation at a court or tribunal. Data on outcomes also indicate that, for some clients, cases have proceeded to other CLS funding. CLACs have successfully applied for certificates for representation in proceedings.
- For clients with problem clusters, the one-stop shop approach of CLACs has brought gains. Approximately a quarter of clients who have received help in more than one matter have benefited from services being available from a single provider. The absence of any detailed data on advice delivered at the general help level means that this figure is likely to be an underestimate of the benefits afforded by the CLACs. Gains have been greatest in those areas in which, prior to the CLAC, there was limited contracted provision involving two or more categories of social welfare law.¹⁶³

In line with the contractual requirement, the LRSC report sets out the data on the proportion of cases in which a substantive benefit has been achieved for CLAC clients.¹⁶⁴ The performance standard in the CLAC contracts requires a threshold target of sixty percent of all cases to have provided a substantive benefit to clients. All five CLACs are reaching this target. The report concluded:

> Overall, the performance of the CLACs with respect to the substantive benefit target has been very good. This is further indicated by the fact that the proposed key performance indicator for contracted providers in the 2010 Standard Civil Contract Specification is a threshold of 50 percent for the categories of debt and welfare benefits, and 40 percent for all other categories except immigration which has a target of 15 percent. Data for all LSC contracted providers show that the proportion of clients for whom a substantive benefit has been achieved was between 53 and 55 percent in the family and social welfare law categories.¹⁶⁵

¹⁶² Smith and Patel, at p. 7.
¹⁶³ Smith and Patel, at pp. 14-17.
¹⁶⁴ Smith and Patel, at p. 15 (Table 2.3).
¹⁶⁵ Smith and Patel, at p. 16.
The Australian government has initiated a review of the National Partnership Agreement on Legal Assistance Services, which is to include measurement of outcomes. Preparatory work for the review included a literature review by Dr. Liz Curran (discussed in detail in Part 4) and a draft evaluation framework discussion paper prepared by the independent evaluators, Allen Consulting Group, was circulated for comments. Coincidental to the national review, Dr. Curran was commissioned by one of the smaller Australian legal aid programs Legal Aid ACT (LAACT) in the Australian Capital Territory. The purpose of the review was to “measure and enhance the quality of legal aid services” delivered by the Legal Aid Act. Dr. Curran emphasizes the challenging nature of this work:

In the author’s view, any attempt to measure legal aid services’ impact, outcomes, and/or results must take into account the challenges of working with disadvantaged and vulnerable clients. Human services such as legal aid services involve individual lives and impact on the lives in ways that can be beneficial or detrimental. Rather than assuming the impact of legal aid services is simple, easy to measure and/or predictable in advance, the approach to measurement used in these circumstances must acknowledge the difficult and unpredictable nature of service delivery when complex work is undertaken for disadvantaged and vulnerable clients. This involves listening to, informing, conducting analysis with, responding to, interacting and communicating with a range of people engaged in this complicated work.

The research was conducted in two phases. Phase One involved:

- Collation and analysis of previous research on the subject.
- The initial staff conversation.
- Focus groups in each division or practice area of LAACT (with paralegals, receptionists and legal practitioners)
- Feedback from a former client of LAACT

Phase Two was a two-week ‘snapshot’ trial in November 2011 using the instruments developed in Phase One. The following survey instruments and methodologies were trialed during the ‘snapshot’ of the two practice areas of LAACT:

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167 Dr. Liz Curran, We Can See There’s a Light at the End of the Tunnel Now – Demonstrating and Ensuring Quality Service to Clients (Legal Aid ACT, 2012). [LAACT Report]
• Eight lawyer and eight client interviews were conducted by the researcher – interviews were conducted separately but after the same legal interviews.
• Entries in observation logs made by seven staff members (selected because they were not undertaking other tasks in the research – the survey workload was spread across staff).
• A voluntary client feedback survey questionnaire of all clients receiving advice in interview from LAACT lawyers.
• A telephone survey of clients on closure of their file.
• Case studies collected from open questions in observation logs, focus groups, client interviews with the researcher and the online survey.
• Interviews with the stakeholders identified by the practice areas (as well as the academics from the College of Law, Australian National University alongside students work in partnership with LAACT in the Youth law Centre and in the Legal Aid Clinic (advice service).
• An online survey (using Survey Monkey) of private and in-house lawyers handling legally-assisted cases.
• A feedback session with staff and board members to discuss any tweaking the instruments needed for measurement in the future (and assisted in the preparation of the research report).169

For the purpose of this review, the research team developed a set of outcome indicators “based on those elements identified as essential for an outcome to occur.”170 The report states:

Outcomes and outcome indicators both indicative of and necessary for quality service provision must be consistent and realistic, taking into consideration the roles and functions of a legal aid commission with a diverse range of policy and legislative settings.171

In this research, outcomes were defined as follows:172

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169 LAACT Report, at p. 3.
170 LAACT Report, at p. 2.
171 LAACT Report, at p. 4.
172 LAACT Report, at p. 4-5.
<table>
<thead>
<tr>
<th>Outcome</th>
<th>Qualities Demonstrated By Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A good client interview</td>
<td>Holistic, Joined-up, Quality, Problem Identification, Empowerment, Good Practice, Early Intervention, Prevention, Responsiveness, Client Centred, Alternative Dispute Resolution (ADR), Targeting, Expertise</td>
</tr>
<tr>
<td>2. Clients with chaotic lifestyles attend interviews, appointments and court dates</td>
<td>Early Intervention, Prevention, Empowerment, Client Centred, Holistic, Targeting</td>
</tr>
<tr>
<td>3. As appropriate, sentences are minimized or unsubstantiated charges are dropped</td>
<td>Rule of Law, Efficiency, Good Practice, Expertise.</td>
</tr>
<tr>
<td>4. Clients are better able to plan and organize their legal affairs</td>
<td>Early Intervention, Prevention, Empowerment, Quality, Good Practice, Client Centred</td>
</tr>
<tr>
<td>5. Improvement in the client’s interaction with the legal system</td>
<td>Early Intervention, Prevention, Empowerment, Client Centred</td>
</tr>
<tr>
<td>6. Consideration of issues before a court or tribunal enhanced because the lawyer asked questions/raised issues and brought the client’s story before the court</td>
<td>Rule of Law, Quality, Voice, Flexibility, Good Practice, Client Centred, Responsiveness, ADR, Expertise</td>
</tr>
<tr>
<td>7. Client is better able to understand their legal position and the options open to them</td>
<td>Early Intervention, Prevention, Empowerment, Good Practice, Quality</td>
</tr>
<tr>
<td>8. A process is undergone where the client is listened to, respected and given fearless advice of their legal position</td>
<td>Quality, Client Centred</td>
</tr>
<tr>
<td>9. Relationships and trust building with other legal and non-legal support agencies enabling client referral and support</td>
<td>Early Intervention, Prevention, Holistic, Joined-up, Good Practice, Quality</td>
</tr>
<tr>
<td>10. Holding of authority to account</td>
<td>Rule of Law, Quality, Voice, Flexibility, Good Practice, Client Centred, Responsiveness.</td>
</tr>
<tr>
<td>11. A holistic service delivered to the client through collaboration, networking, community legal education and joined-up services</td>
<td>Good Practice, Client Centred, Problem Identification, Collaboration, Prevention, Early Intervention, Holistic, Joined-up.</td>
</tr>
</tbody>
</table>

