

RESEARCH REPORT

Self-Represented Litigants: An Exploratory Study of Litigants in Person in the New Zealand Criminal Summary and Family Jurisdictions

Melissa Smith, Esther Banbury and Su-Wuen Ong



MINISTRY OF
JUSTICE
Tāhū o te Ture

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July 2009



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Executive summary

Concern has grown in recent years about individuals appearing in court without representation. This has led to research in the United States, Canada, Australia and the United Kingdom studying self-represented litigants, why they appear without a lawyer, and the effect of self-representation.

New Zealand has shared this concern. Until now, no formal, similar research has been undertaken. The Law Commission in 2003 therefore recommended that research be conducted in New Zealand.

The research described in this report was similar to the international studies. The objectives were to study self-represented litigants in the family and criminal summary jurisdictions of district courts, in particular answering the following questions:

- What are the key characteristics of self-represented litigants?
- Why are they self-represented?
- What effect does their lack of representation have on them, the other party, the court process, the judiciary, court staff, lawyers and others?
- To what extent are information and resources accessed by self-represented litigants?

It was *not* intended to recommend law reform or recommend what should or should not be done for self-represented litigants.

The research was undertaken in 2006–07 in eight courts in five cities. These courts were chosen to reflect demographic and regional spreads.

In the criminal summary jurisdiction, while qualitative interviews were held with 55 key informants, there were difficulties recruiting self-represented criminal litigants so these interviews were discontinued. The proportion of cases involving self-represented litigants ranged from 1% in Dunedin to 7% in Palmerston North over the varying study periods. In the family jurisdiction, 133 interviews were held with 54 self-represented litigants, 21 represented other parties and 58 key informants. The proportion of cases involving a self-represented litigant ranged from 17% in Tauranga to 7% in Manukau over the study periods. Quantitative analyses determined demographic and specific trends. Additional analyses determined more in-depth demographic and socioeconomic details of the interviewed litigants from the family jurisdiction. Key informants included judges, lawyers, various court employees and Community Law Centre staff.

What are the key characteristics of self-represented litigants?

Criminal jurisdiction

In the criminal jurisdiction little recorded data were available to determine actual numbers of self-represented litigants and if the number of self-represented litigants had increased in recent years. The courts undertook a short data collection exercise specifically for the study which revealed regional variations in the numbers of individuals appearing self-represented

(ranging from 1% to 7% of cases). In the absence of long term trend data, key informants were asked whether they thought there had been a change in the numbers of self-represented litigants, but no clear consensus was reached. In general it appears that self-represented litigants do not differ markedly from represented litigants in their key characteristics.

Family jurisdiction

In the family jurisdiction little recorded data were available to determine the numbers of self-represented litigants and if the number of self-represented litigants had increased in recent years. Family Court staff also undertook a short data collection exercise specifically for the study which revealed regional variations in the numbers of individuals appearing self-represented (ranging from 7% to 17% of cases). Most key informants suggested that the number of self-represented litigants in the family jurisdiction had increased over the past five years. This finding is in line with that found internationally, not only in the Family Court, but also in other jurisdictions. Without historical trend data we could not say whether this perception was true.

Self-represented litigants in the Family Court were likely to be New Zealand European males with an average age of 37, appearing for care of children and domestic violence cases. They were more likely to be paid full-time employees, most earning more than \$30,000 a year. These characteristics differed from those found in the family jurisdiction internationally.

Why are they self-represented?

Cost was the most commonly cited reason. Many self-represented litigants' incomes were not low enough to be eligible for legal aid, and they felt their income was insufficient to afford a lawyer. In March 2007, a Legal Services Amendment Act was passed, which now enables a larger proportion of New Zealanders to obtain legal aid by increasing the financial threshold and simplifying the criteria, but also requires a higher proportion of recipients to pay back their grant. Self-represented litigants' earnings were higher in general than that of the represented litigants. While very few were in the highest income categories, they were more likely to be in full-time, paid work. Very few had applied for legal aid during the study period. Our findings mirror those found in the international research.

Other reasons for self-representation included:

- Litigants appearing in the criminal court on minor charges are less likely to be eligible for legal aid. This fits with our findings about the types of offences the litigants are charged with.
- Self-represented litigants' perceptions that the case was straightforward enough to represent themselves. In the criminal court this was believed to be partly owing to the standardised nature of the sentences. In the Family Court this was because the litigant believed they knew their case better than a lawyer.
- A previous bad experience or distrust of lawyers (family jurisdiction).
- A desire to get the case over and done with as quickly as possible (criminal jurisdiction).

What effects does self- representation have?

Across both jurisdictions, key informants said that self-represented litigants face the same main difficulty – they often do not understand court process and procedures. This sentiment was repeated by the self-represented Family Court litigants. This leads them to make mistakes such as presenting irrelevant and excessive material, not being aware of their options when making pleas (criminal summary jurisdiction), and in the family jurisdiction making errors when filing and writing documents (supporting international findings). Key informants in both jurisdictions took pains to say that judges did their best to be fair in these situations by adapting their approach. Key informants in both jurisdictions recognised that the outcomes were fair. These key informants also suggested that the outcomes may have been more in the litigants' favour if they had representation. That mirrors the international research findings. This lack of understanding can result in litigants feeling more stressed and frustrated.

Their lack of understanding of the law and court processes is believed to increase hearing times (and also case progression in the Family Court) because court staff, lawyers, judges and prosecution have to guide the litigants through the process and spend more time explaining procedure. Interestingly, most key informants in the criminal court felt that difficulties dealing with self-represented litigants did not have a huge personal impact on them. However, the effect on key informants in the Family Court appears more pronounced. There may be two reasons for that:

- 1 There were fewer self-represented litigants found in the criminal summary jurisdiction overall than in the Family Court.
- 2 Since Family Court cases can be more complex and personal, key informants suggested that self-represented litigants are more likely to stay in the court system longer and make repeated requests on key informants' time. In contrast, the criminal court is better known by key informants for the volume and speed of cases it handles in a day. Thus key informants in the criminal courts may be less likely to deal with repeated requests from the same litigant and have fewer litigants to deal with overall compared with key informants in the Family Court.

Key informants also noted the effects of self-represented family litigants were more widespread, because of the more complex and personal nature of their cases, than those of the criminal self-represented litigant. Self-represented family litigants were found to increase the other party's costs and stress. Children could be upset and unsettled.

To what extent are information and resources accessed by self-represented litigants?

Owing to difficulties contacting self-represented criminal litigants we were unable to assess what information and resources these individuals had sought. Family litigants had frequently sought advice from court staff, Community Law Centres, the Internet, and family and friends for information on court procedure, process, applications, affidavits, case law and general case advice. These resources were also accessed (although less frequently) by most represented litigants for the same reasons.

Several court-specific initiatives were mentioned to aid self-represented litigants and to help the courts run more smoothly. Common practices included setting specific hearing times and showing litigants where to go for hearings. Other practices included letting litigants express their views; providing extra instructions in correspondence; and lawyers offering pro bono work. In the Family Court more specific actions included giving 'how-to' handouts and delegating one staff member to deal with problematic litigants.

More information on court processes and procedures was suggested by key informants and by litigants as being of benefit (with additional information on duty solicitors, charges and penalties for the criminal jurisdiction). It was also suggested that the common difficulties self-represented litigants face could be outlined. Many represented litigants said they had sought similar types of information. This information was identified as benefiting court staff because it would reduce the time they spent dealing with self-represented litigants. According to the Law Commission, the United States and Canada have adopted the idea of an information pack and put it into practice (Law Commission, 2003).

Most key informants in the criminal summary jurisdiction suggested they needed nothing more to help them deal with self-represented litigants. Most Family Court key informants wanted more training in how to deal with self-represented litigants.

Limitations of this research

The purpose of this study was exploratory. It aimed to answer the four key research objectives to build a picture of the self-represented litigants in New Zealand criminal and Family Courts. As noted earlier it was *not* intended to recommend law reform or recommend what should or should not be done for self-represented litigants.

Some points warrant more discussion.

- 1 The study findings generally reflect those found internationally.
- 2 In the absence of comprehensive recorded data, the numbers of self-represented litigants reported from the brief data collection exercise in this study provide only brief snapshots in time. To determine more accurate numbers and long term trends in self representation, rigorous data recording practices would need to be established. Insufficient data make research difficult.
- 3 The regional variation in the number of self-represented litigants suggests that a nationwide approach may not be appropriate. More accurate data recording is needed before we can draw firm conclusions about the reasons for the variation.
- 4 It appears from this study that self-represented litigants are more of an issue in the Family Court than in the criminal summary jurisdiction.
- 5 This study is only a first step in assessing self-represented litigants in New Zealand. Other jurisdictions (such as the civil and High Court) also have self-represented litigants. More research may be necessary to assess the effects of self-represented litigants in these jurisdictions.

1 Introduction

This report presents the findings of an exploratory study on self-represented litigants in the New Zealand family and criminal summary jurisdictions. The term ‘self-represented litigant’ (also known as ‘litigant in person’, ‘unrepresented litigant’, ‘pro se litigant’ or ‘pro se representation’) is used to describe litigants who are not represented by legal counsel. This group includes litigants who choose to represent themselves, litigants who are represented by a lay person, litigants who are unable to access legal representation (perhaps because of costs or not knowing that legal aid exists), those who have been declined legal aid, those who can not find or retain a lawyer to take their case, and those who have had representation but chosen to dispense with their counsel. For simplicity we refer in this report to litigants without representation as self-represented throughout.

1.1 Background

1.1.1 Self-represented litigants: An international issue

In recent years there has been growing concern about the number of people appearing in court ‘unrepresented’. Australia, the United Kingdom, the United States and Canada have noted an increasing trend for litigants to appear without representation (Byrne and Leggat, 1999; Mather, 2003; Appleby, 1997; Cohen, 2001). These countries have begun to examine this issue in more depth by studying the profiles of self-represented litigants; the reasons they are self-represented; the effect a lack of representation has on the self-represented litigants, other parties, the judiciary and court staff, and how to address the needs of self-represented litigants.

A pattern of key characteristics of self-represented litigants in the Family Court of Australia has been identified.¹ Dewar, Smith and Banks (2000) found that self-represented litigants were more likely to have limited formal education, income and assets, and to have no paid employment. A large number were classed as ‘dysfunctional serial litigants’ (individuals who are often suspicious or resentful of the court and/or legal system, who make repeated self-represented appearances in multiple cases). Similarly, in a survey by the Office of the Deputy Chief Administrative Judge for Justice Initiatives (2005), most self-represented litigants in the New York City Family and Housing Courts reported low incomes (60 percent of litigants felt they could not afford representation) and little formal education.

International research has also explored the reasons behind litigants’ self-representation. Among the most common reasons included distrust of the legal system (Dewar, Smith and Banks, 2000); being unable to afford a lawyer (Dewar, Smith and Banks, 2000; Moorhead and Sefton, 2005) and a belief that the litigant could represent themselves (Moorhead and Sefton, 2005).

¹ The Australian Family Court is different from the New Zealand Family Court because it is a federal court, dealing only with custody and property cases. It does not deal with any public law cases, care and protection, or domestic violence issues.

Self-represented litigants face many problems both before and during the court hearing. In criminal courts in Canada, key informants believed that the representation deficiencies of the self-represented accused caused them to suffer negative effects because of serious mistakes during the court process. This included the litigant failing to submit relevant case information, and not understanding options such as discharges, convictions and plea bargaining available to them and/or potential sentence implications (Hann et al, 2002). Problems have also been observed in family and civil cases in relation to filing and submitting applications and including irrelevant and inappropriate information in documents to judges that are often poorly written (Moorhead and Sefton, 2005).

Research has also shown that self-represented litigants trying to navigate the court system can impact on court staff, judges and other parties. It is believed that self-represented litigants coming to the court counter take up a considerable amount of time. Court staff helping self-represented litigants must provide information without giving advice, while often encountering litigants' literacy problems or communication barriers. Judicial officers and registry staff in the Family Court of Australia said they experienced frustration and stress dealing with self-represented litigants, as well as difficulties maintaining impartiality and balancing the needs of self-represented litigants with opposing parties (Dewar, Smith and Banks, 2000). Judges may spend more court time with self-represented litigants (because of the litigant's lack of knowledge), again providing information without legal advice. As a result, the opposing party and the prosecution may feel that, in their efforts to be fair, judges are more flexible towards self-represented litigants than their clients (Hann et al, 2002). Research in Canada also plans to look at judges' views of the seriousness of the problems created by self-represented litigants (Personal Communication, 2007²).

Initiatives to address the needs of self-represented litigants have varied between countries. A project in the Australian Family Court (Family Court of Australia, 2003) aimed to have a consistent national approach to providing sensible, effective and understandable services, and improved court practices, procedures, protocols and standard forms. In the United States and Canada, self-help centres staffed by counter clerks have been established, as well as making available information packs and extensive Internet information (Law Commission, 2003).

1.1.2 Self-represented litigants in New Zealand

Like other countries, New Zealand is also believed to be dealing with an increasing number of self-represented litigants (Carruthers, no date). However, there is currently only anecdotal evidence to support this claim (Law Commission, 2004). What is known about self-represented litigants in New Zealand comes primarily from Law Commission reports and an evaluation of status hearings. The Law Commission report (2004) suggested that self-represented litigants may lack skills, knowledge and objectivity to properly represent themselves. The status hearings evaluation found that one in every 10 defendants was not represented by a lawyer. Key informants in this evaluation were concerned that self-represented litigants were vulnerable to coercion to change their plea or disclose their

² Email correspondence. Albert Currie. Principal Researcher. Access to Justice, Legal Aid, Department of Justice, Canada.

defence. The effect of self-represented litigants on the judicial process was highlighted by several judges who said they spent more time explaining procedures to self-represented litigants (Searle et al, 2004).

More New Zealand-based research is needed to investigate why litigants represent themselves, the key characteristics of self-represented litigants, and the information and resources they are able to access. There has not been a comprehensive study of how lack of representation affects the self-represented litigant, the court process (although Barwick et al, 2003 identified a lack of representation as a factor linked to case complexity in Family Court custody cases), the judiciary and lawyers. The Law Commission recognised these shortcomings and recommended, in particular, research into the characteristics of self-represented litigants so resources could be targeted to relevant litigants and proceedings (Law Commission, 2003). Informed initiatives can then be developed to address the needs of self-represented litigants, including access to representation in courts, and legal advice and assistance outside the court.

While little research is available in New Zealand, international research suggests that self-represented litigants fall into two distinct groups: those who can afford representation or are eligible for legal aid but choose not to apply, and those who cannot afford representation or have no choice but to appear in person. New Zealand law recognises the rights of individuals to represent themselves and, conversely, rights to consult and instruct a lawyer (New Zealand Bill of Rights Act, 1990). Although everyone has the right to consult a lawyer, there are many reasons why this may not happen. Individuals may be unable to afford the cost of legal services, have no legal representative willing or able to act, or legal aid may have been refused or believed to be unavailable (Family Law Council, 2000). In addition, some jurisdictions may discourage or prevent the use of representation (for example, the Disputes Tribunal).

1.2 Research objectives

This study aims to provide a basic understanding of self-represented litigants in the criminal summary and family jurisdictions in New Zealand.

The four key objectives of the study are:

- 1 To identify the key characteristics of self-represented litigants.
- 2 To investigate the reasons why these litigants are not represented.
- 3 To identify the extent to which information and resources (such as Community Law Centres, Mātua Whangai and Citizens Advice Bureaux) are accessed by self-represented litigants.
- 4 To identify the effect that lack of representation has on self-represented litigants, opposing parties, the court process, the judiciary and lawyers.

The key research questions were developed from these objectives (see Appendix 1). Among others, these questions include those relating to groups of self-represented litigants who may

have more specific issues that need to be addressed, and questions about legal aid uptake and awareness.

The research highlights further implications that the Legal Services Amendment Act 2007 could have on the numbers of people seeking legal aid. It is also fundamental in addressing the Law Commission's recommendation for empirical research aimed at building a profile of self-represented litigants – their key characteristics, prevalence, and effects on themselves and others in New Zealand. Determining the effects could help the judiciary, court staff, police prosecution/lawyers and operational policy teams within the Ministry of Justice to develop better strategies to respond to self-represented litigants.

1.3 Scope

The study focuses on self-represented litigants in the family and criminal summary jurisdictions. It does not include the criminal and civil jurisdictions within the High Court because there are additional issues relating to the High Court³ that may not apply to the District and Family Courts. Furthermore, preliminary discussions between the research team and High Court staff suggest the characteristics and motivations of self-represented litigants may differ between the jurisdictions (for example, the Court of Appeal receives appeals from self-represented litigants in prison).

The scope of the study within the criminal court was restricted to the criminal summary jurisdiction because a recent study found that very few self-represented defendants were in the indictable (cases that go to a jury trial) jurisdiction (Searle et al, 2004).

It is important to note that the purpose of this research is exploratory, rather than focused on law reform. While the performance of the judicial system in meeting its obligations to self-represented litigants is extremely important, it is beyond the scope of this study. However, this study identifies other avenues for possible follow up studies. These include examining specific issues relevant to self-represented litigants in the criminal indictable jurisdiction (for example, cross-examination of rape victims by the accused).

1.4 Defining self-represented litigants

Litigants in the current study include defendants from the criminal summary jurisdiction of the District Court, and applicants and respondents from the Family Court. Litigants assisted by Mackenzie Friends (who help self-represented litigants in court) and/or who have parents representing them, will be considered self-represented.

³ For example, issues for the High Court include:

- What are unrepresented litigants trying to get out of the court system?
- Are there more unrepresented litigants in civil versus criminal cases?
- Are there particular courts within the civil jurisdiction in which unrepresented litigants feature more frequently?

This study provides a snapshot of self-represented litigants at a particular time, so the following definitions were used.⁴

Criminal summary jurisdiction of the District Court

Defendants were defined as self-represented if they appeared without a lawyer at the point of observation, which included registrar's hearing, list hearing, police fixture, status hearing, defended hearing or sentencing. Defendants whose cases were adjourned by the judge to consult the duty solicitor and reappear with representation were not considered self-represented. Youth Court and Justice of the Peace court hearings were excluded.

Family Court

Applicants and respondents were defined as self-represented where they appeared without counsel at the given data-collection point. This included judge's list, judicial conferences, fixtures or other hearing types. Mediation was not included because court staff do not attend mediation conferences, so do not know if lawyers are present. It must be acknowledged that litigants who are represented for all or part of the case may also file additional applications in the Family Court without the knowledge of the lawyer representing them.

1.5 Report structure

This report is comprised of 14 chapters. Chapter 2 describes the research methodology and the limitations of the study. Chapters 3 to 13 present the findings in relation to the four main research objectives – from the family jurisdiction (chapters 3 to 9) and criminal jurisdiction (chapters 10 to 13). These chapters cover *who* the self-represented parties are likely to be in each jurisdiction, *why* they are appearing with no representation, *what* information or advice is available for these litigants, and *what* impacts appearing with no representation have on the court system and those involved in their cases. Summaries of the main findings are at the end of each chapter.

Chapter 14 provides a discussion of the key findings from the study. A reference section follows and Appendices 1–4 provide specific research questions and additional analyses that are referred to, but not reported, within the main body of the report.

⁴ We recognise that some litigants included in the sample will have had a lawyer in the past, or might have a lawyer in the future, but for the purposes of this study they are self-represented at the point of observation.

2 Methodology

Information about self-represented litigants in the criminal summary and family jurisdictions of selected District Courts throughout New Zealand was collected using qualitative and quantitative methods. A range of informants was interviewed, including judges, lawyers, court staff and community groups. In the family jurisdiction, self-represented litigants and represented parties (from cases involving a self-represented litigant) were also interviewed. To complement the qualitative information, litigants' demographics and case characteristics were analysed.

Advisory and reference groups provided advice, from the development of the proposal and research design through to the publication of this report. The groups included judges from family and criminal summary jurisdictions; court managers, policy and operational analysts from the Ministry of Justice; and representatives from Legal Services Agency, NZ Law Society (Family Law Section and Criminal Law Committee), Police Prosecution Service, and a Community Law Centre. A representative from Te Hunga Roia Aotearoa – The Māori Law Society Inc – contributed Māori-specific cultural advice and, on recommendation from the Ministry of Pacific Island Affairs, a practising lawyer from the Grey Lynn Community Law Centre gave cultural advice relating to Pacific people.