The report contains rich data concerning LAACT’s work as well as illustrative case studies and other qualitative material. The overall conclusion of the report is an important reminder regarding measuring outcomes in the context of legal aid delivery:
This Report reveals the complex and complicated nature of Legal Aid work and Legal Aid clients. It also clearly demonstrates that autonomy, creativity and relationship building are critical in achieving ‘successful outcomes’. Successful outcomes must be understood in the context of the realities of clients’ lives and must be within the control of the agency given its role and function in society. LAACT’s role or function, as defined in this Report, includes upholding the rule of law, advising clients, providing information and education, representing clients, holding others to account, asking the right questions and knowing and applying the law.\(^{173}\)

4. **Critical Analysis of Existing Research**

Some progress has been made in helping to fill the “canyons in our knowledge base”\(^{174}\) regarding the effectiveness of evolving legal services. Existing research and studies provide some important insights into the relative effectiveness of different types of legal services and the extent to which they provide meaningful access to justice. Each study and methodological approach also has strengths and weaknesses.

This section discusses the limitations of existing research through a review of the American debate on the relative value of observational versus randomized studies. It identifies the major problem of defining and measuring outcomes as a proxy for effectiveness of legal services and presents two Australian approaches that attempt to reconcile these conceptual and methodological difficulties.

**Casting Doubt on the Validity of Observational Studies**

The main dividing point in the American literature is between studies which are observational in nature and those that can actually ‘test’ the effect of a legal service through a randomized study that effectively isolates the specific legal service and measures its impact.

Steinberg identified the following limitations in her empirical study of the impact of unbundled legal services in the eviction context in California:

- *It did not include a randomization scheme, meaning that tenants were not randomly assigned to receive a certain level of legal aid, but rather self-selected into the treatment and control groups by either seeking out assistance or choosing to represent themselves.*
- *The study was observational in nature, it was therefore impossible to determine definitively whether the case outcomes achieved by litigants were a product of*  

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\(^{173}\) LAACT Report, at p. 8.  
\(^{174}\) Engler 2011, at p. 98.
the type of lawyering assistance provided or, instead, a product of case or client characteristics that may have been present in one group of tenants but not another.\textsuperscript{175}

- The study was unable to measure the impact of unbundled legal services independent of the merit of the cases or the personal attributes of the clients who sought assistance.
- Other limitations include the small sample size of the study, the uneven distribution of foreclosure cases across groups of litigants, and the specific context of “economic fragility” that structured the disputes in particular ways.\textsuperscript{176}

Based on her findings, Steinberg made three suggestions regarding research priorities:

- Look at the provision of many types of unbundled legal aid in a variety of courthouses, as well as their application to other substantive fields, such as family law, where the model is commonplace.\textsuperscript{177}
- Further trials on the impact of unbundled legal services should be randomized where possible.
- Increase Sample of Fully Represented Litigants.\textsuperscript{178}

As noted in Part 2, Greiner and Pattanayak discount the validity of observational studies concluding that: “few of these studies are worthy of credence”.\textsuperscript{179} They describe this body of work in these terms:

Almost all of these studies follow the same basic design, which is a comparison of the outcomes of cases with representation versus cases without representation, sometimes with regressions using predictors available in official case files. Partly as a result of this design, almost all such studies suffer from methodological problems so severe as to render their conclusions untrustworthy,\textsuperscript{180} which (we

\textsuperscript{175}For example, perhaps a higher-than-average number of litigants who sought unbundled aid did so because they could not, on their own, identify an obvious defense to their eviction. If that is the case, then lawyers providing unbundled services may have been assisting a group of tenants with fewer, or more complicated, defenses than tenants who got no assistance or full representation, and this relative lack of merit - rather than any lawyering services provided - may, at least in part, explain the outcomes achieved by that group of litigants.

\textsuperscript{176}Steinberg 2011, at p. 459.

\textsuperscript{177}Steinberg 2011, at p. 497-498.

\textsuperscript{178}Greiner and Pattanayak at p. 7.

\textsuperscript{179}Greiner and Pattanayak at p. 7.

\textsuperscript{180}Greiner and Pattanayak at p. 7, footnote 20: “Occasionally, authors have acknowledged the methodological problems in case-file-based observational studies in this area; see, for example, Karl Monsma and Richard Lempert,”“The Value of
*hasten to emphasize* is different from wrong.\(^{181}\)

Indeed, Greiner and Pattanayak go so far as to say that “we know almost nothing as a result of these studies\(^{182}\) and all but two provide no information on representation effects that would already have been available from instinct and conjecture.”\(^{183}\) They go on to say that “Instinct and conjecture have been proven wrong and the only way to produce credible quantitative results is with randomized trials.”\(^{184}\) At the same time, the authors recognize that these studies “provide rich descriptive statistics and non-quantitative information.”\(^{185}\) Therefore the team’s criticism is “limited to the attempt to draw inferences of causation regarding the effects of offers or actual use of representation from the quantitative data these studies contain.”\(^{186}\) These criticisms apply equally to Engler and Sandefur’s synthesis and

Counsel: 20 Years of Representation Before a Public Housing Eviction Board”, 26 Law and Society Review 627 (1992), at pp. 629-31. Some have recognized how to address these problems. Jean R. Sternlight, “Lawyerless Dispute Resolution: Rethinking a Paradigm”, 37 Fordham Law Journal 381 (2001), at p. 389 fn.31 (“Theoretically the solution to this quandary is to assign or not assign attorneys to disputes on a random basis, but accomplishing this end in the real world is difficult.”).

\(^{181}\) Greiner and Pattanayak at p. 7, footnote 21: “The sole observational study we might believe in this area is Monsma and Lempert, supra note 20, which went to great lengths to address some of the challenges an observational design poses.”

\(^{182}\) Greiner and Pattanayak at pp. 55-56, footnote 193: “Sandefur has attempted to obtain information from case-file-based observational studies in this area by conducting a bounds-based meta-analysis of a well-chosen subset of these studies. See Sandefur, supra note 137. Although we admire the attempt to glean information from these studies, we are skeptical that it can be done. Sandefur limited her meta-analysis to studies that considered legal representatives who appeared at some kind of hearing or adjudication. As such, as we discuss in Subsection II.A.1, none of these studies identifies a well-defined intervention, and thus none appears to be measuring a causal effect. This alone is enough to suggest that at least without further, strong assumptions about whether legal representation early in a case’s development affects the probability that the case reaches a hearing (and is thus included in the datasets Sandefur’s meta-analysis covers), the underlying studies are themselves of little value. Limiting oneself to bounds cannot solve this problem. Moreover, even assuming this problem away, the bounds Sandefur calculates are necessarily wide (as she recognizes), and all we really know is that the “truth” lies somewhere in the bounds. Given the selection effects present, which we discuss in this Part and some of which Sandefur discusses herself, there is no reason to believe that across studies, the truth generally lies near the middle, or near the bottom, or in any particular place within these bounds.”

\(^{183}\) Greiner and Pattanayak, at p. 55-56.

\(^{184}\) Greiner and Pattanayak, at p. 56.

\(^{185}\) Greiner and Pattanayak, at fn 194.

\(^{186}\) Greiner and Pattanayak, at fn 194.
meta-analysis of these studies.\textsuperscript{187}

One major methodological problem is that few of these studies included regressions in an attempt to "control" for certain variables.\textsuperscript{188} Greiner and Pattanayak identify and elaborate on three additional sets of methodological problems with observational studies:

- the failure to define an intervention being studied;
- the failure to account for selection effects (which come in multiple layers); and
- the failure to follow basic statistical principles to account for uncertainty.\textsuperscript{189}

These problems are not "technical" rather they are "fundamental to the nature of the question being asked and to whether a study is viable."\textsuperscript{190} According to Greiner and Pattanayak, observational studies cannot found causal claims. The consequence is that these studies get the "wrong answers".\textsuperscript{191} They argue that we cannot even tell if these studies have resulted in overstatements or understatements of representation effects.

Observational studies contain a fatal flaw in that the data set is in fact selected rather than random and therefore suffers from several types of "selection effects":

- Courts can induce effects by determining when counsel is needed (e.g. by appointing counsel in more serious/difficult cases);
- Clients can induce effects – since "only the strong survive" and those who find pro bono counsel and so on "constitute a disproportionately worldly, future-looking, and risk-averse subset of the general population" (referred to as ‘Go-Getters’);
- Lawyers, pro bono programs and legal aid can induce effects: paid lawyers might take the strongest cases; legal aid and pro bono have selection mechanisms, and so on.\textsuperscript{192}

Randomized studies are superior to observational ones, according to Greiner and Pattanayak, because they specify the nature of the legal intervention in a forward looking way rather than by observing in hindsight; control the nature and timing of the intervention to be made for treated and non-treated groups (to a specific moment in time); and because randomization destroys the selection effects described above.\textsuperscript{193}

\textsuperscript{187} Greiner and Pattanayak, at p.7 and 55-56.
\textsuperscript{188} Greiner and Pattanayak, at p. 57.
\textsuperscript{189} See extended discussion: Greiner and Pattanayak, at pp. 58-68.
\textsuperscript{190} Greiner and Pattanayak, at p. 57.
\textsuperscript{191} Greiner and Pattanayak, at p. 57.
\textsuperscript{192} See extended discussion: Greiner and Pattanayak, at pp. 62-65.
\textsuperscript{193} Greiner and Pattanayak, at p. 67-68.
Greiner and Pattanayak state that randomized studies could be structured to investigate many other aspects of access to justice and highlight three areas for future research. One is the effect of representation on non-pecuniary interests by identifying other values to be measured including:

- Making adjudicatory systems run more smoothly,
- Assuring that each person subject to official decisionmaking and/or state coercive power is treated with dignity,
- Promoting a feeling on the part of the litigant that the process was fair and that her story was told, thereby increasing the litigant’s willingness to accept the result of the adjudication (favorable or unfavorable),
- Educating the client as to her best interests or as to what is possible given legal and factual constraints, thereby adjusting the client’s goals, and
- Improving the client’s socioeconomic situation, even if the legal outcome is the same, perhaps because the legal representative also acts as a coordinator of official and community resources (e.g., as a social worker).

Randomized designs can also help to test the adequacy and efficiency of legal services programs’ outreach, intake, and client-selection systems. For Greiner and Pattanayak, there is no question but that “randomized trials measuring the effect of representation can provide a valuable device to assess both the accessibility of an adjudicatory system and the system’s accuracy.”

Drawbacks of Randomized Studies

As noted above, randomization is a relatively new technique in this field because of the ethical and practical issues involved in choosing to provide or abstain from providing legal services to persons with unmet legal needs. It is extremely difficult to isolate the legal service from other aspects of the legal matter (e.g., the capacity of the litigant and the complexity of the matter). It has been posited that: “Randomization would greatly increase confidence that any observed differences in case outcomes are attributable to the level of assistance from a lawyer, and not to other characteristics of the dispute, such as the merit of individual cases.” But randomization alone will not answer all of our questions. At a practical level, it is rare to have the capacity to study a large enough sample of like cases to permit solid analysis. Furthermore, the randomized studies have involved creating a new service to serve as a comparator for the existing situation of non-service – this means diverting scarce resources for the purposes of a study. It is only in rare circumstances, such as the Shriver Pilot Projects in California, that a large amount of funding has been set aside to provide representation and to measure its value.

194 Greiner and Pattanayak, at pp. 74-77.
195 Greiner and Pattanayak, at p. 76.
196 Steinberg 2011, at pp. 498-499.
Greiner and Pattanyak also acknowledge three important limits and drawbacks of randomized studies:

- an inability to evaluate the effects of systemic change,
- operational and ethical challenges in the field operation, and
- the objections of some legal services providers to engaging in randomized studies.\(^\text{197}\)

Greiner and Pattanayak state that the limit of case-by-case quantitative evaluation whether randomized or not is that “it cannot measure the effect of lawyer efforts aimed at systemic change”.\(^\text{198}\) While these studies can tell us whether the system is ‘pro se accessible’, it cannot provide information on how or why and what would be required to make it accessible. Nor do these studies which focus on win/lose outcomes measure systemic or structural changes such as the impact of a test-case which can assist many other parties. They point out, however, that if structural change is the primary goal, a series of randomized evaluations could focus on whether that goal can be more economically achieved via targeted representation of test cases without an overarching program of legal services.

A more fundamental critique of randomization is offered by Dr. Curran who concludes, based on an extensive literature review, that evaluation of legal assistance services are not amenable to an ‘experimental design approach’ (including randomized studies) because of the “complex and diverse nature of the legal assistance service, the clients they serve and the setting they are in are not straightforward and will be complex and complicated.”\(^\text{199}\) She argues that it is impossible to isolate variables to the extent required to find valid cause-effect relationships between legal services and outcomes. Similarly Catherine Albiston and Rebecca Sandefur conclude that while randomized trials provide an important piece of the puzzle they “cannot tell us all that we need to know for meaningful evaluation of civil legal services and policy formulation”.\(^\text{200}\) For example, randomized trials cannot tell us about why representation matters and may “miss the forest for the trees by leaving much out of the civil justice picture.”\(^\text{201}\) Randomized studies cannot provide system and institution level information. Additionally, the authors caution about the limitation of randomized testing results as a basis for policy, particularly in experiments in which there is no