2.1 Selection of courts

Seven courts were visited during the scoping phase of the study. A standard scoping questionnaire was completed for each court to see if research at their court was feasible. A sample of files from each court was examined to check the quality of the demographic information recorded. The results of the scoping exercise and a shortlist of preferred sites were presented to the advisory group for discussion.

From this sample, four courts were selected for the criminal summary jurisdiction component of the study and four were selected for the family jurisdiction component. In three of the locations, the same court was used for both components. The selected courts are shown in Table 1.

Table 1: Selected District Courts for the study

| Court | Jurisdiction/s |
|------------------|-----------------------------|
| Christchurch | Family only |
| Dunedin | Criminal summary only |
| Manukau | Family and criminal summary |
| Palmerston North | Family and criminal summary |
| Tauranga | Family and criminal summary |

These courts were selected to meet the following criteria:

- a mix of urban and provincial courts
- a mix of large (eg, Christchurch) and smaller courts (eg, Palmerston North)

- appropriate geographic spread across the country – three North Island and one South Island location per jurisdiction, reflecting that 76 percent of the New Zealand population lives in the North Island⁵
- a mix of areas with differing socioeconomic levels
- areas with high proportions of Māori (Manukau and Tauranga) and Pacific people (Manukau).

The courts also required a sufficient frequency and volume of hearings and the physical capacity to accommodate the research.

2.2 Pilot study

Lower Hutt and Porirua District Courts were chosen as the pilot sites for the criminal summary and family jurisdictions respectively.

The purpose of the pilot study was to test the research design, recruitment methods, data collection instruments and interview schedules in the family and criminal summary jurisdictions. In the criminal summary jurisdiction, the pilot also aimed to assess the feasibility of conducting interviews with self-represented litigants when they appeared in court.

2.2.1 Family jurisdiction

The pilot study for the family jurisdiction was conducted at Porirua District Court in September 2006.

The qualitative component of the study involved interviewing key informants. These included judges, lawyers, court staff, Community Law Centre staff and a member of a men's group. Interviews were also held with self-represented litigants and represented parties (from cases involving a self-represented party). The initial strategy for recruiting the self-represented and represented parties was to approach litigants outside the courtroom after they appeared in court, and ask them for an interview. This strategy was not successful during the first week of this pilot because researchers waited a long time for only a few cases that had self-represented litigants. The strategy was subsequently changed. Court staff gathered the details of all self-represented litigants during a data collection period, and the researchers later contacted the litigants by post and then by phone.

The interview schedules required only minor alterations after the pilot study. It was therefore decided that the pilot study interviews would be included in the main findings of this report.

In the quantitative component of the study, demographic and case-specific data were gathered from the court's Case Management System (CMS) for each of the cases identified as having a self-represented litigant during the data collection exercise. The quantitative data collection method remained the same throughout the study, allowing the data to be included in the main findings of this report.

⁵ Personal communication with Statistics New Zealand staff regarding Census 2006 findings.

2.2.2 Criminal summary jurisdiction

The pilot study was conducted at Lower Hutt District Court in September 2006.

Interviews were held with key informants who had experience dealing with self-represented litigants in the criminal summary jurisdiction. These included judges, lawyers, police prosecution, court staff, Community Law Centre staff, a victim adviser and a Salvation Army staff member. Interviews with self-represented litigants were also trialled using the same recruitment strategy as in the family jurisdiction (waiting outside the courtroom and approaching self-represented litigants after their appearance at a hearing). This strategy was inefficient for the same reasons. A lack of sufficient contact details on file meant that other means of recruiting self-represented litigants were unsuccessful. Given these difficulties, interviews with self-represented litigants in the criminal summary jurisdiction were discontinued. However, as the key informant interview schedules required only minor alterations after the pilot study, the pilot key informant interviews are included in the main findings of this report.

Quantitative data were also collected. Court staff collected data to identify all litigants who appeared with no representation during a six-week period, using the same methodology used in the family jurisdiction. The court's Case Management System (CMS) was again used to investigate these litigants' demographic and case-specific quantitative data. The quantitative data collection method remained the same throughout the study, allowing the data to be included in the main findings of this report.

2.3 Main study

2.3.1 Study population and recruitment

Family jurisdiction

Court staff collected data to identify cases with self-represented litigants for a period ranging from four to six weeks,⁶ as specified by the researchers. Data were collected at every event in which a court staff member was a court taker (eg, judge's list, short cause fixture, long cause fixture etc).⁷ Data were not collected for mediation conferences or registrar's list hearings as court takers were not at these events and no one else was available to collect the data. In two of the courts (Tauranga and Palmerston North) data were already available through the courts' standard recording practices, so they were not collected specifically for this study.

The data collection exercise identified the self-represented litigants and represented other parties to be interviewed, and provided the sample of cases involving self-represented litigants for the quantitative analysis. Interviews were conducted with self-represented litigants and represented litigants from cases involving a self-represented party. The purpose

⁶ The data collection periods were: four weeks in Christchurch; one calendar month in Manukau, Palmerston North, and Tauranga; six weeks in Porirua.

⁷ It is acknowledged that litigants who are represented for all or part of the case might also file additional applications in the Family Court without the knowledge of the lawyer representing them.

of the self-represented litigant interviews was to understand why they did not have legal representation, what support or information they had accessed, any issues or problems they had, and what may have helped them. The main aim of the interviews with represented parties was to see if they were affected by the other party representing themselves.

The list of all self-represented and represented litigants was examined by a staff member at each court to see if they were suitable for interviews. Litigants were not contacted if they were considered unable to give informed consent because of mental illness, or if court staff believed the litigants would be unduly upset or negatively impacted by being contacted. Only one litigant was excluded (the litigant’s demographic information remained in the quantitative analysis). Litigants considered a security risk were interviewed by phone, and phone interviews were used when the litigant was unable or unwilling to be interviewed in person.

Letters were sent to the litigants who were in a case with a self-represented party. The letters explained the purpose of the study, why the litigant had been contacted and that the research team would like to contact them to arrange an interview. The letters also included a postage-paid envelope and a refusal slip, which they could use to ‘opt-out’ of the study.

About 10 days after the letters were sent researchers contacted by phone litigants who had not returned refusal slips, and arranged interviews with those who were willing. The numbers of litigants who opted out of the study are provided towards the end of this chapter. Litigants were interviewed face-to-face at the court or by telephone, depending on their preference and availability.

In total, 75 interviews were conducted with litigants (54 self-represented, 21 represented). Twenty-seven interviews were face-to-face at the court (19 self-represented, 8 represented) and 48 interviews were by phone (35 self-represented, 13 represented). Table 2 shows the number of interviews with defendants at each District Court.

Table 2: Number of interviews with litigants at each District Court

| District Court | Self-represented | Represented |
|------------------|------------------|-------------|
| Porirua (pilot) | 9 | 4 |
| Christchurch | 26 | 13 |
| Manukau | 7 | 1 |
| Palmerston North | 5 | 0 |
| Tauranga | 7 | 3 |
| Total | 54 | 21 |

Where the litigants chose to be interviewed with support people, the contributions of these people were also included in the interview.

Criminal jurisdiction

Court staff collected data identifying cases with self-represented litigants for a period ranging from two to six weeks,⁸ as specified by the researchers. Defendants were defined as self-represented if they appeared without a lawyer at the point of observation, (eg, list hearing,

⁸ The data collection periods were: two weeks in Manukau, three weeks in Palmerston North and Dunedin, a calendar month in Tauranga, and six weeks in Lower Hutt.

police fixtures, status hearing, defended hearing or sentencing). Defendants whose cases were adjourned by the judge to consult the duty solicitor and reappear with representation were not considered self-represented. These data identified the self-represented litigants used in the quantitative component of the study.

Difficulties recruiting defendants to interview in the criminal summary jurisdiction meant interviews were conducted with key informants only, not with the self-represented litigants.

2.3.2 Key informants

At each of the courts, court managers identified the staff experienced in dealing with self-represented litigants in several roles. The roles were chosen by the researchers to represent the wide range of people who interact with self-represented litigants. Court managers were also asked to provide details of other agencies or groups in the area that provided support or advocacy to self-represented litigants.

Key informants were interviewed to find out what, if any, effect self-represented litigants had on the court system, their cases, or on the way the key informants did their job.

Researchers contacted the key informants by telephone, letter or email and arranged interviews. Face-to-face interviews were conducted where possible and others by telephone.

Family key informants

Interviews were conducted between September 2006 and April 2007. Key informants included judges, lawyers (including lawyers with experience acting for children and lawyers working on behalf of the Children, Youth and Family Services), court staff, representatives of Community Law Centres, men's groups, and Women's Refuge. In total, 58 key informants were interviewed (including those interviewed for the pilot, see Table 3 for more detail). On average, 12 key informants were interviewed from each site.

Table 3: Number of key informants interviewed from the family jurisdiction

| | Number interviewed |
|----------------------------|--------------------|
| Judges | 9 |
| Lawyers | 10 |
| Court registry officers | 8 |
| Court counter staff | 6 |
| Family Court coordinators | 7 |
| CYF lawyers | 4 |
| Community Law Centre staff | 5 |
| Women's Refuge staff | 1 |
| Managers/team leaders | 4 |
| Men's group advocates | 3 |
| Other support person | 1 |
| Total | 58 ⁹ |

⁹ On two occasions multiple key informants were interviewed in a single interview. In total, 55 interviews were conducted with 58 key informants.

Criminal key informants

Interviews were conducted between September 2006 and April 2007. In total 55 key informants from the criminal summary jurisdiction were interviewed (including those interviewed for the pilot). Key informants included judges, duty solicitors, police prosecution, court staff, Community Law Centre staff, Salvation Army staff members and victim advisers (see Table 4 for more detail). All key informants were experienced in dealing with self-represented litigants. On average, 11 key informants were interviewed from each site.

Table 4: Number of key informants interviewed from the criminal summary jurisdiction

| | Number interviewed |
|----------------------------|--------------------|
| Judges | 10 |
| Police prosecutors | 7 |
| Court counter staff | 6 |
| Registrars | 5 |
| Court registry officers | 7 |
| Victim advisers | 3 |
| Community Law Centre staff | 3 |
| Duty solicitors | 7 |
| Team leaders/managers | 4 |
| Salvation Army staff | 2 |
| Community magistrate | 1 |
| Total | 55 ¹⁰ |

2.3.3 Data collection instruments

The interview schedules were designed to answer specific research questions (see Appendix 1) agreed by the research team in consultation with the advisory and reference group members.

Existing literature and research from New Zealand and overseas were examined to help develop the interview schedules. The interview schedules for the represented and self-represented litigants in the family jurisdiction were designed to be as similar as possible to allow comparisons between the two groups.

The schedules consisted of mainly open-ended questions (with several fixed-choice demographic questions at the end for litigants). They were pretested at the Ministry of Justice by researchers to ensure the language was appropriate and that the questions flowed logically. A few minor changes were made to the order and wording of some questions after the pilot study at Lower Hutt and Porirua District Courts.

The interview team and training

The interviewers included two Ministry of Justice staff and three researchers with cultural knowledge and experience in interviewing Māori and Pacific people. Interviewers were trained at the Ministry of Justice, where the court processes, interview techniques and ethical

¹⁰ On one occasion two key informants were interviewed as a single interview. In total, 54 interviews were conducted with 55 key informants.

issues were reviewed. The safety protocol and the interview schedule were also reviewed and amended where necessary.

Validity

The validity of this research depends on whether participants' true views and perceptions are accurately depicted in the findings. Validity of interviews can be affected by several factors: interviewees may misunderstand some questions, forget details of their experience, or deliberately give false or misleading responses.

Māori and Pacific litigants could be interviewed by someone of their own ethnic background and interviewees could choose a male or a female interviewer.

Participants could also review their transcript or interview notes to check for accuracy and amend if the content did not accurately reflect their views.

2.3.4 Qualitative analysis

Where participants agreed, interviews were recorded on digital voice recorders. This allowed verbatim recording of the interviews. Where a participant did not want to be recorded, the interviewer took notes. Transcripts were typed from the tapes or interviewer notes. These transcripts were checked by the interviewers for accuracy during coding.

The open-ended questions were coded and analysed by the researchers using NVIVO, a software program for analysing qualitative data.

2.3.5 Quantitative analysis

The courts' electronic Case Management System (CMS) was used to identify all litigants who appeared in the selected courts during the data collection period.¹¹ Matching with the list of litigants identified by the court staff, each litigant was identified as being either self-represented, represented other party, or having a case that did not involve a self-represented litigant. SAS statistical software package and Microsoft Excel were used to analyse the data.

Family jurisdiction

Information recorded for each self-represented litigant included the litigant's case type, address, gender, age, occupation and ethnicity (when given), numbers of applications submitted (including date the first application was filed), numbers of events completed for their case, case status, date of appearance, whether counsel to assist was appointed (or lawyer for child in cases involving children). The same information was also recorded for the represented parties who had appeared in a case involving a self-represented litigant.

This information was used to determine the average number of applications made, age, gender, predominant applicant/respondent status, case status, case type, and numbers of

¹¹ The search excluded hearings for Mental Health Act cases, registrars list and mediation because information was not available on who had represented themselves in these hearings.

days in the CMS system for both self-represented and represented parties. A comparison between the groups could then be made.

Regression analyses were also conducted on represented and self-represented litigants to examine whether being self-represented influenced:

- 1 the outcome of applications
- 2 the length of time for applications to reach an outcome
- 3 the number of hearings.

In addition to the data collected from the CMS (as mentioned above), another set of quantitative data was collected from the litigant interview sample. These data provided a more detailed analysis of the socioeconomic variables (eg, salary, education and occupation levels) than could be obtained from the CMS data.

Criminal summary jurisdiction

Similar characteristics were recorded for self-represented litigants in the criminal summary jurisdiction as those for the family jurisdiction. Information was obtained on each litigant's case type, age, gender, ethnicity, plea type, outcome, and hearing type.

Legal aid information

The Legal Services Agency (LSA) gave researchers information about any contact they had with each of the self-represented litigants (for criminal summary and family jurisdictions) and represented other parties (for family jurisdiction only) identified during the data collection. The LSA identified which of these litigants had applied for legal aid, the outcome of the application, and how many times the litigants had been granted legal aid.

2.3.6 Ethical issues

The research followed the ethical principles described in the Association of Social Science Research Code of Ethics (1996). The following sections describe the way researchers followed these principles by ensuring that all participants were fully informed before they were asked to participate, ensuring their cultural safety, and following a safety protocol.

The proposal for this research was reviewed by the Justice Sector Research Group and a few minor changes were made.

Cultural safety

Most interviews were conducted by two Pākehā researchers from the Ministry of Justice. However, litigants could also be interviewed by a Māori, a Samoan or a Tongan interviewer (contracted to provide input on the interview schedules and conduct interviews). These three interviewers also interviewed Pākehā litigants.

Interview schedules, information sheets and informed consent sheets were available in English, Māori and Samoan. Litigants could also have an interpreter.

Informed consent

During the consent process, participants were told about the purpose of the research, the intended use of the information they provided, and the security procedures the researchers would undertake to maintain their confidentiality.

Participants were also told that:

- participation was voluntary
- they could choose not to answer any question
- they could stop the interview and withdraw their answers at any stage
- their participation would not affect their case
- confidentiality would be suspended if any serious offences were disclosed during the interview.

Participants were then asked if they had any questions and if they were still willing to be interviewed. They were also told they could call the 0800 number to ask questions about the study after the interview. Participants then signed the informed consent sheet.

Safety issues

Researchers followed a protocol to ensure the safety of litigants, key informants and themselves during an interview.

Researchers had a list of local community and support organisations (such as Legal Services Agency, Community Law Centres, Citizens Advice Bureaux, Women's Refuge, Mensline, and Victim Support) to give to litigants where appropriate.

To maintain participant confidentiality, researchers were careful to schedule interviews so that litigants in the same case were not interviewed on the same day.

2.3.7 Limitations of the research

Limitations must be noted when considering the research findings. Firstly, only a small selection of courts participated in the research, so readers should be cautious of making generalisations regarding other courts. Other limitations concerning interviews with litigants, ethnicity and quantitative data are discussed below.

Interviews with litigants

Definition for study and response rate

A litigant in this study was defined as self-represented when they appeared at a hearing without counsel. This definition excludes some cases that do not require court appearances (eg, dissolutions) and litigants who choose not to defend applications. These groups of self-represented litigants are outside the scope of this study but may warrant further research.

Where possible, self-represented and represented litigants in cases from the data collection exercise were approached for interview (see Table 5).

Table 5: Self-represented litigant response rate – Family Court¹²

| Court | Interviewed | | Refused | | Incorrect/ no contact details | | Other (no reply, did not turn up for interview; or ineligible/unsuitable) | | Total | |
|---------------------|-------------|-----|---------|-----|-------------------------------------|-----|---|-----|-------|-----|
| | % | No. | % | No. | % | No. | % | No. | % | No. |
| Porirua (pilot) | 56 | 9 | 0 | 0 | 25 | 4 | 19 | 3 | 100 | 16 |
| Tauranga | 39 | 7 | 11 | 2 | 39 | 7 | 11 | 2 | 100 | 18 |
| Palmerston North | 36 | 5 | 14 | 2 | 43 | 6 | 7 | 1 | 100 | 14 |
| Christchurch | 37 | 26 | 16 | 11 | 30 | 21 | 17 | 12 | 100 | 70 |
| Manukau | 37 | 7 | 16 | 3 | 16 | 3 | 32 | 6 | 101 | 19 |

The highest response rate for interviews with self-represented litigants was in Porirua. Response rates in Tauranga, Palmerston North, Christchurch and Manukau were similar. While the refusal rates were fairly low, the relatively high number of litigants who could not be contacted because of incorrect or unavailable phone or address details affected the overall response rate.

Twenty-one interviews were held with represented parties, with most coming from one court (Christchurch) in the sample (see Table 6). Fewer litigants were in the represented party sample compared to the self-represented litigant sample because many self-represented cases had Ministry of Social Development (MSD)/Children, Youth, Family Services (CYF)¹³ as the other party, rather than as other litigants. In these cases, researchers did not interview the other party (MSD/CYFS lawyers are interviewed as key informants rather than as parties to specific cases). Interview rates were lower on average than those for the self-represented parties, from 0 percent in Palmerston North to 40 percent in Porirua. Again, incorrect contact details (with the exception of Palmerston North) largely explain why so few interviews were held.

Table 6: Represented litigant response rate – Family Court¹⁴

| Court | Interviewed | | Refused | | Incorrect/no contact details | | Other (no reply, ineligible/unsuitable) | | Total | |
|---------------------|-------------|-----|---------|-----|------------------------------------|-----|--|-----|-------|-----|
| | % | No. | % | No. | % | No. | % | No. | % | No. |
| Porirua (pilot) | 40 | 4 | 20 | 2 | 40 | 4 | 0 | 0 | 100 | 10 |
| Tauranga | 30 | 3 | 20 | 2 | 30 | 3 | 20 | 2 | 100 | 10 |
| Palmerston North | 0 | 0 | 60 | 3 | 0 | 0 | 40 | 2 | 100 | 5 |
| Christchurch | 35 | 13 | 16 | 6 | 30 | 11 | 19 | 7 | 100 | 37 |
| Manukau | 6 | 1 | 6 | 1 | 65 | 11 | 24 | 4 | 100 | 17 |

¹² Totals may add to more than 100 percent because of rounding.

¹³ During this research the Department of Child Youth and Family Services merged with the Ministry of Social Development.

¹⁴ *ibid.*

Unanswered interview questions

Litigants and key informants did not have to answer all questions. Some questions were more likely to be answered (eg, reasons why litigants appear self-represented) than others (eg, estimates of the numbers of litigants encountered). For ease of reporting we have not provided the numbers of those who answered each question in the body of the report (with the exception of two questions where only a very small subgroup of individuals responded).

Where qualitative answers refer to proportions of interviewees (eg, two-thirds of key informants; three-quarters of self-represented litigants etc), this refers only to the proportion of the total who answered the question. It should not be assumed that this refers to the proportion of the overall total key informants, self-represented litigants or represented litigants.

Ethnicity

Interviewed litigants identified which ethnic group they belonged to. However, the ethnicity information on self-represented litigants in the criminal summary jurisdiction from the data collection sample comes from police records. Ethnicity is often inferred by the police officer and may differ from what litigants themselves say. The police data also do not allow for litigants who belong to more than one ethnic group. For these reasons, care should be taken when assessing ethnicity differences.