\(^{197}\) Greiner and Pattanayak, at pp. 69-74.
\(^{198}\) Greiner and Pattanayak, at p. 69.
\(^{199}\)Dr. Liz Curran, Literature Review: examining the literature on how to measure the ‘successful outcomes’: quality, effectiveness and efficiency of Legal Assistance Services (Australia: February, 2012), at p. 15.
\(^{201}\) Id., at p. 108.
statistically significant relationship between the intervention studied and outcomes, given the need to take into account the hypothesis underlying the experiment and other elements of research design.\textsuperscript{202}

Furthermore, Laura Abel highlights the fact that the scientific validity of evaluations is measured along a continuum from strong to weak and while randomized controlled trials provide the strongest measure of a program's effects they are not the only effective methodology. When randomization is not feasible, other ‘quasi experimental’ methods can “provide acceptable precision in detecting and measuring the program’s effects.”\textsuperscript{203}

### Difficulties in Measuring Outcomes

One of the main problems in designing and carrying out outcome-based evaluations is the difficulty in developing measures of “outcome”. This central problem is not overcome through the introduction of randomized research design. In its recent report, Legal Services Society of BC concludes that the “goal of proposed reforms” should be to support a justice system that focuses on outcomes defined as “timely, fair and lasting resolution of legal problems.”\textsuperscript{204} The report notes that a focus on outcomes would benefit not only those who are seeking to resolve their problems but the broader justice system and society as a whole because “a focus on outcomes will result in more enduring resolutions to the legal challenges that bring individuals to the justice system in the first place.”\textsuperscript{205}

Steinberg discusses the conceptual difficulties in assessing the outcomes of legal processes:

> Of course, it is not possible to demand “victory” in order to demonstrate that legal assistance has been effective. In every case adjudicated in court, there is a winner and a loser; it is perhaps for this reason that providers of unbundled legal services have often looked to more subjective assessment measures, such as client satisfaction, to determine whether the provision of assistance has been a success. Yet, we know that unrepresented parties are losing significantly more often—and in a bigger way—than represented ones. So where a “win” cannot be the standard by which we measure efficacy of an access to justice program, the likelihood of

\textsuperscript{202} Id., at p. 107-108.

\textsuperscript{203} Abel 2009-2010 at p. 299 fn 29 (with extended references to literature on scientific evaluation).

\textsuperscript{204} Legal Services Society, Making Justice Work: Improving Outcomes and Access for British Columbians. A Report to the Minister of Justice and Attorney General The Honourable Shirley Bond. (July 1, 2012), at p. 4.

\textsuperscript{205} Id., at p. 9.
obtaining a substantially better result than the unrepresented can—and should—be that standard.206

The measure of outcome is by definition a relative one, "the likelihood of obtaining a better result" with or without the legal service.207

One priority is on broadening the concept of outcomes, to be more inclusive and allow measurement of all types of outcomes including a broader understanding of client goals. Greiner et al. recognize that one of the limitations of their team’s randomized studies is that they are only isolating some socioeconomic consequences: as they say “legal outcomes tell only part of the overall story.”208 They suggest that the future research agenda incorporate these elements:

- How different levels of legal assistance result in proper referrals to agencies and to programs designed to assist with such challenges;
- How different levels of legal assistance result in the resolution of these challenges;
- Recognize the underlying purpose of the social programs that form the setting for legal interventions; and
- Recognize the importance of litigants’ perceptions of fairness, both of the process and of the outcomes of adjudicatory processes.209

Greiner and Pattanayak also note the difficulties in defining favourable outcomes.210 Clients can have more than one goal. Family law is particularly difficult in this regard. They suggest that researchers may want to think of it as being “different” outcomes with representation (e.g. length of time to divorce, quantum of maintenance awards). They conclude that we should be merging approaches that measure the effect of different levels of assistance on “adjudicatory outputs” and on some socioeconomic outcomes (“objective indicators of effectiveness”) with interviews and surveys to measure whether different levels of legal assistance alter litigants’ perceptions of fairness, litigant satisfaction with the substantive outcome, and litigant respect for (or contempt of) the law.211

Albiston and Sandefur present a strong argument for measuring effectiveness relative to a broad range of outcomes and impacts that extend well beyond a specific case outcome: “Civil justice research must step back from narrow definitions of

206 Steinberg 2011, at p.501. (footnotes omitted)
207 Steinberg 2011, at p.501.
208 Greiner, Pattanayak and Hennessy, at p. 39.
209 Greiner, Pattanayak and Hennessy, at pp. 40-41.
210 Greiner and Pattanayak, at p. 73.
211 Greiner, Pattanayak and Hennessy, at pp. 40-41.
effectiveness that are limited to case outcomes and consider the broader, systemic effects of representation on individuals and those around them.”\footnote{Albiston and Sandefur 2013 at p. 111.}

A paper prepared by Erol Digiusto for the Law and Justice Foundation of New South Wales notes that in civil matters there can be competing outcome goals between client-desired outcomes and systemic outcomes (such as a fair hearing or trial).\footnote{Digiusto, at p. 5.} Clients can and should be involved in identifying outcomes, but where outcomes are contested or contingent as in many legal situations it may be particularly challenging:

- Clients may be unaware or unable to understand and analyze the range of possible outcomes which are inherent in their legal problem;
- Clients may lack objectivity and may have difficulty realistically assessing the merits of their situation (inaccurately high or low expectations);
- A client’s goals many not be ‘fair’, ‘just’ or legally acceptable; and
- Legal problems will often have more than one potential solution, each of which may be associated with different risks, benefits, costs, and probabilities of achieving particular goals.\footnote{Digiusto, at p. 6.}

The overview presented in Part 3 suggests that it is possible to develop templates for the assessment of outcomes either on a case-by-case basis (used by the Hotlines assessment study) or system-wide basis (the ‘substantive benefit’ outcomes designated in England and Wales or the contextualized indicators developed for the LAACT review).

**Two Australian Approaches to Measuring Effectiveness**

In his literature review on the concept of “effective” legal services, Digiusto took a close look at the issue of measuring the effectiveness of legal assistance services and strategies. The starting point is:

> Legal assistance services and strategies are designed to help people to resolve their legal problems. Those funding and providing services intend that these efforts actually make that difference, and do so efficiently given their limited resources. Given this aim, what does it mean to be ‘effective’ and how can this be demonstrated? Measuring effectiveness is about measuring whether or not the program achieved its aim or intended outcome.\footnote{Digiusto, at p. 1.}

In particular, if the goal is to evaluate effectiveness in *causal* terms, then the planning and methodology must be carefully developed and supported by the...
required expertise. It is tricky to demonstrate that "a strategy actually caused a desired outcome (rather than another factor that made the difference)." Studies can also attempt to explain why an activity succeeded or failed or how it was perceived or received by stakeholders. The study defines effectiveness:

An intervention is **effective** if it directly increases the likelihood that a desired outcome will occur, and that it does this independently of the effects of other concurrent factors which may also potentially increase the likelihood of that outcome occurring.  