Key informants were asked if there were specific issues for self-represented Māori and Pacific litigants. However, in two areas (Dunedin and Christchurch), informants had few experiences in dealing with self-represented Māori and or Pacific people because of their area's demographic composition.

Quantitative data

Researchers could not separate the numbers of previous convictions and the type of case from the criminal litigants' data, which may have affected their outcomes. Regional differences were also not analysed in either the criminal summary or family jurisdictions because the sample sizes were too small to allow meaningful analysis.

3 Who are the self-represented litigants in the family jurisdiction?

This chapter aims to build a picture of who the self-represented litigants and represented litigants (in cases involving a self-represented litigant) are likely to be, in terms of demographics, case types, applicant/respondent status and previous court experience. It provides estimates of the numbers of self-represented litigants and perceptions of the change in the number of self-represented litigants over the past five years in the family jurisdiction.

Interviews with key informants, self-represented litigants and represented litigants, and demographic and socioeconomic data were used to build this picture.

The chapter is structured as follows:

- 3.1 Numbers and case types.** In this section the proportion of all cases that involve self-represented litigants, the types of cases that self-represented litigants are likely to be facing and their status as applicants or respondents are discussed. Key informants discuss whether self-representation is an increasing or decreasing phenomenon.
- 3.2 Demographics.** Gender, age and ethnicity of the self-represented litigants and represented other parties are described in this section. Comparisons are made with the data from litigants who were in cases that did not involve self-represented litigants.
- 3.3 Socioeconomic status.** Details of average education and salary levels of the subset of self-represented litigants and represented litigants are outlined in this section.
- 3.4 Previous experience with the court.** Self-represented litigants describe their prior experience as litigants in court before appearing unrepresented at their most recent hearing.

A summary of the key findings is provided at the end of the chapter.

3.1 Numbers and case types

3.1.1 Change in numbers

More than two-thirds of key informants thought the numbers of self-represented litigants through the Family Court had increased over the previous five years. The remainder felt there had been no change or could not comment.

Suggestions for the increase were mainly related to cost – more people finding it difficult to afford a lawyer or more people now ineligible for legal aid. A shortage of lawyers – especially legal aid lawyers – was also suggested by some key informants.

...there definitely has been, I think, a significant increase in self-represented litigants in the last five years ... I guess there's a few reasons as to why that might be. I guess that some of it is just general socioeconomic reasons, people not being in a position to

afford counsel. I think that access to legal aid is difficult, there are lots of lawyers now who won't do legal aid work because it's difficult. (Lawyer)

Some key informants also said that there was a change in the types of people choosing to appear without representation. In the past, many self-represented litigants were perceived to have a particular personality type (eg, grudge against the court system), but litigants representing themselves now are perceived to come from a variety of backgrounds – with financial difficulties in common, rather than personality types.

When I came in five years ago there were a smattering and they tended to be the more on-the-edge fringe kind of people, slightly eccentric, maybe lawyers themselves or some legal training ... now it's across the board. They have a profile which often relates to their financial circumstance, so if they don't qualify for legal aid and they don't have a lot of money, they fit into that middle band, then they have a go at representing themselves. (Case flow manager)

Data on the number of self-represented litigants over the past five years are not available, so we cannot determine if there is an increase. In the absence of these data, we asked court staff to record the numbers of self-represented litigants over a specified data collection period (see Methodology for detail) and asked key informants to estimate the current numbers of self-represented litigants they encounter (below).

3.1.2 Numbers encountered

There was some variation in the proportions of self-represented litigants recorded at each court during the data collection period, as shown in Table 7. Christchurch and Tauranga recorded the largest proportions of self-represented litigants; Manukau and Porirua were relatively low.

Table 7: Percentage of cases involving self-represented litigants

| Family Court | % of cases involving a self-represented litigant ¹⁵ | Number of cases involving a self-represented litigant |
|------------------|--|---|
| Christchurch | 15 | 70 |
| Manukau | 7 | 19 |
| Palmerston North | 13 | 14 |
| Porirua | 8 | 16 |
| Tauranga | 17 | 18 |

There was also a large variation in the numbers of self-represented litigants who key informants encountered. Key informants' estimates ranged from as few as one or two self-represented litigants a year, to 30–50 self-represented litigants a week. The large range in estimates did not appear to be related to their role in the court or the court from which the key informant came. However, in general, most key informants estimated that they encountered very few on a weekly basis, with fluctuations in numbers encountered from day to day and week to week.

¹⁵ This refers to the percentage of cases included in the data collection exercise and does not count cases that did not appear before a judge. See the methodology section for more detail.

*Sometimes a self-represented litigant, depending on who they are, they can ring us two or three times a day. And that might happen for two or three days a week and then we might not hear from them, but you might deal with others during that time ...
Sometimes it's lots of contacts and other times it, you might have a week free, so it just varies. (Family Court coordinator)*

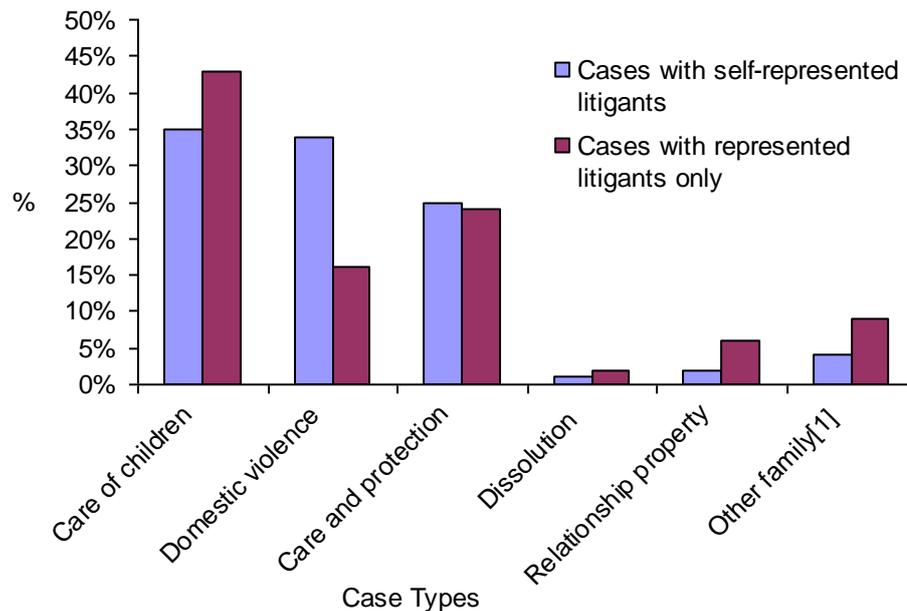
Although some key informants encounter a small number of self-represented litigants on a daily basis, these litigants often contact court staff repeatedly and take a large proportion of their time (see impact on court staff section below).

3.1.3 Case types

It must be noted that the data collection method used in this research identified cases that appeared before a registrar or judge. Cases that had self-represented litigants but did not involve a court appearance (eg, some undefended domestic violence cases) are therefore not included in the data.

Figure 1 shows the number of each type of case that went through the sample courts during the data collection period.¹⁶ Most cases involving self-represented litigants arose under the Care of Children Act 2004 or the Domestic Violence Act 1995.

Figure 1: Proportion of self-represented and represented litigants' case types



As Figure 1 shows, similar proportions of self-represented litigants and represented litigants are involved in care of children. This is also evident for care and protection cases. However, self-represented litigants were twice as likely to appear in domestic violence cases than represented litigants.

¹⁶ The self-represented and represented litigants who were interviewed are included in this sample. For an analysis of how the interviewed sample compares to the sample as a whole, see Appendix 2.

Key informants said that self-represented litigants may be involved more in care of children or domestic violence cases because the cases may be perceived as more straightforward.

Like with a lot of the care of children stuff and the guardianship stuff, we do tend to refer them onto the website if they choose not to have a solicitor because you can file a defence, it's almost, if you follow the steps and file what you're asked to file, you can get away with representing yourself. (Court registry officer)

Key informants also said that many litigants in domestic violence cases may be self-represented because of urgency. Victims of domestic violence are often told to go straight to the Family Court by police or other agencies. These litigants often self-represent to get the matter dealt with as quickly as possible.

I notice with protection orders a lot of people are representing themselves... And I think that's a time thing, just cos they need to file their application that day ... And lawyers aren't always able to respond to that critical time response. (Family Court coordinator)

3.1.4 Numbers of applicants versus respondents

Table 8 shows the roles that the self-represented litigants and the represented other party had taken during the case. Nearly half of the self-represented litigants were likely to be respondents while the represented other parties were more likely to be applicants. Interestingly, many litigants had taken the roles of applicant and respondent in their case.

Table 8: Role of self-represented litigants

| Role | Self-represented | | Represented | |
|-----------------|------------------|----|-------------|----|
| | No. | % | No. | % |
| Applicant only | 19 | 14 | 56 | 48 |
| Respondent only | 67 | 49 | 12 | 10 |
| Both roles | 51 | 37 | 45 | 39 |
| Unknown | 1 | 1 | 3 | 3 |
| Total | 138 | | 116 | |

Key informants also said that litigants may submit applications as well as respond to other applications during a case – for example, litigants beginning a case by responding to an application then later filing their own applications (or vice versa).

Some also suggested that the self-represented litigant's role often depended on the case type (eg, domestic violence or care of children) but there were mixed views on whether in these cases self-represented litigants were more likely to be applicants or respondents.

3.1.5 Characteristics of applicants versus respondents: Key informants' perceptions

Many key informants said that in the initial stages of a case at least, the self-represented party was more likely to be a male respondent. This was thought to be particularly true of protection orders and care of children cases.

Key informants often said that self-represented respondents were more likely to be angry and emotional about being involved in the process, or perceived as on the back foot and

somewhat disorganised. Self-represented applicants, on the other hand, were generally perceived as more open to assistance or support.

I think the respondents ... they're initially kind of hyped, they're kind of aggravated, they're kind of at a level anyway because they've been served with these documents, and when you're trying to explain process and there's forms that you have to fill out, and you have to deal with a lot of kind of anger and frustration before you can actually get through the process, too. Whereas applicants are usually coming because they want the help and so they're more open to what it is that you're needing to advise them. (Family Court coordinator)

Others noted that in some cases self-represented parties who start out as respondents can quickly become vexatious applicants and fire off numerous applications to regain control of the case or punish the other party. One key informant suggested this tactic might be used to redress a perceived power imbalance in the case.

3.2 Demographics

3.2.1 Age, gender and ethnicity

Most key informants said self-represented litigants were more likely to be European males, aged between 30 and 50. Confirming the key informants' perceptions, more self-represented litigants were male, aged in the 30 to 50 year bracket and identified themselves as New Zealand European (Tables 9, 10 and 11 respectively). These findings are explained in more detail below.

Table 9 shows that most self-represented litigants were male and most of the represented other party were female. Cases that did not involve a self-represented litigant were more closely split by gender. Further analyses of the litigants' gender by case type are provided in Appendix 3. About one in five of the self-represented litigants were involved in care and protection cases and other cases in which the other party was an organisation, such as Child, Youth and Family Services.

Table 9: Gender

| | Self-represented | | Represented other parties | | Other represented litigants (in cases without self-represented litigants) | |
|--------------|------------------|-----|---------------------------|-----|---|-----|
| | No. | % | No. | % | No. | % |
| Male | 91 | 66 | 18 | 16 | 893 | 33 |
| Female | 47 | 34 | 72 | 62 | 1386 | 50 |
| Organisation | 0 | 0 | 26 | 22 | 329 | 12 |
| Unknown | 0 | 0 | 0 | 0 | 135 | 5 |
| Total | 138 | 100 | 116 | 100 | 2743 | 100 |

Self-represented litigants, represented other parties, and other represented litigants in cases without a self-represented litigant were all very similar in age, averaging 37 years (see Table 10 for more detail). Most self-represented litigants and represented other parties were in the

40 to 49 year old bracket, whereas slightly more represented litigants in cases without self-represented parties were in the 30 to 39 year old bracket. The ages of many litigants in our sample were unknown.

Table 10: Litigants' age at data collection¹⁷

| Years | Self-represented | | Represented other parties | | Other represented litigants (in cases without self-represented litigants) | |
|---------------------|------------------|----|---------------------------|----|---|----|
| | No. | % | No. | % | No. | % |
| Under 20 | 3 | 2 | 1 | 1 | 34 | 1 |
| 20–24 | 9 | 7 | 5 | 4 | 141 | 5 |
| 25–29 | 13 | 9 | 10 | 9 | 239 | 9 |
| 30–39 | 30 | 22 | 17 | 15 | 605 | 22 |
| 40–49 | 38 | 28 | 22 | 19 | 502 | 18 |
| 50–59 | 5 | 4 | 7 | 6 | 118 | 4 |
| 60+ | 1 | 1 | 0 | 0 | 59 | 2 |
| Unknown | 39 | 28 | 54 | 47 | 1045 | 38 |
| Total | 138 | | 116 | | 2743 | |
| Average age (years) | 37 | | 37 | | 37 | |
| Median age (years) | 38 | | 38 | | 37 | |

Table 11 shows that in each group, litigants were predominately identified as New Zealand European. Māori made up the second most common group of both self-represented litigants and represented other parties.

When compared with the cases that did not involve self-represented litigants, self-represented litigants were more likely to identify as New Zealand European. Māori appeared self-represented at about the same rate that they appeared in the cases that did not involve self-represented litigants. Pacific people were less likely to appear in cases with self-represented litigants than in cases with represented litigants only. Ethnicity data were not available for many of the litigants.

Table 11: Litigants' ethnicity from the interview sample and data collection sample

| | Self-represented | | Represented other parties | | Other represented litigants (in cases without self-represented litigants) | |
|-----------------------|------------------|----|---------------------------|----|---|----|
| | No. | % | No. | % | No. | % |
| New Zealand European | 81 | 59 | 58 | 42 | 920 | 34 |
| Māori | 19 | 14 | 11 | 8 | 449 | 16 |
| Māori and NZ European | 1 | 1 | 0 | 0 | 0 | 0 |
| Pacific people | 5 | 4 | 4 | 3 | 322 | 12 |
| Other | 3 | 2 | 0 | 0 | 22 | 1 |
| Asian | 4 | 3 | 4 | 3 | 146 | 5 |
| Unknown | 25 | 18 | 39 | 28 | 884 | 32 |
| Total | 138 | | 116 | | 2743 | |

¹⁷ Age is taken as at 1/1/2007.

Key informants also noted that aside from the predominance of self-represented litigants identifying as New Zealand European, there were regional differences in ethnicities. In Manukau Family Court, Indian and South African self-represented litigants were also believed to be common. These groups of litigants were thought to struggle with cultural differences between the family law in New Zealand and in their home countries, and responded to this conflict by representing themselves.

3.3 Socioeconomic status

This section provides additional details, such as the highest education levels completed and salaries of the subset of self-represented litigants and represented litigants who were interviewed for this study.

Most key informants said self-represented litigants were more likely to be middle class and middle income earners. Some said that self-represented litigants were commonly unemployed or self-employed, which allowed them the time to run their own case. In Tauranga, Palmerston North and Porirua, key informants mentioned that self-represented litigants were often well educated.

Table 12 shows the majority of both the self-represented and represented interview samples had predominately secondary school qualifications only. About a third of both of these groups of litigants had a tertiary degree.

Table 12: Highest education level completed of interviewed litigants sample

| | Self-represented | | Represented | |
|---------------------------------------|------------------|----|-------------|----|
| | No. | % | No. | % |
| Less than 2 years of secondary school | 8 | 15 | 1 | 5 |
| Secondary school (3 years or more) | 25 | 46 | 11 | 52 |
| Vocational or trade qualification | 3 | 6 | 3 | 14 |
| Tertiary degree or higher | 17 | 31 | 6 | 29 |
| No answer | 1 | 2 | 0 | 0 |
| Total | 54 | | 21 | |

Although self-represented litigants were most commonly in paid full-time employment, more than a fifth were unemployed (see Table 13).

Table 13: Employment status of interviewed litigants sample

| Employment status | Self-represented | | Represented | |
|--|------------------|----|-------------|----|
| | No. | % | No. | % |
| Paid employee working full time (30+ hours p/w) | 21 | 39 | 3 | 14 |
| Paid employee working part time (less than 30 hrs p/w) | 3 | 6 | 9 | 43 |
| Self-employed and not employing others | 7 | 13 | 3 | 14 |
| An employer of other persons in own business | 5 | 9 | 0 | 0 |
| Working in a family business or farm without pay | 0 | 0 | 0 | 0 |
| Looking after the family/home | 1 | 2 | 3 | 14 |
| Not currently employed & receiving benefit (eg, unemployment, sickness, ACC etc) | 12 | 22 | 3 | 14 |
| Student | 0 | 0 | 0 | 0 |
| Retired | 0 | 0 | 0 | 0 |
| Other | 4 | 7 | 0 | 0 |
| No answer | 1 | 2 | 0 | 0 |
| Total | 54 | | 21 | |

Several self-represented litigants from our interview sample did not answer the question about income. Of the self-represented litigants who did, about a third earned up to \$20,000, about a third earned between \$20,001 and \$40,000, and the remainder earned more than \$40,001. Represented litigants were more likely to fall into salary brackets of either \$15,000–\$20,000 or \$25,000–\$30,000, with a clear majority of these litigants earning less than \$30,001 a year (see Table 14).

Table 14: Annual income before tax of interviewed litigants

| Annual income before tax | Self-represented | | Represented | |
|--------------------------|------------------|----|-------------|----|
| | No. | % | No. | % |
| Zero | 1 | 2 | 0 | 0 |
| \$1–\$5,000 | 0 | 0 | 1 | 5 |
| \$5,001–\$10,000 | 4 | 7 | 0 | 0 |
| \$10,001–\$15,000 | 4 | 7 | 1 | 5 |
| \$15,001–\$20,000 | 5 | 9 | 5 | 24 |
| \$20,001–\$25,000 | 4 | 7 | 1 | 5 |
| \$25,001–\$30,000 | 2 | 4 | 5 | 24 |
| \$30,001–\$35,000 | 5 | 9 | 1 | 5 |
| \$35,001–\$40,000 | 3 | 6 | 2 | 10 |
| \$40,001–\$50,000 | 5 | 9 | 1 | 5 |
| \$50,001–\$70,000 | 6 | 11 | 2 | 10 |
| \$70,001–\$100,000 | 2 | 4 | 1 | 5 |
| \$100,001 or more | 4 | 7 | 1 | 5 |
| No answer | 9 | 17 | 0 | 0 |
| Total | 54 | | 21 | |

3.4 Past experience in the court setting

3.4.1 Self-represented litigants

A clear majority (about four-fifths) of self-represented litigants had previous court experience. Experience in the criminal jurisdiction was common, with more than half having previous involvement in a criminal case, and most of these litigants had been in three or more cases.

Some litigants had experienced the criminal jurisdiction through their professions, and a few had been witnesses or had sat on a jury. A minority of self-represented litigants had involvement with the Family Court other than the current case (although many of the current cases had been in progress for many years).

Of the self-represented litigants who had been in other cases, about half had always used a lawyer in the past. About a third had represented themselves in the criminal jurisdiction, but only a small minority had previously represented themselves in the Family Court. Just under two-thirds of the self-represented litigants had used lawyers outside court for purposes such as buying or selling property, or for business transactions.

3.4.2 Represented litigants

More than half of the represented litigants had no previous experience in any court. Others had been defendants in the criminal jurisdiction (three of whom had each been in multiple cases). Only two other litigants had experienced other cases in the Family Court; one litigant had been involved in the Disputes Tribunal; one litigant had been a witness in the criminal court; and another had sat on a jury.

Of these represented parties with previous court experience, all but one (whose lawyer had walked out on the day of the hearing) had used lawyers in the past.

When asked about other experience with lawyers outside court, just over half had used lawyers, most frequently for buying property, writing wills, work, and in relation to trusts (some litigants had used lawyers for more than one purpose).

3.5 Summary

- A high proportion of key informants thought the numbers of self-represented litigants had increased over the past five years. The most likely reason suggested was cost. This is explored in more depth in the next chapter.
- Data recorded during the study period showed a large variation (across courts) in the numbers of litigants appearing without representation. In the absence of trend data it is not possible to draw any conclusions on whether and how the patterns are changing.
- Most self-represented litigants faced care of children and domestic violence cases. Care of children cases were also the most commonly faced across all represented litigants. There was a larger proportion of self-represented litigants than represented litigants in domestic violence cases.
- Nearly half of self-represented litigants appeared as respondents only with a small number appearing as applicants only. Conversely the pattern for represented parties showed almost half were applicants only with a small number being respondents only. Many self-represented litigants switched roles during their case so could be both respondents and applicants. Self-represented respondents were often perceived by key informants as more likely to be angry and emotional, and somewhat disorganised.

- More self-represented litigants were males, mainly aged between 40 and 49. Represented parties were similar in age and more likely to be female. Most self-represented litigants were likely to identify as New Zealand European followed by Māori. This pattern is similar to all litigants going through the Family Court.
- Socioeconomic information was only available for those interviewed in the study. The small number makes it difficult to draw strong conclusions. More than half of all self-represented and represented litigants had secondary school qualifications only. Self-represented litigants were often paid full-time employees earning at least \$30,000 a year. In contrast, represented litigants were more likely to be part-time employees earning less than \$30,000 a year.
- Many self-represented litigants from the interview sample had previous court experience, commonly in criminal cases. In contrast, most represented litigants had no prior court experience.

4 Why do litigants appear self-represented in the family jurisdiction?

This chapter examines the reasons why litigants appear with or without a lawyer. Key informants, self-represented litigants and the represented litigants (who were in cases with self-represented litigants) were asked why litigants appeared either with or without representation.

This chapter is structured as follows:

- 4.1 Reasons for appearing with no representation.** Self-represented litigants, key informants and represented litigants comment on why litigants appear without representation. The litigants' experiences with lawyers and legal aid are also presented to provide a richer context through which to understand the litigant's rationale for choice of representation.
- 4.2 Reasons for choosing to have a lawyer.** Represented litigants' rationale for choosing to appear with representation are discussed in this section.
- 4.3 Future choice of representation.** Self-represented litigants' and represented litigants' views are presented concerning whether or not they would choose to have representation in the future.

A summary of the key findings is provided at the end of the chapter.

4.1 Reasons for appearing without representation

4.1.1 Cost

Self-represented litigants

Cost was the main reason stated by more than half of the self-represented litigants for not having a lawyer. Generally this was because they were ineligible for legal aid but still felt unable to afford a lawyer. One litigant felt the \$50 cost of a legal aid application was beyond their reach.

Straight out, I can't afford it and I can't get legal aid.

In some cases litigants had previous legal bills which meant they felt they could no longer afford representation or did not want to become further in debt.

I had applied for custody in my first legal battle with the children's father and I spent about \$80,000 and I could not afford, I'm still paying the other lawyer from my first case. So in this one I just could not, absolutely could not afford it.

One litigant said it was not worth the cost as the lawyer did not feel confident they could win the case.

Given the general consensus that self-represented litigants felt they could not afford a lawyer but were also ineligible for legal aid, legal aid applications were investigated further. Using the Legal Services Agency data of applications and grants awarded to all self-represented litigants across the five courts during the study period, in conjunction with interviews with self-represented litigants, a richer picture emerged.

Across the five courts, 66 percent of self-represented litigants from the original data collection periods were matched to the Legal Services Agency records. The number of total applications for legal aid ever received from this group up until 31 July 2007 was examined. It revealed that 72 percent (58 litigants) had applied for legal aid in the past. Most of these litigants had at least one application approved at some stage. This indicates they were aware of legal aid and had been eligible for legal aid at some time.

Interviewed litigants had become aware of legal aid through a variety of sources, including friends and family, the court, lawyers, case workers and the Internet. Others had become aware of legal aid through 'general knowledge'.

Very few people had applied for legal aid during the study's data collection period. Nine percent (7 litigants) of all self-represented litigants had applied for legal aid. Five of these individuals had applications awarded during this time. Of the other two, one had an application granted that they had applied for before the data collection period, and the other had applied but was still waiting for an outcome.¹⁸ It should be noted that because some Family Court cases take a long time to resolve, some of the self-represented litigants may have applied for legal aid before the data collection period.

To examine this further, interviewed self-represented litigants were asked if they had applied for legal aid for their present case. Supporting the Legal Services Agency data findings, most (more than two-thirds of the interview sample) had not applied for their present case. Most of these litigants thought they would not have been entitled because they earned more than the threshold (although some stated they were not aware of the actual threshold limit).

Others did not apply for legal aid because they thought getting a lawyer would either drag out their case or because they thought their case was straightforward enough not to warrant a lawyer.

Of the self-represented litigants from the interview sample who had applied for legal aid, about half had been awarded legal aid and had used a lawyer in the beginning. However, they later became self-represented either because of dissatisfaction with their lawyer, or, for two of the litigants, because further legal aid was unavailable.

¹⁸ Although very similar proportions of litigants had applied for and been granted legal aid, it cannot be assumed that legal aid granted within this period necessarily correlates to the applications submitted. It is possible that an award granted to an individual relates to an application submitted before the data collection period, while applications made within the period might not be determined until it is over.

Key informants

Cost was also the most common reason key informants said litigants represented themselves – self-represented litigants' income being above the threshold for legal aid but possibly insufficient to pay for representation. Key informants said that often in care of children cases, men were more likely to be working and therefore assumed to be ineligible for legal aid.

In some cases, litigants are thought to have chosen to avoid the cost of representation or to avoid having a charge put on their home by the Legal Services Agency.

Echoing sentiments of some of the self-represented litigants earlier, some key informants suggested litigants may have already spent thousands of dollars on lawyers and simply run out of funds. They may also have been awarded legal aid in the past but were no longer eligible.

Certainly cost is a very significant factor. A lot of people tell me that they've spent anywhere between \$5,000 and \$100,000 and they don't feel that it's got them where they would like to be. (Men's group advocate)

4.1.2 Previous experiences with lawyers

Self-represented litigants

The second most common reason for self-representing was previous bad experience with lawyers (cited by about a fifth of the self-represented litigants).

More than half of the self-represented litigants had used a lawyer at some stage of their case. Most of these litigants began their cases with representation, but then became self-represented for a variety of reasons; most commonly because they were unhappy with their lawyer's performance.¹⁹

I did originally have representation, however I dismissed them due to the fact that the instructions given they did not follow ... they actually took actions that I did not agree with.

In some cases they said the lawyers were colluding with the other party.

My lawyer before withdrew because she thought I was too hard on her and I'm saying to her, well, you've got to be honest with me. You don't go behind my back. If I tell you something, and say, well look this is what I want to do, and that's the plan I'd like to go towards and I want you to put it on paper so we can present it to the court, I don't expect you to ring up my partner's lawyer and tell him what's going on and what I'm going to do, or what my next move is. I don't expect you to do that and I don't expect them to turn round and courier it back to CYFS and saying well this is what's going to happen, this is what he's going to do and you know, to me that was just double standards.

¹⁹ A smaller number of litigants became unrepresented because they could no longer afford to pay a lawyer or were no longer eligible for legal aid.

In other cases, litigants (both those who had a lawyer previously and others who had not) thought that the presence of lawyers would make the case more difficult to resolve, either indirectly by aggravating the other party, or by the lawyer trying to make money by dragging the case out.

I decided not to bring her into the courtroom because I felt that it would exacerbate the situation and, I mean he had been threatening to do all kinds of things with lawyers, and I felt that it wasn't productive or in the interests of my daughter to do that.

Of those litigants who had never had representation, a few had difficulty engaging a lawyer. Another had been encouraged by a local men's group not to engage a lawyer.

Key informants

Key informants also said that often a litigant's decision to self-represent could be because they distrusted lawyers or the 'system' more generally. This was frequently attributed to previous bad experiences with lawyers, either in the form of poor outcomes or by lawyers not agreeing to take the path the litigant would like.

A lot of them are the litigious people that for whatever reason they have an axe to grind and often they will go to a lawyer and be given advice they don't like and will go off and file their own proceedings. (Lawyer)

Echoing earlier sentiments, some key informants said the litigant's distrust of lawyers was from misunderstanding, where the litigant felt the lawyer was not being proactive enough, or that the lawyer was colluding with the 'enemy' through their professional relationship with the other party's lawyer.

There are a lot of people who misunderstand their solicitor ... and they feel they're being sold down the river even by their own solicitor. (Men's group advocate)

Key informants also noted that issues arose when litigants were unable to find a lawyer to act for them. In Palmerston North and Christchurch, many key informants felt not enough lawyers were taking on legal aid work to cover the demand, or they were not able to represent the client within the time set by the court, such as when a notice of defence needed to be filed within 14 days or when a protection order was wanted that day. In other courts, the process of finding a lawyer was thought to put off litigants.

Key informants noted that in other cases some litigants were refused by lawyers because they were known to be difficult clients.

...there's a number of my litigants that have mental health issues and so they have difficulty finding a lawyer who will actually take them on. Or there's a couple of litigants who have been through a number of lawyers in the area and it's such a small area for lawyers that everybody knows of them and won't take them... (Court registry officer)

4.1.3 Ability to represent themselves

Self-represented litigants

Many self-represented litigants said they knew the case better than a lawyer and could present the case more accurately and effectively firsthand. In one case a lawyer had advised the litigants that they would benefit from this authenticity. A few litigants also felt they were more motivated than a lawyer to achieve the best outcome.

I felt that I was more than capable of presenting to the court quite clearly and concisely what I was hoping to achieve and I felt that it wasn't necessary to have representation ... because this is such a very, very personal thing for a parent. I just felt that my motivation levels were higher.

Several litigants said they were capable of doing a good job by themselves and it would not be worth the expense of engaging a lawyer.

Other litigants said they did not need a lawyer because they were not contesting, or did not want to 'win' the case, or they thought the outcome would be the same either way. Others wanted to retain full control and maximise their involvement in the case.

I said no, I want to do it myself. I want to be 100% involved with everything.

A few said that because they had the truth on their side they should not need a lawyer.

The children's lawyer told me ... go get a lawyer. I said no. And she couldn't emphasise enough, she said, don't you understand this is serious? I said, yes I know it's serious, but it's not true. That's the difference. And the truth will come out, I said don't you worry about it. No lawyer's going to bring the truth out. It's going to come out by itself.

One self-represented litigant admitted to misjudging the seriousness of the case.

And yet again, didn't know that it was this serious that I needed to really sort my crap out and do something about it ... thought it would all be sorted and it would go away.

Key informants

Many key informants also said the litigants may feel capable of doing the job themselves. They noted that litigants may think they knew their case better than anyone else, and they may also have previous experience with the court and feel more comfortable with the procedures as a result.

I think a lot of people don't see why they should have to get a lawyer ... so, it's a do-it-yourself mentality I think to a certain degree. (Community Law Centre representative)

Some key informants said the litigants may have seen others represent themselves or been encouraged to do so by men's or other interest groups.

[Mens Action Groups]... are vocal, they are out there ... and encouraging men to do these things for themselves, with assistance and advice from them. (Lawyer)

They also said the litigants may not feel they needed a lawyer in cases where both parties agreed but wanted to formalise arrangements.

Others said the approachable face of the Family Court was encouraging litigants to represent themselves.

I think also it's probably due to some extent in the Family Court with the court endeavouring to become client friendly ... they say they're there to help, so people will bowl along. (Lawyer)

Similarly, the information available to litigants gave them a sense that they could run the case without legal representation.

There's so much information that they get hold of, they read it and believe that they can do it on their own. So they come in, a lot of the documents we send out have names on them, I mean, contact details saying if you can't afford a lawyer, see your local Family Court for assistance straight away. So they come to us straight away. But the more information we put out there, the more the self-litigants come in. (Court registry officer)

Some key informants said that litigants were being referred to the Family Court by agencies and others such as police, and once at the court they were reluctant to seek representation.

So there are a lot of women representing themselves in protection orders. And they want to do it now. So everybody wants to do stuff now, so you have an incident of domestic violence for example, well they go to the police, the police will say well pop into the Family Court. Which isn't necessarily helpful but once they come here they don't necessarily want to be sent away again. (Family Court coordinator)

Confirming some of the self-represented litigants' beliefs, some key informants said litigants may represent themselves to maintain control of the case and to ensure their point was not diluted by their lawyer.

Some key informants were concerned about one litigant becoming self-represented and the other party following. The irony of this is that it most commonly happens in protracted cases which often, as a result, become even more protracted.

In other cases, the litigant was viewed as resentful at being dragged through the process and did not want to pay, as a protest to the other party. The litigant may use self-representation to continue abusing the other party.

There's also the ability to more directly confront the court and the other party rather than have the personal impact blunted by having to go through a legal representative. (Lawyer)

4.2 Reasons for choosing to have a lawyer

To provide a context for understanding why litigants choose to have a lawyer, represented parties were asked whether they had applied for legal aid and their use of lawyers throughout their current case.

About half of the represented litigants said they lacked the knowledge of the law and of the way the courts operated to be able to represent themselves and get the best possible outcome. Some also said that lawyers could help them to understand their rights and what results they could expect.

I think a lawyer's experience is extremely valuable even if you think you can see the case crystal clear. The thing they can do is explain the precedent and the law ... what appears logical to us lay people may not always necessarily be following what you may expect in court.

Some were too busy caring for children or were too emotionally drained to represent themselves.

Several of the represented parties said they needed a lawyer as a barrier between them and the other party, either for safety or because they felt unable to reason with the other party without assistance.

Two represented parties had planned to represent themselves. One litigant had represented himself at one appearance but found it too complex to continue without a lawyer. The other was advised against doing so by a friend who had been through the process.

Half of the represented litigants had kept the same lawyer throughout their case. A few had been self-represented in the earlier stages of their case but had maintained the same lawyer since enlisting them.

4.2.1 Legal aid

To compare the earlier findings of self-represented litigants' legal aid applications with represented litigants, Legal Services Agency data were used to examine the proportions of applications submitted and grants awarded from all represented litigants in cases with self-represented litigants going through the court during the study period. This was complemented by interviews with represented litigants about legal aid.

Across the five courts²⁰ the number of total applications for legal aid ever received from this group up until 31 July 2007 was examined and 93 percent (55 litigants) had applied for legal aid at some time. All but one of the represented litigants had an application granted on at least one occasion. This indicates that most of the represented litigants were not only aware of legal aid but had been eligible for legal aid at some time.

²⁰ Note that only 69% of litigants were matched to the Legal Services Agency records due to incomplete details.

Most of the interviewed represented litigants had become aware of legal aid through their own lawyers or previous personal, or family, court experience. A few had become aware through Work and Income New Zealand or Community Law Centres.

During the data collection period for the study, 32 percent (19 litigants) of the represented litigants had applied for legal aid. All of these litigants had legal aid granted during this period.²¹ More than half of the interviewed represented litigants had applied for legal aid and all but one had it approved for their current case. Of the remainder, one did not apply out of principle (did not want to be seen as getting a handout), and the others did not apply because they thought they would be ineligible because of their incomes.

Comparing legal aid findings across self-represented and represented litigants, the majority of both groups had been eligible and awarded legal aid at least once in the past. However, more represented litigants had applied for legal aid for their current cases than self-represented litigants.

4.3 Future representation

Both self-represented litigants and the represented other parties were asked whether they would prefer to have a lawyer in future if they could.

4.3.1 Self-represented litigants

The self-represented litigants were divided fairly evenly in their opinions about whether they would prefer to have a lawyer in the future if they could.

Of those who suggested that they would rather have representation, several suggested that if they could afford representation they would prefer it. Common reasons included wanting the benefit of the lawyer's experience in court, or because bad experiences in their current cases had put them off self-representation.

Of the self-represented litigants who would prefer to appear without a lawyer in the future, most thought that appearing in court was straightforward enough to not require a lawyer. Others did not trust lawyers or felt they had gained enough experience through their current cases to handle court in the future.

A small number suggested that whether they used a lawyer in the future would depend on the type of case they were appearing for. They felt they would prefer a lawyer's assistance for cases that were technical (eg, property) or serious (eg, criminal court proceedings), whereas they felt confident enough to represent themselves in more straightforward Family Court matters.

²¹ It can not be assumed that legal aid granted within this same period necessarily correlates to the applications submitted. Some of these awards granted might relate to applications submitted before the data collection period.

4.3.2 Represented litigants

All but one of the represented family litigants confirmed that they would use a lawyer again (the one exception was intending to train as a lawyer).

The litigants generally said they did not have the legal knowledge or expertise necessary to represent themselves. One litigant said that for a simple matter such as in the Disputes Tribunal they would go it alone, but for the criminal or Family Court they would choose a lawyer. Another litigant felt they would definitely use a lawyer for advice, but may consider actually appearing in court alone.

4.4 Summary

- The main reason suggested by self-represented litigants, and echoed by key informants, for appearing without representation was cost. Most self-represented litigants had been granted legal aid at some time in the past, but few had applied for their current case, usually because they felt they were ineligible.
- The second most common reason given for appearing self-represented was a bad experience with, or distrust of, lawyers. Many had used lawyers previously but became self-represented mainly because they were unhappy with their performance.
- Other reasons included litigants saying they knew their case better than a lawyer and were capable of representing themselves.
- Key informants agreed that self-represented litigants often felt this but also pointed out that sometimes litigants were unable to find a lawyer to act for them, or were refused by lawyers as they were known to be difficult clients.
- Represented parties primarily chose to have a lawyer because of their own lack of legal knowledge or because they did not want to deal with the other party directly. Like the self-represented litigants, most had legal aid approved in the past, and nearly one third had applied for legal aid for their current case. Comparing across groups, a higher proportion of represented litigants had applied for legal aid for their current case than self-represented litigants.
- Most represented parties confirmed they would use a lawyer again in the future. Self-represented litigants were divided in their opinions about whether they would prefer to have a lawyer in future if they could.

5 Impacts on the court appearance in the family jurisdiction

This chapter outlines the experiences of the interviewed litigants before their court hearing and at their most recent court appearance. The views of self-represented litigants and represented parties in cases with a self-represented party are discussed.

The chapter is structured as follows:

- 5.1 Attempts to resolve the issue before most recent court hearing.** Litigants describe their experiences before their court hearing about what attempts were made to resolve their issues. This includes counselling (to resolve their issues before they appeared in court) and/or mediation (to resolve disputes and reach agreement to avoid a defended hearing).
- 5.2 Impact of appearing self-represented at most recent hearing.** Appearing without representation can affect many different stages of the court process. A lack of representation may affect the individuals' understanding of why they are going to appear in court; what is going to happen and/or where to go; what was actually said at the hearing (including the types of questions litigants were asked and their perceived opportunity to have their say); and their perceptions of the hearing outcome. To determine whether there is a difference in these types of perceptions that can be attributed to a lack of representation, these issues were discussed with represented and self-represented litigants where appropriate.

A summary of the key findings is provided at the end of the chapter.

5.1 Attempts to resolve the issue before court hearing

5.1.1 Self-represented litigants

Half of the self-represented litigants had been through court-ordered counselling and/or mediation before their most recent appearance. Of those who had not, many said the other party had refused to go to mediation or counselling, or that mediation/counselling was not appropriate given the case matter (eg, protection order).

5.1.2 Represented litigants

More than two-thirds of represented litigants had been through court-ordered counselling and/or mediation. The others had not had any counselling or mediation because it was inappropriate to their case (eg, protection order), or the other party was unwilling to take part.

These findings from both the represented and self-represented litigants, suggest that the parties were motivated to try to resolve their cases before it reached a court hearing.

5.2 Impacts of appearing self-represented at recent hearing

5.2.1 Understanding what was going to happen in court

Self-represented litigants

About two-thirds of self-represented litigants understood why they had to go to court for their last appearance and what was going to happen. Most of these litigants had received the information from the court or from contact with court staff.

A subgroup of 22 of the litigants was asked how long before their appearance they received this information. Most estimated they received notification about their hearing about 2 to 4 weeks before (ranging from four months before the hearing to the day after the hearing).

Most of the original interview sample of self-represented litigants knew where to go for their court hearing through the letter sent from the court with their hearing details, and/or from their previous experience in the court.

Represented litigants

Most represented litigants had a good understanding of what was going to happen in the court and why they had to be there, obtained through their lawyer and/or from letters from the court. The length of notice litigants had of their upcoming hearings ranged from the day before the hearing to two to three months before, averaging 1 to 2 weeks before.

5.2.2 Understanding and hearing the court proceeding

Self-represented litigants

More than two-thirds of the self-represented litigants understood most or all of what was said at their last court appearance.

Some of these litigants said the judge had kept the language simple on their behalf, others indicated they were not afraid to speak up when they did not understand.

The judges were great actually. They were, particularly the last one, they were really, what was it, kind of natural, you know? Like I've seen judges in courtrooms where lawyers are present and they were totally different. They were just, they talked to us like normal people.