The ABA Standards for the Provision of Civil Legal Aid includes a statement on the measurement of effectiveness:

*The effectiveness of a provider can be measured by the tangible, lasting results of its efforts on behalf of its clients. Lasting results can be achieved by favorably resolving individual legal problems; by teaching persons how to address the legal problems they face; by improving laws and practices...The focus of legal work is sharpened if the provider deliberately identifies the results it seeks to achieve.*

Digiusto concludes that measuring effectiveness first requires us to consider the aim of the legal service or intervention, which involves identifying specific, measurable outcomes goals and then measuring the extent to which the goals are achieved. He recognizes that different types of legal services can have different outcome goals. He proposes an approach to measuring effectiveness based on the Goal Attaining Scaling (GAS) methodology. GAS is a flexible procedure for evaluating services that have a variety of possible outcomes and is used extensively in measuring effectiveness in health services. These steps are:

1. Identify the specific problem which the client wishes to have resolved
2. Record the client’s current status relating to the problem
3. Identify a meaningful and achievable goal relating to the problem
4. Specify how and when the relevant outcome data will be collected
5. Proceed with the provision of service
6. At an appropriate time and subject to the circumstances of the case, contact the client to determine the extent to which the outcome goal has been achieved.

Dr. Liz Curran was commissioned by the Australia Attorney-General’s Department to carry out a literature review of "research, studies, reports, reviews and evaluation and other material both nationally and internationally around legal assistance.

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216 Digiusto, at p. 1.
217 Digiusto, at p. 2.
219 Digiusto, at p. 6.
service evaluations” in preparation for a major national review of legal aid in Australia. Curran’s very thorough review of 47 international and 91 Australian studies focuses on four concepts: ‘successful outcome’, quality, efficiency, and effectiveness.

Her study outlines a number of barriers to developing strong evaluation methodologies for legal aid including:

- The lack of a common language with which to articulate results,
- The lack of a framework in which to capture them,
- The difficulties in being able to measure and prove success,
- The fact that outcomes can be influenced by factors external to a service,
- The reality that evaluations can impose significant burdens on service providers to gather data which can distract from service delivery itself.

Measurements tend to be “descriptive”, “subjective”, “anecdotal and vague”. With respect to measuring outcomes, Curran concludes that:

There is no one way which can make it easy to achieve a successful outcome. Good practice informed by good training, cultural awareness, sensitivity, adaptability and flexibility are key factors in effectively reaching and targeting vulnerable and disadvantaged groups. Legal assistance services operate at different levels. Within a legal assistance service different objectives and intentions can sit behind each program. Therefore, they cannot be measured as a ‘lump’ without first understanding the very nature, diverse ways of engaging that are required to target different client groups, complexity, layers and imperative and funding requirements that drive each of the many parts.

Perhaps not surprisingly given these difficulties, Curran finds that “very little outcome/results based measurement has actually been undertaken internationally or domestically although there is some literature on how one might go about it.”

Here is a brief summary/excerpts of some of the key points that Curran draws from her literature review and the studies that she found to be particularly useful.

Dr. Liz Curran, Literature Review: examining the literature on how to measure the ‘successful outcomes’: quality, effectiveness and efficiency of Legal Assistance Services (Australia: February, 2012), at p. 3. [Curran 2012]


Curran 2012, at p. 5.

Curran suggests the best starting point for determining an outcome is Dawn Smart’s outline of what an ‘outcome’ needs to be:

- Relevant
- Useful and measurable
- Achievable
- Practical to measure
- Within your control to influence.\textsuperscript{225}

Paul Bullen observes the following need to be considered as a starting point:

- What are the outcomes we are trying to achieve (and any unintended outcomes)?
- The extent to which we are achieving these outcomes (including showing a cause and effect link between the services provided and the outcomes achieved).\textsuperscript{226}

He notes that clients will have a more accurate and reliable picture of what has been achieved by a particular service and practitioners will be best able to monitor and reflect on what is being achieved. Accordingly, Bullen states “that good studies will examine the perspectives of the service user and the providers of the service.”\textsuperscript{227} It is also important to have processes in place to identify and document unintended outcomes.

Goldberg and Predeoux\textsuperscript{228} utilize the following outcome measures in their study:

- Whether clients gained knowledge to solve problems;
- Whether clients obtained a legal resolution;
- Whether clients obtained access to the legal system or an intended benefit of the law; and
- Whether clients had their voice heard in the legal system.

Ebrahim and Rangan\textsuperscript{229} note “that social outcomes can be difficult to gauge especially with limited resources and the limits to the ability to measure outcomes.”


\textsuperscript{227} Curran 2012, at p. 19.

\textsuperscript{228} Curran 2012, at pp. 20-21, referencing: J. Goldberg and S. Predeoux, ‘Maryland Legal Aid Outcomes Survey – Measuring the Impact of Legal Aid’s Services for Older Adults’, Maryland Legal Aid, July 2009.

They observe that many outcomes can often only occur over a longer time than most accountability measures are concerned with. This is consistent with the views of Smith and Patel’s findings in their evaluation of British legal aid services.\textsuperscript{230}

Outcome measurements can be informed by, inter alia, descriptions of what constitutes good approaches to lawyering\textsuperscript{231} and the literature on access to justice, legal need and advice seeking behaviours. Curran reviews what she considers to be an excellent report in terms of evaluating quality issues in legal advice: Trude and Gibbs’ report entitled, “Review of Quality Issues in Legal Advice".\textsuperscript{232}

She summarizes some of the key approaches in Trude and Gibbs’s work. They identify three key elements of quality legal advice and representation as:

1. Professionalism and expertise enabling the full factual and evidentiary basis of a case at the earliest opportunity
2. Quality of the one-to-one relationship creating trust and confidence in the legal representative as, if this exists, the client is more likely to be confident in the case outcome but also to cooperate in achieving it
3. Representation and advice which have time to present the case and do items 1 & 2 above.

Trude and Gibbs also note that good indicators of quality should also include the professional obligations of lawyers.\textsuperscript{233} In addition, evidence of the following was found to determine quality:

- The identification of legal and evidentiary issues,
- Instructions of appropriate experts and advocates to avoid delays in preparation and dissatisfaction leading to non-cooperation by clients,
- Use of tactical judgement,
- Exploration of every reasonable legal avenue.

In her review, Curran discusses the dangers involved in a widely used focus on ‘client satisfaction’, which does not take into account the function/duties of a lawyer as an officer of the court who has a duty to provide independent competent advice. This advice might not always meet client expectations where the client “may believe

\textsuperscript{232} Curran 2012, at p. 25, referencing: Trude and J Gibbs, \textit{supra} at p. 8.
that they are right and the other side is wrong, that the law ought not work the way it does or that the lawyer’s role is just to be a ‘mouth piece’ for the client.”

She urges a shift to novel types of ‘client feedback’, which can explore the level of ‘quality’ of the service or as client feedback on the service:

Clients responding to surveys/questionnaires when framed in this way are then encouraged to think more reflectively on the service rather than their own wants and wishes, the win or loss of the unwinnable case - areas that might not always be within the remit/scope or the ability of the service to influence. It is also important to think carefully about using a simple survey format to glean information about what is a complex and lengthy court process when so many variables affecting a ‘case outcome’ can apply...

Leading British access to justice scholar Richard Moorhead has also cautioned against relying too heavily on evaluation through measures of client satisfaction: “[c]lient viewpoints, while important, tell us very little about the key issues for quality, such as correct advice and appropriate help.” Nor do client viewpoints tell us whether litigants receiving help were actually able to perform the tasks required of them or whether they prevailed in their cases as a result.

Curran concludes that mechanisms other than surveys, including in depth interviews and focus groups, “can be better able to adapt where complexity and complicated aspects are being examined.” Such alternatives include in depth interviews or focus groups. She highlights the risk that “the statistics gathered in surveys are not in fact representative of the information they are seeking to gather and hence have little empirical value or precision.”

Curran suggests four methodologies that are particularly well suited to measuring legal assistance quality, outcome and effectiveness, all of which are superior in her view to experimental design methodologies (including randomization). These are:

- The Most Significant Change Technique (TMSCT) described as: “... a participatory form of evaluation that uses a story approach to explore the impact of a service or program. This challenges the conventional evaluation

234 Curran 2012, at p. 77.
238 See Hazel Genn, “Tribunals and Informal Justice”, 56 Modern Law Review 393 (1993) at p. 410. (questioning “whether subjective perceptions of fairness on the part of applicants or litigants in informal hearings should be a sufficient goal, or whether fair procedures must be related to just outcomes”)
239 Curran 2012, at p. 25.
240 Curran 2012, at p. 78.
so commonly used and discussed above with its focus on predefined indicators. TMSCT is a process that ensures that the many stakeholders, including client, community, service providers and government are involved in deciding on what kind of impact and change is important and records and reflects on these. Case studies are often used in this approach.” [note this technique is more often referred to by the acronym MSCT]

- **Survey Research** which “involves the use of questionnaires and structured interviews to collect quantitative data at a single point in time which is examined to identify patterns and relationships”.

- The **Case Design Approach** which “involves a range of qualitative and quantitative evaluation methods including interviews, questionnaires, participant observation (difficult in legal assistance research due to client professional privilege issues) and document analysis. It focuses on a very in-depth analysis of a case or service program and examines these to develop in-depth understandings rather than causal explanations. Such approaches reveal particularity and diversity and are good at enabling greater sense to be made of a situation that might not be evident with a more superficial study.”

- **Participatory action research** which “involves the evaluator working with the client/service/community to identify research questions, to collect the data and analyse it. This approach sits within a critical theory which is designed to contribute to learnings and empower people in the process and into the future by learning about their situation and working with the service/community/client to work out ways of making improvements. It uses ‘quality criteria’ which involves reliability, measurement validity, credibility, transferability, dependability and confirmability. It requires that the participation be authentic and ensures that the cause and effect relationship holds.”

Curran used a blend of these four research approaches in her 2011 study of LAACT described above.

Based on her literature review, Curran determined that there were eight methodological components to measuring quality/outcome and effectiveness:

1. Strategic Plan and operation plans of the legal assistance service and Annual Reports were reviewed and understood as part of setting the scene for the evaluation.

2. A ‘Conversation’ with agency staff and management being undertaken to improve understandings of the role and function and scope of the service and what is within its control and attributable to it.

3. Focus Groups held with the support staff/practitioners providing the on-the-ground service/program to identify and define the outcomes particular to the

241 Curran 2012, at p. 16.
service under examination and the elements or surrogate indicators of such an outcome including what quality assurance measures that are relevant to ensuring such quality and outcomes. Ascertaining what quality assurance mechanisms are in place and how these are adhered to. In some evaluations agencies did not have any ‘good practice’ or ‘quality assurance frameworks’ in place that were tested against the practice and so these may need to be developed in consultation as part of a research process.

4. Stakeholder interviews informed by 2 & 3 above.

5. Interviews with clients and lawyers informed by 2 & 3 above.

6. Survey/Questionnaire of client feedback about the service’s treatment of them at interview and in the course of the matter.

7. On-line surveys on quality and approach in service for practitioners both private and public who deliver legal assistance services On-line surveys can risk missing many of the target clients of legal assistance.

8. Case Studies can be collected from the service providers or from clients about their experiences through the interview, survey and focus group tools discussed in 2, 3, 4, 5, 6 and 7 above. \(^{242}\)

5. Towards a Research Framework for ELSRP

This concluding section draws together the main findings of the literature review to provide a platform for developing the research framework for ELSRP. This platform consists of key lessons from the literature review, an outline of the elements and indicators of a contextualized definition of meaningful and effective access, a suggested approach to framing outcome measurements, a reframing of the research focus and questions and comments on methodology including tentative thoughts about site selection criteria.

Key Lessons from the literature review

This literature review has provided an overview of the research approaches and findings regarding the effectiveness of different types of legal services in a variety of situations. Here is a summary of five main lessons arising from an analysis of this body of literature, which could be incorporated into the research framework aimed at measuring the relative effectiveness of PLEI:

- **Context is key.** It is essential to focus on particular types of legal problems/legal processes or forums, to develop a deep understanding of the context of the provision of legal services, and to refrain from over-generalizing or under-generalizing results.

\(^{242}\) Curran 2012, at p. 7 and 76-77.
• **Outcome measurement is a brave new world.** It is difficult to measure outcomes and very few studies have even attempted it. The most promising avenue appears to be a mix of subjective client-defined goals and objective/factual/evaluation potential outcomes defined by law. True outcome evaluation should be longitudinal – which requires substantial resources and faces the difficulty of attrition rates of study participants over time.

• **Research hypotheses can be guided by existing findings.** Despite the paucity of outcome-based evaluations of effectiveness, past research provides a substantial body of knowledge upon which propositions for further study/testing can be formulated. For example, this literature identifies several key conditions that affect the need for legal services:

  o Power imbalances between parties;
  o Complexity of the documents and procedures;
  o Speed of the litigation process;
  o Personal characteristics that make it easy/difficult to pursue cases;
  o Adversarial versus inquisitorial forms of judging;
  o Complications in applicable law (multiple sources of law, multiple doctrines, evidence)
  o Amount of pre-hearing preparatory work.

• **A sophisticated understanding of legal work provides a strong baseline.** Most studies specify the baseline measurement as either no assistance or full legal representation (and in a few cases the comparison of an intermediate service is made to both extremes). However, approaches that specify the range of what a good lawyer brings to bear on the resolution of a legal issue are the most likely to lead us to a greater understanding of the potential of PLEI (e.g. the Trude and Gibbs study discussed above). Quality of the legal services is likely to affect outcome but is an understudied factor. Most studies assume high quality services.