For the minority of those who did not understand what was said in court, obstacles were the terminology and/or a lack of familiarity with the legislation.

Only a small minority of the self-represented parties said they had difficulty hearing in the courtroom.

Most litigants were asked questions by the judge at their court appearance. Most questions were to clarify facts and points of argument, whether the self-represented litigant understood the judge's decision/ruling, or if they had anything more to say.

Of those who were asked questions from the judge, most felt comfortable with answering and were happy to because it advanced their case. A few felt upset because of the case matter or they were nervous. Most litigants felt they had a choice whether or not they wanted to answer the questions.

5.2.3 Opportunity to have their say

Self-represented litigants

More than half of the litigants said they had been given a fair opportunity to have their say at their most recent court appearance.

...there was something really important to me that hadn't been addressed and I felt quite able to say 'excuse me, your honour, there's something I need to say.'

The remainder did not feel they had been given a fair opportunity. The reasons included that the other party's lawyer, or the judge, cut them off; they felt the other party had been given preferential treatment to express themselves; they thought the judge had already made up their mind on the case before the hearing; or they wanted more time to have their say.

Represented litigants

More than two-thirds of the represented litigants said that the other party in the case had a fair opportunity to have their say in court. Of the remainder, most were unsure (some had not been present at the hearing) and only a small minority thought the other party had not been given a fair opportunity.

Similarly, most of the represented parties felt their lawyer had a fair opportunity to have a say on their behalf, (although two litigants suggested their lawyers did not do a good job). The remainder did not know and one litigant thought the judge had focused on the self-represented litigant more than on their lawyer.

5.2.4 Understanding and satisfaction with outcome of latest hearing

Understanding: Self-represented litigants

A large majority of self-represented litigants said they understood the outcome of their last appearance in court and had a good idea of what was going to happen next.

A small number said they did not know the outcome, and fewer still felt they were unclear on some aspects of the outcome or the next steps. Of those who were somewhat unclear, a few were able to get clarification by talking to court staff, or friends and family.

Satisfaction and fairness of outcome: Self-represented litigants

Almost two-thirds of self-represented litigants were satisfied with the outcome and considered the outcome fair. Most of these litigants had received the outcome they wanted.

My daughter's getting a fair hearing which is the main thing. And I feel, but my former wife and I are as well. You know, it's definitely very fair to the three parties.

A few other litigants were satisfied but did not feel that the outcome was fair. They were satisfied with the court's involvement but were unhappy with the other party in the case.

From my view, um, I think that the court has to portray going through due process so that everybody is consulted and that steps are taken to ensure that things are complete. Do I think it's fair in that respect? Yes I do. Do I think it's fair how I even got to this point? No!

Less than a third of the self-represented parties were not satisfied with the outcome and did not consider it fair. Half of them felt the law or the result in general was not fair. The rest were evenly divided between those who felt the other party and/or their counsel was being vindictive and those who felt that the court had not considered the relevant facts.

A very small minority of the self-represented litigants did not feel able to comment on the fairness of the system.

Satisfaction and fairness of outcome: Represented litigants

More than half of the represented litigants were satisfied with the outcome of their last appearance and felt that the outcome was fair.

The courts haven't been the problem here, it's been everything that comes through over and over with my ex-partner throwing things out every five seconds to hopefully try and do me over every time. So it's not actually the courts that are tying this up so much ... they're basically doing the best that they can with what's been thrown at them really.

The remaining represented litigants were not satisfied with the outcome at their last appearance and did not consider it fair. Reasons included feelings that the decision was unfair, that the case was drawn out unnecessarily, they did not feel well represented by their lawyer, or because the self-represented party had not turned up on the day (affecting the decision in one case, and adding expense for another).

5.2.6 Outcome with a lawyer

Self-represented litigants

More than half of the self-represented litigants felt they would have received the same outcome if they had a lawyer representing them. Some felt that not only would the outcome have been the same but also they would have suffered other effects such as making the case more drawn out or having less say in the matter.

I don't think the outcome would have been any different ... It probably would've taken a little bit longer to get to the point that I'm at now because of the meandering that lawyer[s] have a habit of doing.

One litigant felt the outcome would be the same because they had been adequately supported by the lawyer for child.

I don't think a lawyer could have done much more than I did ... and really at the end of the day, counsel for kids basically run how things go...

A few litigants felt they would have got the same result because of their skills or the support they could access, but felt that others may not have been equipped to get the same outcome.

Just over a quarter of the self-represented litigants felt they would have received a better outcome with representation. One self-represented litigant noted that although the outcome would have been better, paying the lawyer would mean they had no means to support the children.

A few litigants felt the outcome, or the process in general, would have been worse for them if they had been represented.

5.2.7 Impact on the case

Represented litigants

All but two of the represented litigants said their case had been affected by self-represented parties filing numerous petty applications, lying, not providing information or their responses on time, and the information presented being more emotionally charged.

Definitely now that he's representing himself, things are a lot more awkward and certainly no, a lot of demands on one side but never answering any questions that are coming back by way of a response. It makes things difficult, whereas if he had a lawyer then I'm sure his lawyer would say right well we do need to answer this, if you want to get this information you need to answer these things first. That makes it hard.

Just under half of the represented litigants felt the outcome would have been the same if the other party had been represented. The remainder felt the outcome may have been different – two-thirds of those thought a lawyer would have objected to the orders, or pushed for a more favourable outcome for the self-represented party.

I would have thought that if she had a lawyer, her own lawyer might have said, hang on a minute, you can't make an order.

A few represented parties felt that the outcome had been more in their favour because the self-represented party had made a bad impression on the judge.

The remaining third of the represented litigants said lawyers would have either advised the self-represented party not to take the case to court or helped to negotiate a settlement earlier in the case.

A represented litigant in a domestic violence case felt that a lawyer would have encouraged the other party to take responsibility for their actions.

...if he had a lawyer it would have been a lot easier and it would, he would understand the consequences a lot clearer, but because he's representing himself, him in his own frame of mind doesn't think it's his fault.

5.3 Summary

- Most of the self-represented and represented litigants had been to or wanted to attend mediation and/or counselling before their court hearing. Many of those who did not have mediation/counselling did not do so because the other party refused to take part. For others, counselling/mediation was inappropriate for their case matter.
- Most represented and self-represented litigants had a good understanding of why they had to appear, what was going to happen, and where they had to go for their most recent appearance.
- At their most recent hearing, most self-represented litigants understood most or all of what was said and were generally happy to answer questions from the judge. Most had a good understanding of their outcome and what was going to happen next.
- Just over half the self-represented litigants said they had been given a fair opportunity to have their say. Others said the judge or other party's lawyer had cut them off, they wanted more time to speak, or they felt the other party had been given preferential treatment. Most represented litigants said that the self-represented litigant and their own lawyer had both been given a fair opportunity.
- Most self-represented and represented litigants thought the outcome was fair. More than half the self-represented litigants thought their outcome would have been the same if they had a lawyer. In contrast, half of the represented litigants said the self-represented litigant would have benefited from having a lawyer, or that the case would have been resolved earlier or not made it to court at all if the other party was represented.

6 Impacts on the case in the family jurisdiction

The previous chapter discussed self-represented litigants' experiences at their most recent hearing and the effect of self-representation on their hearing outcomes. This chapter examines the effect of self-representation on the case *overall* and on the *speed* with which these cases progress through the court system. The information for this chapter comes from interviews with self-represented litigants, the represented other party and key informants, and data from the Court Management System (CMS).

The chapter is structured as follows:

- 6.1 Impact on case outcomes.** Key informants describe their perceptions of the impacts of self-representation on the resulting case outcomes. Data on the outcomes that self-represented litigants receive are also presented.
- 6.2 Impact on case progression.** Key informants, self-represented and represented litigants' views are discussed regarding the impact of self-representation on the way a case progresses through the court system. Data analyses are presented which determine the effect that self-representation has on case progression.

A summary of the key findings is provided at the end of the chapter.

6.1 Impact on case outcomes

In the previous chapter, most self-represented litigants and many represented litigants said they would have received the same outcome from their hearing regardless of whether the self-represented party had a lawyer. Most also felt the outcome was fair. Although these questions were asked in the context of fairness and whether self-represented litigants would have had the same outcome at their *most recent hearing*, their answers also provide some insight into the perception of their case in *general*. It is possible these questions may have also been interpreted this way.

6.1.1 Fair outcomes

Key informants

Echoing similar sentiments mentioned by the represented and self-represented litigants in the previous chapter, all but one key informant felt the self-represented litigants did receive fair outcomes. This was commonly attributed to judges taking extra care to ensure they were accommodated by the court.

...The judges themselves often go to lengths to ensure that there is fairness to things and hearings, situations and pre-hearing stage because I think there is a risk that if they didn't do that, there'd be grounds for appeal. But I think they do go to quite extraordinary lengths sometimes. (CYFS lawyer)

Almost a third of key informants said outcomes were only fair based on the information presented to the court. They believed litigants could disadvantage themselves by not presenting all the relevant facts, not filing the most suitable applications for the circumstances, or by presenting an unfavourable view of themselves to the court (which may not have been shown if a lawyer had represented them).

The real danger is that the judge doesn't actually understand the self-litigant's position. And the self-litigant is going to come across in court as being very aggressive ... Whereas if the lawyer was there the dealings would be with the lawyer and the judge wouldn't really know how aggressive this man was at all. (Judge)

Some said the quality of information and how it was presented by the litigant depended on how hard the self-represented litigant worked, how articulate they were and how clear-cut the case was.

To examine whether a litigant's outcome was affected by self-representation, we wanted to analyse the outcomes of self-represented litigants in our data set. However, most cases in the data set were unresolved at the time of writing so we did not have decisions on overall outcomes. In the absence of this information, a proxy measure of outcomes was a logistic regression of the number of applications made by litigants that are granted. A successful outcome in this sense was an application granted (for applicants) or an application not granted (for respondents).

Whether a party was represented did not significantly influence their outcome ($p = 0.3828$). This suggests that neither party was unfairly advantaged or disadvantaged because of their representational status.

6.1.2 Outcome with a lawyer

A subgroup of 12 key informants was asked whether they thought self-represented litigants generally received the same outcomes as they would if they had representation. Just under half felt the litigants would do better with a lawyer. Generally they thought lawyers kept the case focused on the best outcome overall – which was sometimes different from what the self-represented litigant aimed for.

I think if they had a lawyer ... they would more often get a better outcome, not necessarily the outcome they want but an outcome that suits everyone. (Court registry officer)

A small minority thought self-represented litigants could do better without a lawyer by having direct contact with the judge. The remaining key informants did not know.

6.2 Satisfaction with case progression

6.2.1 Self-represented litigants

Just under two-thirds of self-represented litigants were not satisfied with the speed at which their case had progressed through the court. Most said their case had moved too slowly or had too many delays.

...the report [came] out saying that these kids are in a highly unsatisfactory environment and it took them nearly eight months to set a court date from then. It took me less than eight months to lose the children completely.

Several of these litigants noted that the blame for the delays lay outside the control of the court, falling on either the other party or their lawyers.

Well no, that's not really the fault of the courts, that's in part been the conduct of my other side and legal aid, to be honest. And they keep fuelling his various and many applications.

A few litigants said their case had moved too quickly.

I think had my lawyer been involved, um, the father wouldn't have been able to push this through with the huge speed that it went through.

Just under a third of the litigants were satisfied with the speed at which their case had progressed. Some were merely resigned to the fact that the case would not be resolved quickly and others appreciated the delays for giving them extra time to prepare.

A few litigants felt they were able to speed the case up by representing themselves.

To a certain extent yes, because you can sort of apply pressure to the court and just keep ringing them and saying look when am I going to get a date?

A small minority of the litigants had mixed feelings or did not know how they felt about the speed of the case progression.

6.2.2 Represented litigants

Most represented litigants thought their cases had been prolonged because the other party had represented themselves. They said that the self-represented litigant rehashed the same material in court, brought up irrelevant material, was unwilling to cooperate or negotiate, or lacked the necessary legal knowledge.

However, some also recognised that even if the other party had representation, their cases may still have been dragged out because of the opposing party's personality.

6.2.3 Key informants

Key informants distinguished between the effects on hearing time and on the way the case progressed towards resolution in general.

Length of hearing

Most said hearings were likely to be slower because judges had to explain the procedure and process to the litigant and more actively direct the hearing.

Well, a judge needs to be very clear when it comes to certain stages of a proceeding, that an unrepresented party is actually aware of their rights and what's happening. So it probably slows a trial down ... whereas if a person was represented, the judge just assumes that his solicitor is aware of things. (Union of Fathers)

Several (including some who suggested it was slower) said the hearing length would depend on the personality of the litigant (some may be more likely to give long, irrelevant statements, but others may have little to say) and the lawyer's arguments.

Case speed

More than half the key informants thought that in general, cases involving self-represented litigants progressed more slowly through the court system than other cases because of their lack of knowledge and understanding of the court process, their inability to negotiate, and the volume of documents they filed.

Another third of key informants suggested that the speed of a case depended to a large extent on the personality of the litigant (as mentioned for hearing speed) – represented or not – whether or not they were trying to drag a case out or push to have their cases heard quickly. It was suggested that lawyers could also drag a represented case through the system unnecessarily.

...but there are always those self-litigant people who are self-litigants because they are unreasonable or they have got personality disorders or mental illnesses. Those persons were always going to have a big dispute and the length of that is not necessarily due to them being self-litigants, it is normally due to their personality difficulties. (Judge)

Only a few said the case length remained the same regardless of whether a person had representation or not, and an even smaller number suggested that the cases may be resolved faster because some lawyers may drag a case out unnecessarily.

To examine whether a litigant's case progression was affected by self-representation, we analysed the length of time cases took to get through the court system. Most cases in the data collection sample had not been resolved so it was not possible to compare cases by examining start and end dates of cases. Instead, two other proxy analyses were undertaken.

The first was a regression analysis of the number of events per case for self-represented and represented litigants and also for the number of events per generating application (applications with no events excluded). These regressions were conducted assuming that cases that took longer to resolve may involve more events (ie, hearings). The regressions produced a range of indices, but most of the resulting p values were not significant

($p < 0.1409$). Therefore, the presence or absence of self-represented litigants in Family Court cases did not significantly affect the number of events.

The second analysis compared the length of time an application²² took between the filing date and outcome date (and hence a case). The duration was taken as the number of days from the filing date of an application to the disposal date for that application. Using the General Linear Model, cases with self-represented litigants were found to significantly increase the time taken for applications to reach an outcome ($p < 0.0001$).

6.3 Summary

- Most key informants thought self-represented litigants received fair outcomes mainly because judges took extra care to ensure they were accommodated by the court.
- Analyses showed that being unrepresented did not affect the likely outcome of applications made or responded to.
- Most self-represented litigants said their cases moved too slowly or had too many delays through the court, although they noted that delays were more likely to be because of the other party and their lawyers, rather than the court itself.
- Represented litigants felt their cases had been prolonged because the other party had represented themselves.
- More than half the key informants said the self-represented litigant's lack of knowledge, understanding of the court process and their personality caused their cases to move more slowly through the court system.
- Analyses showed that significantly more time was required for an application to reach an outcome when a self-represented litigant was involved, confirming these perceptions. However, a person's representational status did not affect the number of events (eg, hearings) for each case.

²² For all analyses of applications, all applications of the recorded unrepresented and represented cases were counted not just applications that were 'active' during the study period, as it proved too difficult and unreliable to examine this period alone.

7 Impacts on self-represented litigants in the family jurisdiction

This chapter examines the more general effects of a lack of representation on self-represented litigants. Interviews with self-represented litigants, other represented parties and key informants highlighted advantages and disadvantages to self-representation. Key informants also commented on whether they felt there were specific issues for different groups (such as those of different ethnicities or with disabilities) of self-represented litigants.

The chapter is structured as follows:

- 7.1 Advantages.** Self-represented litigants, represented parties and key informants describe their perceptions of the advantages of appearing without a lawyer.
- 7.2 Disadvantages and difficulties.** Self-represented litigants, represented parties and key informants discuss their perceptions of the difficulties and disadvantages of appearing unrepresented. Key informants also describe some of the common mistakes that self-represented litigants make. Self-represented litigants describe the effect on their confidence and health resulting from self-representation.
- 7.3 Impacts on specific groups of self-represented litigants.** Key informants describe specific issues facing self-represented Māori, Pacific people and litigants with mental illness.

A summary of the key findings is provided at the end of the chapter.

7.1 Advantages

7.1.1 Self-represented litigants

Most self-represented litigants saw advantages in self-representation. Over one-third of self-represented litigants suggested the primary advantage was saving money. There is no evidence of the impact this reduced financial cost may have on court time, duration of cases and increased costs for other parties, but the views of represented parties and key informants are discussed later in the paper (see section 8).

Nearly one-third of self-represented litigants also said their case was stronger because they could present information to the judge first-hand. Some felt the judge would be more open to the honest way in which they presented the case without using ‘tactics’ that lawyers would use.

I think there is a lot of advantages because you can speak from your heart.

Another advantage cited by self-represented litigants was that they felt the judge took a more active role in the case or allowed them a degree of leniency. As noted later in this paper (8.4), judges took a more lenient approach with those unfamiliar with the court process and

procedures in order to reduce the advantages of those represented by lawyers, and to provide a more level playing field.

And one thing I am really grateful for is the judges have shown a lot of leniency and tolerance and I think they've been watching me learn the process and watching me get better and better at it all the time ... the judge sits up and takes a lot more notice, they are much more probing in their questions.

About a fifth said they could take a more active role in the case because they were self-represented. In some cases this was used to take a more aggressive approach; in others it was a tactic to reduce tension between parties or to focus on the interest of the children.

I'm actually representing myself, whereas they're representing their own financial interests ... And so [my child] was actually getting the best service by being represented by me, his interests are most likely to be heard.

Some of these people felt they benefited from a better understanding of the case and relished receiving information and dealing with the courts directly.

...I'm there, I know what's going on ... my face is there at every court hearing. ... I get to actually talk directly to the kids' lawyer and any queries I've got with, as before when I had a lawyer I couldn't even contact her.

About a fifth said they were empowering themselves through the process, gaining skills and confidence along the way, and in some cases relieving stress by focusing their energy on representing themselves.

A few also said that representing themselves was a way of showing their children that they loved them and had fought for them.

7.1.2 Represented litigants

A third of the represented litigants felt self-represented litigants had no advantages. The other two-thirds identified advantages, although half of these felt the only advantage was that they saved money on legal fees.

A few also said that the judge may empathise with or show leniency to the self-represented party.

...and the judge seems to give ... more time and empathy to [a self-represented party] than he or she would to my case.

One represented litigant said the self-represented party was advantaged by having access to court documents that they had only allowed limited access to themselves. Another felt the self-represented party may have a better knowledge of what was happening in the case.

...it's a whole lot to learn, but actually by representing yourself you are kind of forced to do that ... Time wise I probably would have struggled, but I think I probably would have had a better understanding of the whole process.

7.1.3 Key informants

A third of key informants said self-represented litigants were advantaged financially by not having to pay legal costs. However, some said the saving may be outweighed by the costs to the self-represented litigant's time, mental and physical health.

...if it means that they get ill and they therefore have to take time off work or it impacts on the amount of time that they can be in employment, then I think there's no advantage at all. (Family Court coordinator)

A similar number said that litigants could come out of the court process with a sense of empowerment, achievement and a new set of skills.

...some of them find it very satisfying to have a go at, not just in terms of their own self-esteem, but because they think they've had a go at somebody who they see as the enemy. (Lawyer)

Control and active participation were also reported as advantages. Self-represented litigants are perceived to be able to guide the case in the direction they want. By self-representing, litigants can present their case directly without having a lawyer filter what is said or done. Some key informants qualified this as an advantage only when the litigant was capable of representing themselves well.

I mean if you were doing something for yourself and doing it in a way that is believable and convincing, it does actually have quite an impact on you, because it's not being delivered through a lawyer, through a third party. And there are people who can do that and are quite compelling. (Judge)

About a quarter of key informants said leniency and additional assistance from the court were advantages for self-represented litigants. However, this may level the playing field, rather than advantage the self-represented litigant.

...I do think they get cut a bit of latitude from the court and they get helped out. And I think the court takes a more investigative role. So rather than relying on what evidence the parties are bringing, the court will cut it off, and the judges would get in and ask a lot more questions and elicit a lot more information because they're kind of doing that person's job for them sometimes. (Lawyer)

7.2 Disadvantages, difficulties and mistakes made

7.2.1 Self-represented litigants

The most common disadvantage reported by self-represented litigants was their lack of legal knowledge. They said this meant they were not always aware of the options or how to respond to the other party. A lack of access to reference material was also noted as a disadvantage.

The disadvantage is quite simply not knowing the system. It's a complicated system, there are nuances and idiosyncrasies that lawyers are familiar with because they live in there and they breathe in there all the time.

A small number had difficulties because they did not know court hearing protocols and what was expected of them. Some felt that if they were more informed about what to expect it would have helped them to concentrate more on their case.

Getting information from the courts was often cited as a difficulty, as was matching the sometimes contradictory information they received from different sources.

A minority felt intimidated or bullied by the court or by the other party's lawyer. A similar number felt that interacting with the other party's lawyer, or the lawyer for child, who in many cases would not respond to their requests, was a difficulty.

...with my ex-wife's lawyer and ... it's like he's taking advantage of the fact that I don't actually know exactly what I can do.

A small number expressed difficulty dealing directly with the other party.

So I cross-examined my son's mother and yeah, I didn't really like that. Like I would have avoided the whole process entirely if there was some other way or system in place.

A few felt they would have benefited from having a lawyer to support them and explain what was happening. A similar number felt they were not taken seriously by the judges or the courts.

Some litigants felt they were disadvantaged because they were too emotionally involved and not necessarily able to be as objective as a lawyer. A few had difficulty in balancing the roles of lawyer and client, particularly in relation to cross examination. Many litigants said they spent a huge amount of time and energy running their own case.

A minority said they could not see any disadvantage or difficulty in representing themselves. Most of these litigants were in the early stages of their cases and were willing to become represented if the case became more complex.

7.2.2 Represented litigants

The represented parties noted several ways in which the self-represented litigants were disadvantaged – some of which created advantages for the represented party.

The most commonly cited disadvantage for the self-represented party was their lack of knowledge of the law and court processes. This was believed to result in the self-represented party making poor decisions and presenting information that harmed their case.

Basically the disadvantage is she's been throwing all sorts of things into affidavits. If you were with a lawyer they'd be telling you, do not put something like that in, or reword it, or things like that.

Other disadvantages were that the self-represented party had additional stress and often did not seem to understand what was happening.

A small minority felt the self-represented party was not disadvantaged in any way.

7.2.3 Key informants

The major problems and mistakes key informants identified were in relation to court processes and protocols, and lacking the legal knowledge necessary to decide on the most sensible action.

Many key informants said litigants were unlikely to know how to present an affidavit which clearly sets out the relevant information to support an application. Self-represented litigants were said to range from producing too little information, to producing large volumes of information that did not address the relevant points of law. Many key informants felt self-represented litigants could not objectively separate the relevant facts from the rest of the information.

Process and protocol mistakes included self-represented litigants failing to serve documents on the other parties and writing letters to the judge or the case manager instead. Self-represented litigants were also felt to poorly understand the purpose of different hearing types, such as judge's lists, often turning up for administrative appearances expecting a full hearing.

A common problem is that they don't share documentation. They don't serve the other side or particularly lawyer for child with copies of documents they've put in the court. So one can get down to court [and] suddenly the judge is talking about some application that you've never seen or known the existence of. (Lawyer)

Many felt that self-represented litigants did not have the legal knowledge to achieve the outcomes they desired. This was thought to be due to a lack of preparation, lack of knowledge about the options, or because they refused to consider options for settling the case. In some cases problems occurred when litigants acted on inappropriate information from either the Internet or unqualified advisers.

Many said self-represented litigants struggled to cross-examine witnesses effectively and did not adequately understand the rules of evidence. Cross-examination of an ex-partner was identified as an area where emotion ran high.

...it's never very pleasant. It takes a long time, or otherwise they don't have any real questions and the judge tends to have to control it a lot more ... it's pretty difficult if you've got cases of violence where the husband is cross-examining the wife. It's intimidating. (Lawyer)

Key informants also said self-represented litigants could struggle with information overload and the legal jargon, which can mean they misunderstand the judge's directions and offers of settlement. Litigants may underestimate timeframes, leading to frustration with the court system, or they don't comply with timeframes and consequently delay their cases.

More than half the key informants felt that being self-represented had a large emotional toll.

Not only do they have the stress of fighting a case, but they've also got paperwork coming at them, they've got court directions coming at them, they've got other lawyers who'll be saying things that potentially they don't even understand what's actually going on. The language used, things like that. I think the stress would be huge. (Lawyer)

Other reported effects included self-represented litigants having to spend more time away from work and their children and losing faith in the court system.

7.2.4 Other impacts – self-represented litigants only

When asked to rate their confidence about conducting their case, ranging from 1 (not confident) to 5 (very confident), on average respondents felt their confidence level was between 3 and 4. Although they felt reasonably confident, many said their lack of legal knowledge, court protocols/procedures, or legal terminology was why they had chosen their particular ratings.

Nearly a third said their confidence had changed over time and according to different situations. Most of these litigants felt their confidence levels had increased over time because of the knowledge and experience they had gained.

More than two-thirds of the self-represented litigants felt their health had suffered, usually from stress and stress-related illnesses (eg, anxiety, depression, insomnia, weight loss). However, this was not felt to be due to self-representation, rather the case in general. Others felt this was due to a combination of the case and the fact they were representing themselves.

Many suggested it may have been more stressful having a lawyer.

As far as representing myself goes, it would probably have been just as bad if I'd used a lawyer, because I would have been more worried about their incompetence.

7.3 Impacts on specific groups of self-represented litigants

Māori and Pacific people were not specifically interviewed for this part of the report, and accordingly it is difficult to draw any conclusions about the situation facing Māori, Pacific people and other ethnic groups who choose to self-represent.

7.3.1 Māori-specific issues

Most of the key informants did not report any specific issues for Māori self-represented litigants compared to other self-represented litigants. However, some did note that Māori may be disproportionately affected by factors such as low socioeconomic status and education, which could influence their interaction with the Family Court.

Look, when you go into that Family Court, there are a number of issues and race I don't think is one of them. I really don't. (Men's group advocate)

Several key informants noted that few Māori represented themselves. It was felt that Māori were less likely to start Family Court proceedings, or to defend any orders against them.

Many key informants said the Family Court environment was very much a European system that could be daunting to other cultures. Some felt that mediation and other dispute resolution methods were more appropriate for Māori.

It's not a good place for them, they don't feel comfortable and it's not an appropriate way to deal with their problems. (Family Court manager)

In Tauranga, a few key informants felt there was a lack of Māori legal counsel in the area.

We have a high Māori population; we don't even have any Māori lawyers in Family Court any more ... which is surprising when you think of what the constitution demographically of our area is. (Lawyer)

Others said Māori distrusted the system and other government agencies more, including Child Youth and Family Services. In contrast, one judge felt that Māori self-represented litigants may actually have more faith in judges than non-Māori.

Some people might say that Māori people might feel more alienated from the system than Pākehā people because of a whole variety of cultural factors and their experience of the clear domination of agencies in their lives. But on the other hand, sometimes they appear almost happier that they are involved in the process with the judge regulating it and it might be they cast faith a bit more in the system. I don't know whether that's allied to people who are more traditionally involved with their Māoridom, where there used to be structures in a marae setting and their hapū and iwi where you've got the kaumātua and all that, where there is a high level of respect for the people in charge. (Judge)

7.3.2 Pacific people

Key informants generally felt that Pacific people tended to have representation where possible and to avoid the court in general where possible.

I think a lot of them don't take any active role in the proceedings. They'll get sent a letter, they ignore it, about the counselling, they probably don't even go, registrar's list, they just don't take any part. (Team leader)

A quarter of key informants said self-represented Pacific people faced language problems. This was also an issue for other ethnicities (including Asian litigants) and those with hearing impairments or literacy problems, raising concerns that messages may get confused when being relayed through a third party.

Another concern raised by one key informant was that Pacific people may be more likely to give up because they become frustrated.

It's too hard because you've got often as said the language difficulties on top of the lack of understanding of the system; it's pretty daunting. (Lawyer)

7.3.3 Other groups

Key informants noted that most litigants with serious or diagnosed mental health issues were often represented or counsel was assigned to help the court.

We do have quite a few people in our courts who do have mental health problems, but I'd have to say that they don't normally represent themselves. I'll say no to that. They might start off and the judge might get a lawyer to assist the court or something. (Court registry officer)

However, many said that self-represented litigants with undiagnosed or borderline mental illness may have difficulties because they could not comprehend and retain information. Other key informants noted security issues when dealing with self-represented litigants who had mental health issues or were intellectually impaired.

...it involves security staff as well, who usually need to be around because you don't know the outbursts of these people. It's feeling under threat in the street, even though I've never actually met any of them in the street, you still do feel that it's you that they blame for what goes on in the court, because you're the person that they know ... they have your phone number. (Court registry officer)

Some key informants were concerned that some litigants with mental health issues may not defend orders or may drop out after finding that representing themselves was too difficult.

7.4 Summary

- Self-represented litigants and key informants stated that cost was the most frequently recognised advantage for self-represented litigants. Other advantages included presenting a stronger and more direct case to the judge; taking a more active role in the case; empowerment and a better understanding of their case.
- All parties most frequently identified the main disadvantage and cause of mistakes as self-represented litigants' lack of legal knowledge and understanding of court processes and protocols. Mistakes were made both in the courtroom and when filing and writing documents.
- Self-represented litigants felt moderately confident when conducting their case. Some said their confidence had increased as they became more experienced and their knowledge of the court system grew.
- Many self-represented litigants felt their health had suffered, from stress and/or stress-related illnesses, although they put this down to the case itself rather than their lack of representation. Many suggested it may have been more stressful having a lawyer.

- Several key informants noted that few Māori litigants represented themselves. Some thought that Māori may be disproportionately affected by factors such as low socioeconomic status and education levels. Many said that the Family Court environment was a European-based system that could be daunting to other cultures.
- Key informants reported that very few Pacific people represented themselves, but for those who do (and for other ethnicities with English as a second language) language difficulties may limit their understanding of the process. Including a specific cultural perspective to any future research would provide more insights.
- In general, key informants noted that people with mental illnesses were represented or assigned counsel to help the court. Many said that self-represented litigants with undiagnosed or borderline mental illnesses may have problems because of difficulties comprehending and retaining information.

8 Impacts on others in cases with self-represented litigants in the family jurisdiction

The previous three chapters described the effects of self-representation at the litigants' most recent hearings, on their case as a whole, and more general effects on the litigants themselves. Self-representation may also affect other parties in these cases, court staff, and the court system and processes more generally. This chapter discusses the effect of self-represented litigants on the other party, children, court staff, lawyers and the judiciary, gained by interviewing the represented other party and key informants.

The chapter is structured as follows:

- 8.1 Impacts on the represented party.** Represented parties and key informants describe the disadvantages, resulting personal impact, and advantages that the represented litigants face by being involved in a case with a self-represented litigant.
- 8.2 Impacts on children involved.** Represented parties and key informants describe the effects on the children involved in a case with self-represented litigants.
- 8.3 Impacts on lawyers.** Key informants and represented parties describe the effects on lawyers (counsel for the other party and lawyer for the children) involved in cases with self-represented litigants.
- 8.4 Impacts on court staff and the judiciary.** Key informants discuss the effects that self-represented litigants have on their roles and the roles of others involved in the court system.

A summary of the key findings is provided at the end of the chapter.

8.1 Impacts on the represented party

8.1.1 Advantages

Represented litigants' experiences

About three-quarters said they had been advantaged by the other party representing themselves. A quarter of these litigants felt they were advantaged by having good advice from their lawyer about how to get the outcome they desired.

Probably the advantage for me is that I do have somebody that is aware of the court system so she's able to inform me or give me the best advice that's required for me to basically win what it is I'm requesting for.

Several represented parties also said they were advantaged by being more prepared and confident than the other party, and also because they encountered less resistance from the other party, making it easier to get their orders approved.

Key informants

The only advantage for represented parties that key informants identified was a possibly beneficial outcome, either because the self-represented party had insufficient legal knowledge, or they displayed an undesirable characteristic to the court which would otherwise be unknown to the judge.

The other side of that coin is that they get a quicker and better result than if the lawyer had been involved because the other party hasn't got a clue. So it can cut both ways. It can be an advantage if you've got some klutz trying to do it themselves. (Lawyer)

8.1.2 Disadvantages for the represented party

Represented litigants

Several disadvantages were identified by represented litigants, including difficulties coming to an agreement with the other party.

...definitely disadvantaged, like I say, you can't get a straight-up answer from them as to what they're actually wanting, whereas before when he had a lawyer at least that information was back and forth quite freely as to expectation regardless that they were still miles apart.

Some felt that it was costing them because of numerous applications and affidavits filed by the other party. In some cases litigants said other parties could make false accusations and break the rules a lawyer would be ethically bound to abide by.

More than two-thirds of represented litigants felt they had been personally affected because the other party had represented themselves. Most said there was an emotional and/or physical toll (eg, stress and stress-related illnesses) due to further abuse/defamation from the self-represented party, because the self-represented party dragged the case out, and because their lawyer could not contact the other party. A small minority who had been cross-examined by their opposing self-represented party reported that this process had been harrowing or intimidating.

The remaining third felt they had not been personally affected by the other party appearing without representation.

Key informants

All key informants said represented parties in cases with self-represented litigants were disadvantaged in some way. Most said that cases involving self-represented litigants were often dragged out; the prolonged cases increasing costs for the party paying for a lawyer.

Many said there may be an emotional toll (eg, stress and frustration) on the represented parties as the cases are dragged out. Some were concerned about the potential for the self-represented litigants to harass or further abuse the represented party – especially for

domestic violence cases and those that reached the stage of cross-examination by the self-represented litigants.

...if it's the self-representing person cross-examining their partner I think that would be difficult for the partner. Because they don't have the same skills as a lawyer so they don't cross-examine the same ... But at the end of the day the person that's being cross-examined must, I would think, come out of it feeling more wrung out than if it's a lawyer that did it. (Family Court coordinator)

8.2 Impacts on the children

8.2.1 Represented litigants

More than half the represented litigants recognised that their children may have been affected by the other party representing themselves. Most said that the case had been psychologically upsetting and unsettling to the children because the self-represented litigant dragged the case out and/or put ideas in their children's heads about the opposing party, or showed disinterest in the children. Many recognised that these effects may be because of the case in general, rather than solely due to the other party appearing without representation.

The remainder did not think the children had been affected. In some cases this was because the children were thought to be too young to understand.

8.2.2 Key informants

Key informants said that self-represented litigants who were frustrated and angry about their situation could affect the children when they talked to them about the cases. However, many also conceded that this may also happen in cases where both parties were represented.

...the first thing that an unrepresented party needs to understand is to keep their mouth shut in front of the kids. And, unfortunately, represented parties need to learn that as well. (Union of Fathers representative)

Like the represented litigants, most key informants felt the effect on children would depend to a large extent on the children's ages and also on the personality/emotional state of the self-represented litigant.

Some said that the time and effort that self-represented litigants put into presenting their cases and filing applications meant they had less time to spend with their children. They said that often these cases dragged on longer – a fact confirmed by the analysis of case length.

8.3 Impacts on the lawyer

8.3.1 Represented litigants

Most litigants recognised that their lawyer had difficulties because the other party was self-represented. These included dealing with abuse from the self-represented party; the

unpredictability of their behaviour; having to explain court procedure without giving advice to the other party; and dealing with the irrelevant material the self-represented litigant produced. Some represented litigants felt that dealing with these behaviours may have added to the lawyer's stress and frustration.

...he thinks the ex has definitely lost the plot on several occasions with some of the things he's been saying and doing and he's been extremely abusive in the emails and letters to both my lawyer as well as the lawyer for child.

8.3.2 Key informants

Most key informants believed that lawyers found it difficult to deal with self-represented litigants because the litigants lacked the necessary legal knowledge and were difficult to deal with.

Many of the lawyers themselves confirmed that self-represented litigants required a lot more time and effort from them to explain the way the court worked. They said they were often put in a difficult position when the self-represented litigant wanted legal advice from them while they were representing either the other party or the children.

I think it does add an extra level of stress and frustration, definitely. And then as I say, as the cycle goes on ... you're not only having your own stress and frustration about trying to deal with someone, but your own client starts to get really difficult to manage because they're stressed. They're thinking well this person's getting all this judge time and court air, if you like, and I'm paying for it and getting nowhere and you tell me these are the rules and then we go into court and anything goes. (Lawyer)

Other lawyers noted they had difficulty contacting self-represented litigants and were also much less likely to be able to negotiate a settlement out of court.

Some also said self-represented litigants could be abusive towards them and quick to make complaints about lawyers.

8.4 Impacts on court staff and judges

8.4.1 Impacts on judges

Key informants only

Most key informants said judges spent more time explaining court procedure to self-represented litigants and guiding them through the hearing process. Some (including the interviewed judges themselves) suggested that when guiding self-represented litigants through this process judges frequently allowed more latitude and leniency than a lawyer would be afforded. However, these key informants emphasised that the judges did this to level the playing field and obtain the relevant information to make fair decisions, rather than to advantage one party over another.

...it's a matter of managing them and taking care that they're able to present their case in an orderly way and also in a way which separates out what's evidence and what's not. (Judge)

Some judges also said that helping the self-represented litigant was difficult to do without the other party feeling the judge was no longer impartial.

If you try and assist the unrepresented litigant in the preservation of the case, which you must do to a certain extent, then it is perceived by the other side to be unfair and so you tend to give the appearance of being tough on one party and easy on the other. That just makes it stressful. (Judge)

Many judges also felt pressured because they were expected to take a more inquisitorial role in the case, and because the cases involving self-represented litigants often took longer than necessary.

8.4.2 Impacts on court staff

Key informants only

All key informants said court staff had an extra burden because self-represented litigants lacked the legal and procedural knowledge and experience of the court.

Court staff said they spent more time explaining procedure, terminology and process to self-represented litigants, dealing with applications incorrectly filed or filled in, and fielding queries from self-represented litigants – often the same self-represented litigants repeatedly. This was difficult for the court staff when they were under time constraints.

They are very time consuming, they are hugely time consuming ... I've seen days when the girls [court staff] have had just one or two self-represented files out ... and that is all they've done all day is just work on those two things because the self-represented litigant would have come in, wanted to file yet another application, there would have been something wrong with the affidavit the girls have had to go back and say, 'look you've got to take it away and fix this'. (Court registry officer)

Many said they had to be cautious when drawing the line between giving information and legal advice.

So we need to be professional ... to make sure that we are not giving advice and that they understand that they're not ringing the court for legal advice, to be really careful about what they tell people in terms of information. (Case flow manager)

A small number of court staff reported having to deal with anger and abuse from some self-represented litigants, and a few court staff said it could be emotionally draining when the self-represented litigant relied heavily on them for support.

8.5 Summary

- Many represented parties said that having a lawyer was an advantage to reaching their desired outcome; as they were more prepared and encountered less resistance.
- Both represented parties and key informants considered that represented parties in cases with self-represented litigants were disadvantaged because of increased costs through longer case duration. Many also noted the emotional toll and the potential for self-represented parties to harass or further abuse the represented party.
- Represented parties also believed it was more difficult coming to an agreement with the self-represented party.
- Many of the represented parties and key informants agreed that the cases involving self-represented litigants could be upsetting and unsettling to children, although they conceded this may also happen in cases where both parties are represented.
- It was felt that lawyers in cases with self-represented litigants were negatively impacted. Represented litigants said their lawyer frequently had to explain court procedure to the self-represented party, and deal with irrelevant material and often abuse from them. This could add to the lawyer's stress and frustration.
- Key informants noted that lawyers had difficulties contacting self-represented litigants and it was difficult to provide advice to the self-represented litigant without compromising their position as counsel for the other party or the children.
- Because of the self-represented litigant's lack of knowledge, judges needed to spend more time explaining court procedures to provide a level playing field. However some judges acknowledged that it was a difficult balance to strike to ensure the represented party felt the judge remained impartial.
- Court staff spent more time dealing with self-represented litigants and needed to be vigilant about providing information but not legal advice.

9 Resources and information for litigants in the family jurisdiction

This chapter outlines the sources of information and advice that litigants in the family jurisdiction accessed during their cases, the types of information and advice they were seeking, and how helpful they found these sources. Current court-based initiatives and other resources that help to deal with self-represented litigants are described. Finally, it makes recommendations about further information, support or advice that would assist or support self-represented litigants and key informants who frequently deal with these self-litigants, in the Family Court.