• **Studies and evaluations are different projects.** Evaluations are designed to measure the extent to which a specific program for the provision of legal services is meeting set program/service objectives. Studies are designed to develop our knowledge base about effective legal services in a more generalizable way. Evaluations are primarily used by service providers/funders and government to inform decision-making. Studies are a form of academic research with a broader audience that contribute to general theory development, larger policy analysis as well as other more practical purposes.
There is a range of methodologies, each with strengths and weaknesses that should be considered in the research design process. The attraction of randomized studies is that they are designed to establish cause/effect relationships and to prove hypotheses on a statistically significant basis. Observational studies and other research methods cannot achieve these types of scientific results but can provide richly descriptive data, illustrate links between services and outcomes, and provide a strong empirical basis upon which to found policies, programs, and redesign of legal services.

Research design processes should be participatory.

A Contextualized Definition of Meaningful and Effective Access

The central question of the ELSRP is how and in what circumstances is PLEI effective in increasing meaningful access to justice and assisting people to address their legal problems. A starting point for the research design should be the development of a contextualized definition of meaningful and effective access for a particular type or set of legal problems within a set procedural framework. A collaborative consultation process should be undertaken to define what it would take to ensure meaningful and effective access to justice in practical terms for the type of problem/set of problems/site to be studied. For example, to what extent can the situation be described as “mechanical justice”? (One example of “mechanical justice” would be simple cases such as where there was no question that the litigant was entitled to the legal remedy sought.) What are the evidentiary burdens?

The constituent elements of meaningful and effective access to justice can be broken down into a series of descriptive factors or indicators. On the basis of this literature review and reflections to date, I propose a nine-dimensional matrix:

- Characteristics of the individual/group with a legal problem
- Relationship with other party/parties
- Characteristics of the legal problem
- Type(s) of dispute resolution process
- Type(s) of legal information and assistance available (in this study we would focus on PLEI materials)
- Mechanisms for provision/support/assistance related to PLEI materials
- Procedural Outcomes
- Substantive Outcomes
- Systemic Outcomes

These dimensions can be grouped into a table under three headings in a temporal sequence roughly corresponding to the questions: “who/what”; “when/where/how” and “what happened”. For each of these elements/dimensions under study, we will
need to develop a list of qualitative indicators as part of the research design. A few examples of indicators are identified for illustrative purposes in the following table.

<table>
<thead>
<tr>
<th>“WHO and WHAT”: Characteristics of the person and legal problem</th>
<th>“WHEN/WHERE/ and HOW”: Characteristics of PLEI materials provided, related information, support and advice and process</th>
<th>“What happened”: Characteristics of the outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Individual or Group</strong></td>
<td><strong>PLEI Materials</strong></td>
<td><strong>Procedural outcomes</strong></td>
</tr>
<tr>
<td>• Language</td>
<td>• Type of material</td>
<td>• Level of satisfaction with process</td>
</tr>
<tr>
<td>• Literacy</td>
<td>• General vs targeted information</td>
<td>• Dimensions of satisfaction (well prepared, perception that process fair, perception that s/he was heard)</td>
</tr>
<tr>
<td>• Education</td>
<td></td>
<td>• Level of stress experienced</td>
</tr>
<tr>
<td>• Previous experience with legal system</td>
<td></td>
<td>• What was learned</td>
</tr>
<tr>
<td>• Income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Persistence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Availability of informal supports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Location</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Relationship with other party/parties</strong></td>
<td><strong>Provision of Materials</strong></td>
<td><strong>Substantive outcomes</strong></td>
</tr>
<tr>
<td>• Dual or multi party</td>
<td>• Stand alone</td>
<td>• Level of individual satisfaction with outcome (initial and long-term)</td>
</tr>
<tr>
<td>• Characteristics of other party/parties</td>
<td>• Some information support</td>
<td>• Evaluation of outcome relative to other similar cases</td>
</tr>
<tr>
<td>• Ongoing relationship</td>
<td>• Advice available (to answer questions, provide more information)</td>
<td></td>
</tr>
<tr>
<td>• Power balance/imbalance</td>
<td>• Assistance available</td>
<td></td>
</tr>
<tr>
<td><strong>Legal Problem</strong></td>
<td><strong>Process</strong></td>
<td><strong>Systemic outcomes</strong></td>
</tr>
<tr>
<td>• Essential need/interest</td>
<td>• Options between processes</td>
<td>• Feedback from process/outcome to justice system</td>
</tr>
<tr>
<td>• Potential consequences if unresolved/poorly resolved</td>
<td>• Formality of process</td>
<td>• Resilience/prevention of future disputes</td>
</tr>
<tr>
<td>• Urgency</td>
<td>• Evidence requirements</td>
<td></td>
</tr>
<tr>
<td>• Severity</td>
<td>• Style of Adjudication</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Degree of assistance provided by adjudicator</td>
<td></td>
</tr>
</tbody>
</table>
All of these dimensions are dynamic. For example, a person’s legal problem can change over the course of a resolution process, as can their knowledge and ability to participate effectively in the dispute resolution process. Furthermore, as Engler has pointed out, legal-judicial institutions are not static and the need for legal assistance/representation is tied directly to the effectiveness of the efforts of the court/tribunal system in assisting the litigant. He states:

*The better the job that the courts do in providing meaningful access, and the more successful limited assistance programs are in affecting case outcomes, the smaller the pool of cases needing counsel.*

While this paper has emphasized the importance of outcome-based measurements, it also recognizes that there is an integral relationship between process and outcome. Laura Abel provides a clear illustration of the importance of process analysis:

*We do not know enough about the tasks involved in litigating a particular case, the ability of litigants to conduct those tasks, or the extent to which particular access to justice tools enable litigants to overcome the obstacles facing them. Consequently, even if we are able to demonstrate that a particular access to justice intervention enables litigants to overcome a particular litigation obstacle, we cannot know whether that is sufficient to enable litigants to overcome all other obstacles and obtain a fair hearing. For example, we might determine that providing a simplified form pleading will enable litigants to adequately plead uncomplicated debt cases. However, based on that evaluation alone, we would not know whether the litigants will be able to conduct discovery, write briefs, conduct evidentiary hearings, or make informed decisions about whether to settle.*

Abel references a study conducted by a group of law students, graduate design students, and National Center for State Courts researchers who identified 193 discrete tasks that pro se litigants must perform in various types of civil cases. The tasks, identified through visits to five civil courts in different parts of the country, “rang[ed] from very simple tasks like, ‘wait in line,’ ‘take notes’ and ‘find appropriate court’ to more sophisticated tasks like, ‘develop strategy and position,’ ‘interpret and apply law,’ and ‘negotiate settlement.’” Abel considers this list to be the most comprehensive list of self-representation tasks developed to date. She goes on to recommend a three-prong approach for employing process analysis

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243 Engler 2011, at p. 123.
244 Abel 2009-2010, at p. 305.
246 Id., at p. 1023, 1027
247 Abel 2009-2010, at p. 305.
to evaluate the effectiveness of the spectrum of access to justice interventions. These are: (a) identifying the tasks required; (b) identifying the obstacles from completing the required tasks; and (c) identifying the access to justice interventions that can overcome the obstacles. She too emphasizes this analysis must extend to considering outcomes in the sense of whether access was meaningful and effective. As she notes, while several evaluations have found that self-help interventions can improve the ability of unrepresented litigants to perform certain tasks, they do not show that they “enable them to perform those tasks at a level sufficient to enable the court to reach a fair and accurate decisions”.248