The chapter is structured as follows:

- 9.1 Information and resources accessed by litigants.** Self-represented and represented litigants describe the types of advice/information they were seeking and the sources of information and advice they accessed. A subset of these litigants commented on how helpful they found these sources.
- 9.2 Current initiatives and resources assisting self-represented litigants.** Key informants discuss current strategies and methods to help self-represented litigants and help the court to run smoothly.
- 9.3 Unmet needs of litigants.** Self-represented litigants, represented parties and key informants describe further information and support that could be helpful for both self-represented and represented litigants in the family jurisdiction.
- 9.4 Unmet needs of key informants.** Key informants suggest options and resources that would help them in responding to self-represented litigants.

A summary of the key findings is provided at the end of the chapter.

9.1 Information and resources accessed by litigants

9.1.1 Self-represented litigants

More than three-quarters of self-represented litigants had tried to get information or advice about their case. Many litigants sought advice from more than one resource or agency. Court staff were most frequently sought for advice and information, followed by local Community Law Centres, the Internet, and family and friends.

More than half of these litigants had contacted court staff (front counter, Family Court coordinators or case managers) for information and advice on matters such as court procedures and processes, filling out applications and other documents, clarification of the judge's rulings, dates for their hearings, the law, and options for their case.

When asked to rate how helpful this advice was on a five-point scale with 1 being unhelpful and 5 being very helpful, ratings averaged between 3 and 4. A variety of reasons were given for the ratings, including some staff being more helpful than others, and other litigants recognising that court staff could not give them the advice they wanted.

Court staff actually, they were very good ... just in regards to what papers I needed to fill out and trying to understand the procedures of things and what I needed to do and what to get into the courts on time and those sorts of things.

Community Law Centres were accessed for information and advice on the court process, writing affidavits, general case advice, and to help the litigants to find lawyers. Ratings of helpfulness averaged 2. Reasons for the low ratings included staff not answering the litigant's question or that staff were too slow.

The Internet (frequently Google or the Family Court website) was used to obtain information about case laws, Acts, online statutes, case summaries, court processes and affidavits. Ratings for the Internet in general averaged only 2, mainly because the Family Court website, in particular, was said to be difficult to navigate and it was difficult to find Acts and case laws on general Internet searches.²³

Self-represented litigants often asked their family and friends who had experience in the Family Court for advice about procedure, affidavits, how to approach their case, and how to get lawyers. Some of these people had legal experience or were lawyers. On average, the self-represented litigants rated the helpfulness of their friends and family quite highly, at 4. Rationale for ratings included that the advice was excellent (frequently those whose friends were lawyers), that they provided practical advice and that they had a good understanding of the system.

The next most frequently accessed source of advice was Citizens Advice Bureaux and lawyers. Citizens Advice Bureaux were used for information on what kind of applications to submit, court procedure, drafting affidavits and where to go for extra support. Ratings of helpfulness averaged between 3 and 4.

Some of the self-represented litigants asked lawyers for advice on how to proceed with their cases, their rights, structuring affidavits, checking submissions, and determining the strength of their case. Lawyers were given an average helpfulness rating of 4. To avoid confusion with earlier chapters, it should be noted that most of the advice discussed in this context by lawyers was given to the self-represented litigant free (pro bono).

A small group of the self-represented litigants also sought advice from men's groups (including Union of Fathers), the library and lawyer for child.

²³ Note that respondents may have commented on the Family Court website before or after it was updated – both are possible.

9.1.2 Represented litigants

Two-thirds of the represented family litigants had sought advice from someone apart from their lawyer. The represented litigants' helpfulness ratings are not reported because of the small sample.

Of those who sought advice, a third had asked their family and friends for general advice on the direction of the case, procedural advice or emotional support. The remainder had commonly used Community Law Centres, the lawyer for child or the Family Court website. A small number had also visited Citizens Advice Bureaux; Māori Law Services; Child, Youth and Family Services (CYFS) and the CYFS website; the Grandparents Raising Children group; and the Union of Fathers.

9.2 Current initiatives and resources assisting self-represented litigants

Key informants identified several men's groups and McKenzie Friends (individuals assisting self-represented litigants in court) that provided additional support or advice to litigants.

The men's groups included Union of Fathers, Men's Centre (Auckland), and the Men's Coalition. Historically, some of these groups had been considered confrontational, with political motivations. However, key informants recognised that many were now less politically motivated and provided support and practical advice to self-represented litigants on court process and procedures, filing applications, writing affidavits and emotional support.

I think men often access the men's group websites which do have guidance on a lot of that [how things are done in court]. They even have guidance as to how to ask the psychologist questions ... You can always tell when men have gone to men's group because it comes out in evidence, it's the same question ... I can't remember how it goes, but at least the men's groups have got information for people free to them, how to run a case. (Judge)

Similarly, McKenzie Friends was recognised by some key informants as helping self-litigants, for example helping them to stay focused and on track. However, some key informants felt that McKenzie Friends had sometimes given litigants poor advice.

In addition to these groups, key informants also identified court practices or strategies that helped litigants and aided the smoother running of the court. Many of these strategies were court-specific. For example, Christchurch Family Court has a 'PR' or 'red coat' role.

Every day one of us who's not going to be in court will go over and do the PR role. We do that especially so people know where they're going. We have a copy of the list with us and if we see people without a lawyer say 'are you waiting for your lawyer?' Then we go and let the court taker know we've got X self-litigant here today so they put that file at the end of the list. It works really well ... We call it the red coat role. (Court registry officer)

Christchurch also has produced its own 'how to' handouts for litigants, and the coordinators often take self-represented litigants to the courtroom to familiarise them with the surroundings before their hearings.

A judge in Manukau mentioned that sometimes if they had a self-litigant in court they deviated from the usual order of who got to speak first to let the self-represented litigant get their concerns off their chest and get settled into the court setting. Manukau also has strategies for litigants who go to multiple court staff with the same enquiry. A staff member (usually the team leader) is delegated to deal with that litigant. Other team members then refer the litigant directly to that person.

9.3 Unmet needs of litigants

9.3.1 Self-represented litigants

Self-represented litigants frequently suggested that a better understanding of the court process or procedure would have helped them with their case. It was suggested that this could be through a brochure or information sheet, example templates for filing applications, a website, or even a person at court to explain these aspects.

Just having templates available would really have helped a lot because I could fill them in and file them. And the other thing that would have helped a lot was just being given some kind of idea about the process and procedures. If you are going to represent yourself you need to do this, this and this. When you go to court, this, this and this will happen. After court, this, this and this will happen.

Other common suggestions included having a lawyer from the beginning of their case, and better access to further materials relevant to their specific case (eg, specific Acts and case law) etc.

9.3.2 Key informants

More than half the key informants also recognised that self-represented litigants needed a type of information pack to inform them about the court processes and procedures. Key informants thought this pack could also include:

- information on what to put in an affidavit
- a list of legal centres/lawyers to turn to
- example forms that had already been filled out
- information about the Privacy Act 1993 and how it relates to the court
- a description of what types of information court staff can provide.

Some key informants raised the concern that it would be difficult to design such a pack because every case was different and the literacy of some self-represented litigants was poor. A DVD was suggested as an alternative. One lawyer for child found the current DVDs available from the court were very popular with litigants.

I think it would be reasonably easy to produce a DVD for self-litigants ... You could have basic laws of evidence, and say the judge has to read thousands of pages in the course of the week, so write neatly. Doesn't matter about your spelling, write neatly, set it out in logical form ... basic rule of hearsay evidence, if you're going to say somebody said something, get them to come and swear an affidavit. Just very basic structure ... basic rules of courtroom etiquette. (Case flow manager)

Some of these key informants said that self-represented litigants could then be overloaded with information, or that this kind of information could encourage more people to be self-represented litigants. To counter this, they suggested that the information should explicitly state the potential difficulties for self-represented litigants.

Key informants also recognised the need for better access to free legal advice for self-represented litigants (whether through more legal aid or from a type of duty solicitor scheme similar to that provided in criminal court).

Another commonly recognised need was for more support services for self-represented litigants (eg, counselling services, more McKenzie Friends, or a court staff member whose role was targeted to help self-represented litigants). Alternatively, some key informants suggested better advertising of the existing support services.

9.3.3 Represented parties

Represented parties were also asked if any further information, support or advice would have helped them with their case. Two-thirds gave suggestions, most frequently suggesting it would have been helpful if the other party had a lawyer, or had been stopped from continuing their case. Other suggestions included more information on the court processes, more equality in the system, for the case to be heard faster, and knowledge of what the self-represented party was going to say before their court appearance. The remaining third of litigants thought nothing further would have helped.

9.4 Meeting the needs of self-represented litigants through provision of court services

In addition to the unmet needs of self-represented litigants, key informants were asked if anything would assist them in responding to self-represented litigants. Most key informants felt that more training was needed about how to deal with self-represented litigants. Suggestions of what this training could include were:

- how to respond to angry and emotional litigants
- guidelines on what to say and do when responding to self-represented litigants (including setting standards for quality of applications submitted)
- instructions on how to provide adequate information about court procedures and processes to self-represented litigants without crossing the line of providing legal advice.

...there's a lot more training that needs to be given in how to respond ... finding that boundary between legal advice and giving information. (Case flow manager)

Other measures helpful in responding to self-represented litigants included:

- more time, or staff, to deal with self-represented litigants
- more access to free legal advice for self-represented litigants (this could be by providing more legal aid, or from a type of duty solicitor scheme similar to that provided in criminal court)
- simplifying the terminology on application forms to make them easier to fill out for self-represented litigants
- increased security when dealing with problematic self-represented litigants.

9.5 Summary

- Most self-represented litigants had tried to get information or advice about their case; many from several sources. The most frequently accessed sources were court staff; followed by Community Law Centres; the Internet; and family and friends for information on court procedure and process, filling out applications/affidavits, case laws and general case advice.
- Court staff, and family and friends were generally considered more helpful than Community Law Centres and the Internet.
- Many represented litigants also sought advice (aside from their lawyer). They most frequently approached family and friends for procedural and general case advice. Other sources frequently accessed included Community Law Centres, lawyer for child, and the Family Court website.
- Key informants pointed to advice and support for self-represented litigants available from several men's groups and McKenzie Friends. Specific court strategies to help litigants and to ensure a smoother running court include a red coat role and 'how-to' handouts established in Christchurch, changing speaking order during hearings involving self-represented parties, and delegating one staff member to deal with problematic litigants.
- Over half of the key informants acknowledged that an information pack or DVD about court processes and procedures could benefit self-represented litigants, although some thought it would be important to explicitly state the potential difficulties of self-representation in this information.
- In addition to the information pack for self-represented litigants, key informants suggested they may also benefit from additional training focusing on how to deal with self-represented litigants.
- Feedback from represented litigants indicated what they would find most helpful is if the self-represented party had a lawyer or had been stopped from continuing their case.

10 Who are the self-represented litigants in the criminal summary jurisdiction?

This chapter builds a picture of the numbers and demographics of self-represented litigants in the criminal summary jurisdiction and the types of charges they faced. Because of difficulties in recruiting self-represented litigants for interviews in the criminal summary jurisdiction (see Methodology), the views discussed in this chapter and chapters 11 to 13 have come from key informant interviews. Demographic data on litigants who appeared in the selected courts during the data collection period were also used.

The chapter is structured as follows:

10.1 Numbers and case types. Key informant views and data outline the types of charges a self-represented litigant is likely to face. Key informants describe whether self-represented litigants are an increasing or decreasing phenomenon.

10.2 Demographics. Details on the gender, age and ethnicity from both the interviews and study data of self-represented litigants are discussed.

A summary of the key findings is provided at the end of the chapter.

10.1 Numbers and case types

10.1.1 Numbers

A very small proportion of litigants were self-represented, although a large variation was noted across courts, as shown in Table 15. Palmerston North recorded the largest proportion of self-represented litigants, followed by Tauranga. The three other courts noted very small percentages of litigants appearing without representation.

Table 15: Percentage of cases involving self-represented litigants¹

| | Number of litigants appearing without representation | % of litigants appearing without representation ² |
|-----------------------|--|--|
| Lower Hutt | 16 | 2 |
| Tauranga ³ | 21 | 4 |
| Palmerston North | 52 | 7 |
| Dunedin | 5 | 1 |
| Manukau | 15 | 1 |

Notes:

¹ Numbers rounded to the nearest percent.

² Manukau recorded data for two weeks while the remaining courts recorded data for three weeks.

³ Tauranga's original sample of unrepresented litigants included those who had been through a Community Magistrate's court. Hearings in the Community Magistrate's court can include some minor traffic offences (which are outside our study scope) and also include litigants who appear unrepresented but have written instruction from duty solicitors. For these reasons, Community Magistrate's List has not been included in our calculations. The estimate of 4 percent might be, therefore, likely to underestimate the true numbers as we will be excluding some unrepresented parties that would meet the eligibility criteria.

Key informants also estimated the number of self-represented litigants they encountered as small. Some were more likely to encounter self-represented litigants than others because of the nature of their roles. For example, key informants working within the courtroom who encountered litigants in hearings generally provided larger estimates of self-represented litigants than those working outside the courtroom (eg, front counter staff) who typically encountered self-represented litigants over the phone or at the front desk.

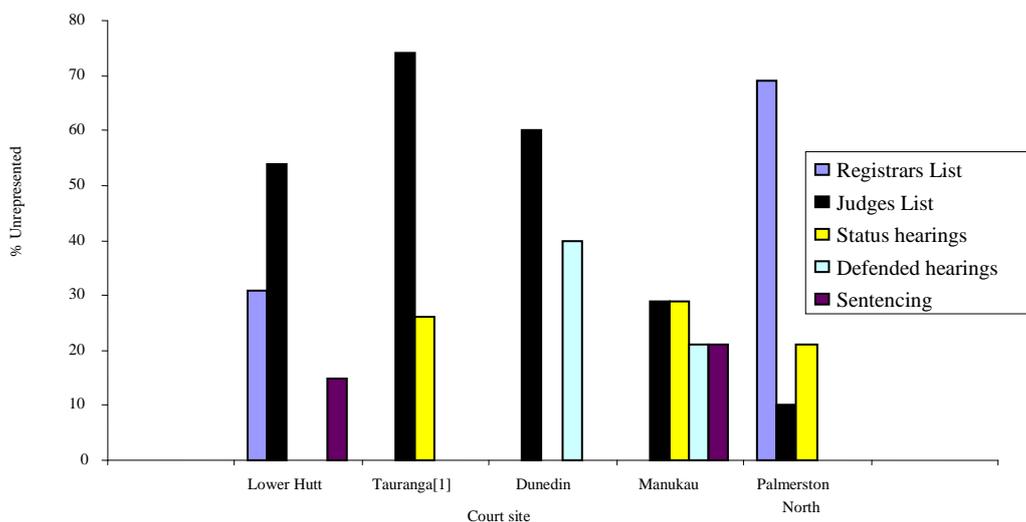
Key informants generally said the numbers they encountered varied depending on the type of hearing and the total numbers of individuals on the hearing list. Most said they encountered more self-represented litigants in list hearings (eg, first appearances) than at status or defended hearings.

I would say roughly two or three out of 20 [list hearing] ... Very, very few in status hearings. Very few in defended hearings. (Judge)

To examine hearing types further, each litigant in our data sample was grouped according to the hearing where they were recorded as self-represented (see Figure 2). It should be noted that not all courts in our data sample hold the same types of hearing. For example, Tauranga does not hold registrar list hearings (as many other courts do before judges list hearings).

In general, across each court site more litigants appeared self-represented at the earlier list hearing stages (eg, registrars/list hearing), than at the status or defended hearing stage. For example, in Tauranga 74 percent of its self-represented litigants were self-represented at judges list compared to 26 percent at status hearing. This supports many of the key informants' perceptions discussed previously.

Figure 2: Type of hearing that self-represented litigants were observed as appearing at across the five court sites



10.1.2 Change in numbers

Nearly half the key informants said the numbers of self-represented litigants going through the criminal summary jurisdictions had not changed over the past five years.

Of those who thought there had been a change, views were evenly divided between those who said numbers had decreased, increased, or who were unable to comment. Opinions were divided on the impact of availability of legal aid. Of those who suggested a perceived increase in numbers, this was thought to be because of the increased availability of legal aid and duty solicitors, or litigants becoming more familiar with the courts.

I think that legal aid is more available perhaps than when I started years ago. There was fairly strict criteria, there still is to a degree, but I think that yeah, people have the option of getting legal aid a little more easily. (Criminal case officer)

In direct contrast to those who thought legal aid had become easier to access, others thought that difficulties in getting legal aid had resulted in fewer numbers.

A regional analysis of key informants' perceptions found that of the five district courts included in the study, seven out of 10 key informants in Dunedin said there had been no change in numbers over the five-year period. There was little consensus from key informants in Manukau, Tauranga, Lower Hutt and Palmerston North about any change in numbers.

10.1.3 Case types

Most key informants said self-represented litigants were generally appearing on low-level charges, most commonly driving-related offences (eg, excess breath alcohol, careless/dangerous driving, driving whilst disqualified). Other frequently cited charges included assault, disorderly behaviour and wilful/unlawful damage. Legal aid is not generally available for these offences because they do not meet the statutory test of seriousness in section 8 of the Legal Services Act 2000, so people have only two options – pay private rates for a lawyer or represent themselves.

An analysis was conducted to determine whether self-represented litigants in our data sample were facing the charge types suggested by the key informants (see Table 16). Definitions and examples of charges (from the Ministry of Justice's *Conviction and Sentencing report*, Soboleva, Kazakova & Chong, 2006) are included in this report as footnotes.

Table 16: Charges and outcomes of self-represented litigants

| Crime | Outcome | | | | Total |
|------------------------------|---------------|----------------------------------|-----------------------------|------------------------|-------------|
| | Convicted (%) | Discharge without conviction (%) | Not proved ¹ (%) | Other ² (%) | |
| Violence | 2.9 | 0.0 | 0.0 | 0.0 | 2.9 |
| Property ³ | 17.6 | 2.0 | 16.7 | 0.0 | 36.3 |
| Drugs | 11.8 | 0.0 | 0.0 | 0.0 | 11.8 |
| Against Justice ⁴ | 6.9 | 0.0 | 13.7 | 1.0 | 21.6 |
| Good Order ⁵ | 1.0 | 0.0 | 0.0 | 0.0 | 1.0 |
| Traffic ⁶ | 18.6 | 0.0 | 2.0 | 0.0 | 20.6 |
| Miscellaneous ⁷ | 0.0 | 0.0 | 2.0 | 3.4 | 5.4 |
| Total | 58.8 | 2.0 | 34.4 | 4.4 | 99.6 |

Notes:

- ¹ Not proved includes charges which were withdrawn, dismissed, discharged, struck out, not proceeded with or acquitted.
- ² Other includes an outcome where the litigant is unfit to stand a trial, acquitted because of insanity or where there is a stay of proceedings.
- ³ Property offences include theft, burglary, arson, stolen goods, wilful damage and motor vehicle conversion.
- ⁴ Against justice includes breach of sentence or bail, failure to answer bail, breach of protection orders.
- ⁵ Offences against good order include disorderly behaviour, offensive language, trespassing, carrying offensive weapons, unlawful assembly.
- ⁶ Traffic-related offences include driving causing death or injury, driving with excess breath alcohol, driving whilst disqualified, reckless/dangerous driving, and careless driving.
- ⁷ Offences classified as miscellaneous include those related to the Arms Act 1993; Dog Control Act 1996; Fisheries Act 1983; Income Tax Act 1994; Tax Administration Act 1994; Goods and Services Tax Act 1985; Postal Services Act 1998; Sale of Liquor Act 1989 (CS report).

As shown in Table 16, more than a third of offences that self-represented litigants are charged with are property-related, followed by against justice and traffic-related offences.

More than half of the self-represented litigants in court during the study period were convicted. Examining charge type by outcome showed similar proportions of self-represented litigants facing property-related charges were likely to be convicted as those who had their charges withdrawn/dissmissed. Those facing against justice charges were more likely to have their charges withdrawn/dissmissed than to be convicted, and those facing traffic-related charges were more likely to be convicted.

The types of charges represented litigants face and their outcomes are similar to the self-represented litigants. Again, about one-third appeared on property-related offences, followed by violence and traffic-related offences (see Table 17).