A related methodology is to take this list of individual tasks and render it as a “journey map”: a visual diagram of the typical steps an individual goes through in accessing a court or tribunal. Journey mapping is a design tool that assists service providers to understand and improve the experience of the user of their services. Here is a typical definition:

_The customer journey map is an oriented graph that describes the journey of a user by representing the different touchpoints that characterize his interaction with the service. In this kind of visualization, the interaction is described step by step as in the classical blueprint, but there is a stronger emphasis on some aspects... At the same time there is a higher level of synthesis than in the blueprint: the representation is simplified through the loss of the redundant information and of the deepest details._249

Journey mapping has been used extensively by the corporate sector and more recently by public service providers.250

**Framing outcome measurements**

One of the most difficult aspects of measuring the effectiveness of legal services is the framing of outcome measurements. This issue has been canvassed in some detail above and should be taken into account in developing outcome measurements for ELSRP (as one aspect of the contextualized definitions of meaningful access to justice).

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In summary, outcome measures should:

- Be relevant, useful and measurable, achievable, practical to measure, within the service’s control to influence;
- Take into account the perspectives of the client and the service provider/system;
- Take into account the goals of the client and those of the justice system;
- Be informed by, inter alia, descriptions of what constitutes good approaches to lawyering (e.g. the identification of legal and evidentiary issues, enabling preparation of full factual and evidentiary basis, raising of all relevant arguments and defenses, use of tactical judgment, exploration of every reasonable legal avenue, avoiding delay, creation of trust and confidence in the justice system);
- Include some objective definition of “substantive benefit” resulting from PLEI/legal assistance (tangible, lasting result, intended benefit of the law);
- Take into account legal and socioeconomic outcomes; and
- Take a longitudinal perspective that examines the durability of solutions.

One formulation of outcome measurements that could provide a foundation for the ELSRP is:

- Whether clients gained knowledge to solve problems;
- Whether clients obtained resolution to their legal problem and non-legal aspects of their problem;
- Whether the resolution was durable;
- Whether clients obtained access to the legal system or an intended benefit of the law; and
- Whether clients had their voice heard in the legal system.

This list of factors is only a starting point. They require further elaboration and to be framed as practical, measurable outcome indicators.

**Reframing the research focus and questions**

The research focus should be on the delivery of PLEI in situations where legal problems engage fundamental interests and must include measures to ensure the inclusivity of members of disadvantaged and marginalized communities. The ELSRP should contribute to the comparative study of the spectrum of services from no assistance, to “passive” receipt of materials alone, to more “active” limited forms of advice in addition to written materials, and possibly to representation. The full range of services need not be available at each study site. One way to think about the ELSRP is that the focus is to identify favourable and unfavourable outcome patterns based on solid evidence with special attention to the client, case, and advice characteristics.
The initial research questions are valid but will have to be tailored to the sites selected for study. The ELSRP has the potential to provide contextualized answers to these questions in a robust, descriptive and prescriptive manner. For example, the study should provide empirical evidence that PLEI can provide meaningful and effective access to justice to persons with X characteristics and Y legal problems in Z circumstances. If the results hold true across a number of different environments then it may be possible to generalize from the results to other types of like legal problems and legal processes.

For ease of reference, the original research questions are recapped here:

**How is PLEI effective in increasing meaningful access to justice and assisting people to address their legal problems?**

**In what circumstances is PLEI effective when provided primarily on a stand-alone or self-help basis, and when is a fuller continuum of legal services including PLEI or full representation required?**

- In what ways does PLEI complement, augment or supplement the provision of assistance within the continuum of services in order to help people address their legal problems and increase meaningful access to justice?
- Are there types of legal problems for which exclusive or primary reliance on PLEI meets the criteria of meaningful access to justice and assists people in addressing their legal problems?
- Are there types of legal problems for which exclusive or primary reliance on PLEI does not meet the criteria of meaningful access to justice and does not provide sufficient assistance to help people address their legal problems?
- Are there differences in case outcomes where parties had access to and relied exclusively or primarily on PLEI, those where PLEI was provided in conjunction with other legal services, and those where full legal advice and representation were provided?
- Where PLEI is relied on as a primary form of legal services delivery, what factors or characteristics affect the likelihood of positive outcomes? For example, are there characteristics of cases (e.g., involving deeply personal matters, complexity of legal issue); characteristics of parties (e.g., power imbalance, level of sophistication; resiliency or ability to persevere); or characteristics of the system (e.g., cost, time, formality, bias in favour of the applicant) that affect the likelihood of positive outcomes?
- What are good practices in the provision of various types of PLEI (e.g., stand-alone PLEI, PLEI as part of a continuum of legal services) that enhance effectiveness?

During the initial research phase as contextualized definitions of meaningful and effective access are being generated, the research team should also develop
propositions of hypotheses for each of these questions. The two go hand in hand. For example, in the US studies the researchers hypothesized that representation would be necessary in court eviction hearings because of (a) the power imbalance between the parties; (b) the complexity of potential defenses; and (c) the fast pace of the litigation.

**Site selection criteria**

Based on this literature review, these criteria should be considered in selecting the sites for the ELSRP:

- The legal problems or sets of problems should engage fundamental interests;
- The sites should reflect a spectrum of complexity of procedures, e.g. some of the sites should be ones in which we would hypothesize that stand-alone PLEI materials could provide meaningful access and others should be ones in which we hypothesize that additional legal assistance/representation is required;
- Some of the sites should include situations where there is a likelihood of power imbalances between the parties;
- Together the sites should serve a spectrum of clients, so as to ensure that overall the study is inclusive of members of disadvantaged and marginalized groups;
- There should be straightforward processes for gathering the consent of clients to participate in the study and/or have information concerning their experience released to researchers; and
- The sites should deal with a high enough volume of clients/cases so as to generate a valid pool of participants/cases required by the methodologies employed.

**Methodological approaches**

On the basis of the literature review, I conclude the ELSRP should not adopt randomization as the main methodological approach because of the ethical and practical issues and because the empirical knowledge gained is fairly narrow. The price of scientific validity is too high given the complicated and complex nature of the impact of legal services on access and outcomes.

The mixed methodology approaches provide for empirical data as demonstrated by the US hotline study and the LAACT 2011 study. Like the US hotline study, ELSRP will be generating data from several sites in two provinces thereby increasing the depth and validity of results. Promising methodologies include:

- Development of a reporting tool through a collaborative process with service providers
- Statistical analysis (e.g. length of time to resolution)
File reviews
- Surveys of clients regarding quality of service and identification of “the most significant measure” from their perspective (not generic client satisfaction approach) [online, by telephone, or in person]
- Interviews with clients/disputants/claimants
- Interviews with justice system personnel/service providers
- On-site observation of processes
- Staff observation logs
- Case studies collected from other methodologies (observation logs, focus groups, client interview with the researcher and the online survey)