More than half of the litigants were convicted. Represented litigants were more likely to be convicted of their property-related and traffic offences than to have their charges withdrawn/dissmissed.

Table 17: Charges and outcomes of represented litigants

| Crime | Outcome | | | | Total |
|-----------------------------------|---------------|----------------------------------|----------------|-----------|--------------------|
| | Convicted (%) | Discharge without conviction (%) | Not proved (%) | Other (%) | |
| Violence | 7.7 | 0.6 | 6.6 | 2.8 | 17.7 |
| Other against person ¹ | 1.3 | 0.1 | 0.9 | 0.4 | 2.7 |
| Property | 17.8 | 0.4 | 7.5 | 4.2 | 29.9 |
| Drugs | 2.9 | 0.1 | 2.1 | 1.5 | 6.6 |
| Against Justice | 7.7 | 0.1 | 1.8 | 1.1 | 10.7 |
| Good Order | 3.4 | 0.2 | 1.8 | 0.3 | 5.7 |
| Traffic | 13.0 | 0.3 | 2.6 | 1.2 | 17.1 |
| Miscellaneous | 6.0 | 0.2 | 2.7 | 1.5 | 10.4 |
| Total | 59.8 | 2.0 | 26.0 | 13.0 | 100.8 ² |

Notes:

¹ Other against-the-person offences include obstructing/resisting police officers and some sexual or intimidation offences.

² Numbers total more than 100 percent because of rounding.

10.2 Demographics

In each of the courts, key informants identified three prominent groups of self-represented litigants. The most common was middle-aged, employed, New Zealand European males. The second group was younger males, commonly New Zealand European, and often described as ‘boy-racers’ because of the vehicle-related charges. The third group were Māori males appearing within the sovereignty context (in sovereignty cases the litigants assert that the court does not have jurisdiction over them). Key informants noted that Pacific people were unlikely to represent themselves.

The study data confirmed the key informants’ perceptions that most self-represented litigants identified as male and predominately New Zealand European (followed by Māori). The data also showed that represented and self-represented litigants were very similar in ethnicity, age and gender (see Tables 18, 19 and 20 below).

Table 18: Litigant’s ethnicity from the study sample

| | Self-represented litigants (%) | Represented litigants (%) |
|----------------|--------------------------------|---------------------------|
| NZ European | 38 | 36.0 |
| Māori | 32 | 35.0 |
| Pacific people | 9 | 12.0 |
| Asian | 1 | 2.6 |
| Indian | 1 | 0.7 |
| Other | 1 | 0.5 |
| Unknown | 18 | 13.0 |
| Total | 100 | 99.8 |

Note: Totals may not equal 100 percent because of rounding.

In general, self-represented litigants were similar in age (late 20s–early 30s) to represented litigants (see Table 19).

Table 19: Average and median ages¹ of litigants in the study sample

| | Self-represented litigants | Represented litigants |
|---------------------|----------------------------|-----------------------|
| Average age (years) | 31 | 29 |
| Median age (years) | 28 | 26 |

Note:

¹ Age is calculated at 22/12/2006.

Most represented and self-represented litigants were male (see Table 20).

Table 20: Gender of litigants in the study sample

| | Self-represented litigants (%) | Represented litigants (%) |
|---------|--------------------------------|---------------------------|
| Male | 82 | 80 |
| Female | 18 | 19 |
| Company | 0 | 1 |
| Unknown | 0 | 0 |
| Total | 100 | 100 |

10.3 Summary

- A very small proportion of litigants were self-represented, although there was a large regional variation in the proportions across the five courts sites (from 1% to 7%).
- In general, there were more self-represented litigants at the earlier stages of court – such as list hearings – than at status or defended hearings.
- Nearly half of the key informants said the numbers of self-represented litigants had not changed much over the past five years. Of the rest who were happy to offer an opinion, they were divided as to whether numbers had decreased or increased.
- Most self-represented litigants appeared on property-related charges (including theft, arson, wilful damage etc), followed by against justice charges (breach of bail/protection orders/sentence) and traffic-related offences. Represented litigants were charged with similar types of offences: commonly property-related, followed by violence and then traffic-related offences.
- Both self-represented and represented litigants were more likely to be convicted of their charges than to have them dismissed or withdrawn.
- Self-represented and represented litigants were very similar in age (average of 29–31 years), sex (most were male) and ethnicity (predominately New Zealand European, followed by Māori).

11 Why do litigants appear self-represented in the criminal summary jurisdiction?

This chapter discusses the reasons why litigants appear without representation. Key informant interviews and analysis of study data and data from the Legal Services Agency were used to inform this discussion.

This chapter is structured as follows:

11.1 Reasons for appearing without representation. Key informants comment on why litigants appear without representation. Data analysis determines whether the litigant's choice of plea is related to self-representation.

11.2 Legal aid applications. Data analysis from the Legal Services Agency determines the numbers of self-represented litigants who had applied for and been granted legal aid.

A summary of the key findings is provided at the end of the chapter.

11.1 Reasons for appearing without representation

11.1.1 Views of key informants

Most key informants said the cost of lawyers was the reason litigants represented themselves in the criminal summary jurisdiction. They said many self-represented litigants were ineligible for legal aid but unable to afford representation.

In my experience, and I'm drawing on my own criminal experience over a number of years, 95 percent of people who are representing themselves are representing themselves because they cannot afford a lawyer or have not got legal aid. (Lawyer)

Some self-represented litigants may be ineligible for legal aid because the charges they face are minor. Many key informants said that these litigants preferred to plead guilty in person to speed up the court process, rather than wait in a queue to see a duty solicitor or to adjourn the case to make an application for legal aid.

It was also felt that the standardised nature of the penalties for some of the minor charges gave litigants the impression that a lawyer would not be able to help them.

It's usually their perception that it's a minor matter, that it's going to be a standard sentencing for it, they just can't be bothered wasting time seeing a duty solicitor, they'd rather have it dealt with and get on their way. (Judge)

Many key informants also identified lack of trust and bad experience with lawyers as common reasons for litigants representing themselves. These litigants had often been represented by several lawyers before representing themselves. In part, this was attributed to a misperception that lawyers should follow the client's instructions to the letter.

Other less frequently reported reasons for self-representation included:

- Litigants appearing under the sovereignty²⁴ context. In some cases it was felt that litigants were pressured to take this approach by others.
- Some litigants were said to be too disorganised to arrange representation.
- A desire by litigants to admit what they had done and take their punishment, rather than get off on a technicality.

11.1.2 Plea types and charges

In the previous section key informants noted that self-represented litigants appearing on minor charges may plead guilty to speed up the court process. If this is the case, self-represented litigants from our study sample should be more likely to enter a guilty plea when faced with minor charges, than a not guilty plea.

Analysis of data from the study period showed that most self-represented litigants facing traffic-related offences (often classified as a more minor offence) were more likely to plead guilty than not guilty or another plea. Those facing other minor charges, such as against justice and property charges, were more likely to enter 'other' pleas (See Table 21).

Table 21: Charges laid against self-represented litigants and their pleas entered

| Crime | Plea (%) | | | Total (%) |
|-----------------|----------|------------|--------------------|-----------|
| | Guilty | Not guilty | Other ¹ | |
| Violence | 1.0 | 0.0 | 2.0 | 3.0 |
| Property | 7.8 | 2.0 | 26.5 | 36.3 |
| Drug | 6.9 | 0.0 | 4.9 | 11.8 |
| Against justice | 6.9 | 0.0 | 14.7 | 21.6 |
| Good order | 0.0 | 0.0 | 1.0 | 1.0 |
| Traffic | 16.7 | 1.0 | 2.9 | 20.6 |
| Miscellaneous | 0.0 | 0.0 | 5.9 | 5.9 |
| Total | 39.3 | 3.0 | 57.9 | 100.2 |

Note:

¹ Includes remands, no plea entered or no plea recorded.

Represented litigants facing traffic charges were also more likely to plead guilty (see Table 22). There was not such a clear-cut pattern of pleas entered for the other minor charges.

²⁴ In sovereignty cases the litigants assert that the court does not have jurisdiction over them

Table 22: Charges laid against represented litigants and their pleas entered

| Crime | Plea (%) | | | Total (%) |
|----------------------|----------|------------|--------------------|-----------|
| | Guilty | Not guilty | Other ¹ | |
| Violence | 5.1 | 5.2 | 7.3 | 17.6 |
| Other against person | 0.9 | 0.7 | 1.1 | 2.7 |
| Property | 11.4 | 6.2 | 12.3 | 29.9 |
| Drug | 2.0 | 1.7 | 2.0 | 5.7 |
| Against justice | 5.6 | 1.2 | 3.9 | 10.7 |
| Good order | 2.6 | 0.9 | 2.1 | 5.6 |
| Traffic | 10.2 | 1.7 | 5.3 | 17.2 |
| Miscellaneous | 4.3 | 1.7 | 4.0 | 10.0 |
| Total | 42.1 | 19.3 | 38.0 | 99.4 |

Note:

¹ Includes remands, no plea entered or no plea recorded.

11.2 Legal aid findings from the criminal jurisdiction

Key informants said that many self-represented litigants could not get legal aid. To determine what numbers of self-represented litigants had applied and how familiar they were with the legal aid process, the Legal Services Agency provided us with analysis of applications submitted and granted.

Across the five courts, 75 percent of litigants from the data collection sample (65 litigants) who appeared self-represented were matched to the Legal Services Agency records. The numbers of total applications for legal aid received until 31 July 2007 were examined and all but one of the litigants had applied for legal aid in the past. All of these litigants had an application granted at least once in the past. This indicates they were aware of legal aid and had at some time been eligible for legal aid.

However, only 9 percent (six litigants) submitted applications during the study period itself. Five of these litigants were granted legal aid during this period.²⁵ It should be noted that grants approved in this time do not necessarily relate to applications submitted in the same timeframe. It is possible that an award counted during this time period may relate to an application submitted before the data collection period.

11.3 Summary

- The main reason reported for self-representation was financial – litigants being ineligible for legal aid but unable to afford representation. Some litigants may be ineligible for legal aid because they were appearing on minor charges. Others may self-represent because they wanted to plead guilty and speed up the court process, because of distrust of lawyers, or because the standardised nature of the sentences meant a lawyer would not be much help.

²⁵ Although it appears contradictory that five litigants were granted legal aid but were recorded as unrepresented, it is most likely that these litigants had their legal aid approved/submitted their application *after* they had first been observed as unrepresented, but still within the data collection period.

- Self-represented and represented litigants were more likely to plead guilty than not guilty for traffic offences.
- Many of the self-represented litigants had applied for and been granted legal aid at some stage in the past. However, only a very small number of self-represented litigants applied for legal aid during the study period.

12 Impacts of self-represented litigants in the criminal summary jurisdiction

This chapter identifies the effect that a lack of representation has on self-represented litigants themselves, court staff, judiciary, police prosecutors and on the court process, as reported by key informants.

This chapter is structured as follows:

12.1 Impacts on others. This section outlines the effects that self-represented litigants have on court staff and other individuals interacting with the self-represented litigants within the court setting (such as judges, prosecution, duty solicitors) and on the court process as a whole – in particular, hearing and case progression.

12.2 Impacts on the self-represented litigants. This section describes the effects (suggested by key informants) that self-represented litigants experience because they do not have a lawyer. Effects include the advantages and disadvantages of not having a lawyer, common mistakes self-represented litigants make, and any effect there may be on outcomes. Specific issues that groups of self-represented litigants have – including Māori, Pacific people and those with mental health problems – are also discussed.

A summary of the key findings is provided at the end of the chapter.

12.1 Impacts on others

12.1.1 Impact on judges

All but one key informant said that self-represented litigants' behaviours affected judges. Most key informants said self-represented litigants' lack of procedural court knowledge and inexperience meant judges guided them through the court hearings, explained the process to them, redirected them to duty solicitors, and stopped litigants when their submissions or questions were inappropriate and/or irrelevant.

There was a strong feeling (reported by more than half the key informants) that hearings involving self-represented litigants took longer because of extra guidance required and were frequently adjourned. About a third of the key informants said that this may increase the judges' level of frustration.

They come in and they do it wrong, they don't know court protocol, they don't know that sort of stuff but everybody guides them and tries to help ... So normally these people they sort of flounder a bit and in so saying you know the judges guide them ... Or the judge might stand it down and suggest they go and talk to a lawyer. (Team leader)

Many of the judges often felt there was more work in hearing a self-represented litigant's case. Some judges also mentioned unease at being expected to take the role of the defence counsel when a litigant was doing a poor job of cross-examining.

...we have to ensure rights and fairness, so we intervene more and sometimes though, if they're being silly, because they've got the right of cross-examining the witnesses, our frustration level goes up because they don't take the hint, they don't understand what the warnings are, they don't understand the rules of evidence or how to ask questions. (Judge)

12.1.2 Impact on court staff

Most key informants said the behaviour of self-represented litigants affected court staff – including those on the front counter and those who worked in the actual courtroom. About a third of the key informants said that dealing with problematic self-represented litigants frustrated court staff.

Court staff said they spent more time explaining to self-represented litigants the court process, procedures and court/legal terminology, and about the existence and importance of duty solicitors. In many cases, judges asked the court staff to read out charges in full (rather than the usual abbreviated version read to lawyers) to ensure that the self-represented litigant was fully aware of the charges.

Many of the court staff also experienced difficulties when trying to correspond with litigants (for example, to inform them of a change of court date).

...it's sometimes harder to get hold of these unrepresented people because they are itinerant, you know, the address that you had is no longer their address, you try and get hold of them, you can't. So you can't deal with them until they come to court (Case officer)

There were occasional difficulties when self-represented litigants got agitated or upset, although aggressive litigants were thought to be a minority rather than the norm.

Overall, many of the court staff said that although individual self-represented litigants could be very time consuming, the issue was not serious because the numbers of self-represented litigants were low. Others said that dealing with self-represented litigants was just part of the job.

12.1.3 Impact on police prosecution

Duty solicitors and lawyers tend to have little interaction with self-represented litigants because of the nature of their roles. However, police prosecutors do interact with self-represented litigants and most key informants thought that self-represented litigants would have a negative impact on police prosecution.

Prosecution staff were likely to be affected by disclosure issues. In particular, self-represented litigants were noted as frequently not asking for or being aware of the need for disclosure, losing disclosure, or staff not knowing where to send disclosure.²⁶

...sometimes the police ring up here and say 'can you tell us who represents so and so because they've got a defended hearing on such and such a date and nobody's asked for the disclosure' ... That means it's a delay in the case because they haven't had the proper information. (Counter staff)

Self-represented litigants were also reported to frequently produce irrelevant facts at a hearing and lack knowledge about the court process and procedure (eg, not being aware of the consequences of their plea). This could delay cases.

Some prosecutors took extra steps to ensure that the self-represented litigant was fully aware of the charges and the case against them, as well as ensuring the litigant knew about the duty solicitor scheme. Some were concerned the litigants would not try to negotiate the charges against them.

Personally if I know someone's unrepresented, I'll try and meet them before the matter's called in court, to make sure that they know what the purpose of the hearing's about, try and explain to them the procedural things that I anticipate they won't know, so they've got at least some idea before it's called ... It certainly takes a lot more time. (Police prosecutor)

However, many prosecutors did not feel there was any impact on them, or felt that it actually made their job easier because self-represented litigants resisted the charges less than a lawyer would.

I don't really think it affects prosecutors too much. Prosecutors may well even take the view that it's easier for them to prove their case where there's someone representing themselves. (Police prosecutor)

12.1.4 Impact on other parties

Aside from the impact on judges, court staff and police prosecution, it was recognised that appearing in court self-represented could increase harassment and abuse for victims in a case. It could also affect witnesses (for litigants who go through to defended hearing stages) who may have their time wasted unnecessarily by self-represented litigants who did not know the rules of evidence.

12.1.5 Impact on case progression

Key informants identified effects that self-represented litigants had on the length of time the whole case took to resolve, and the time required at each hearing.

²⁶ Information given to the lawyer (or litigant) by the prosecution about the case against the litigant.

Length of hearing

As outlined in the *Impact on Judges* section, key informants frequently said that individual hearing time was longer when a self-represented litigant was involved because they needed to be coached through the process; to ensure they did not want a lawyer; and because the litigant wasted time presenting irrelevant information.

[Hearings] take at least three times as long. And its purely because they don't know the rules that they're expected to play by. (Police prosecutor)

Case length

Most key informants thought that cases involving self-represented litigants usually took longer to resolve in general. Others were divided between those who thought the process was faster and those who felt representation made no difference to case length.

Cases may take longer to resolve because self-represented litigants were considered less likely to settle or negotiate charges with prosecution. Their cases often had unnecessary adjournments because litigants were unprepared for hearings and may be more likely than represented litigants to go to defended hearing when guilty. Their cases may also be delayed because a self-represented litigant decided at a late stage to apply for legal aid.

...they often freak out when their case is called and the judge says 'yes we have time today, let's hear it' and they're like 'oh well, can I be put off for legal aid' when it's usually a couple of months timeframe from the police list to the defended hearing, so they're slowing down that process. (Counter staff)

In contrast, other key informants said that case length may be shorter because many litigants entered an early guilty plea.

Those who want to get it out of the way very quickly, probably do take less of the court's time. Because they've entered an early guilty plea, taken a more solid [route] in or out of there, whereas, anyone I represent will always take an extra appearance, really. If in doubt, adjourn it out. And I try to insist that I get full disclosure on every one of my cases. (Duty solicitor)

12.2 Impact on self-represented litigants

12.2.1 Advantages

Half of the key informants identified advantages to appearing self-represented. Saving money was most commonly identified, followed by the satisfaction for a litigant from having represented themselves. Some key informants also said litigants may feel more satisfied owning up to their crime, rather than employing a lawyer to dismiss the charges on a technicality.

They probably feel better about themselves that they've gone and faced up to it, than thought they'd got off on a technicality. (Police prosecutor)

Another advantage noted was faster resolution of the case for self-represented litigants who entered early guilty pleas. They may also benefit from the early guilty plea being accounted for in sentencing.

Those that plead guilty at the first available opportunity and get out, for example, on a drink driving charge, and say, 'I'm sorry, I won't do it again, I made a mistake', I think judges might give them a bit more credit. (Judge)

Some key informants felt that judges showed more leniency towards self-represented litigants about court processes. However, they noted that this leniency was balanced by disadvantages.

It may be perception, suppose the judge has got to be more accommodating for them, or sympathetic if they're on their own, but if that happens, that's only balancing what would otherwise be an unfair situation, so don't think there's any advantage to being unrepresented. (Judge)

12.2.2 Disadvantages, problems/mistakes and personal impact

The main disadvantage for self-represented litigants was a lack of legal knowledge which led them to make poor decisions.

A common mistake is the self-represented litigant's failure to appreciate the difference between a defence and a plea in mitigation. Other common mistakes regarded the rules and laws of evidence and the process of calling and cross-examining witnesses.

At defended hearings or jury trials, obviously they [are] totally unaware of the laws of evidence and that makes those hearings much more difficult to conduct. (Judge)

Many key informants said litigants tended to present excessive and irrelevant information, and/or fail to present all the information required by the judge. Other problems of note included a general lack of preparation before the appearance, and little knowledge of court etiquette or processes.

Key informants noted that being self-represented in court meant many self-represented litigants felt anxious, stressed or bewildered, depending on their personality. However, some litigants may find self-representation beneficial because they are able to put across their own point of view.

There's obviously a lot of stress and anxiety. Some of them put in a huge lot of effort and I think that must be very difficult. They probably feel a bit isolated. This is the 95 percent that I'm talking about. They feel alienated. Those other 5 percent are probably wanting to be unrepresented, they're wanting to take on the system and the world. (Lawyer)

12.2.3 Impact on outcomes

Chapter 10 established that although there were some discrepancies, in general, represented and self-represented litigants had very similar outcomes (convicted, discharged or not proved) across all charges they faced.

Most key informants said that self-represented litigants received 'fair' outcomes, which were thought to be the result of extra effort from the judges, in particular, to accommodate self-represented litigants.

Although the outcomes were thought fair, key informants said the outcomes may be less favourable than if the litigants had representation. The outcome was believed to depend on the litigant's ability to present all the relevant information to the court, and their experience and knowledge of plea bargaining and plea choice.

I think the judges bend over backwards to be fair to them. But the judges can't be defence counsel and judge, so possibly they don't get as good a result as somebody that's represented. I'm thinking in terms of things like, discharge without conviction, if they're convicted, the penalties. (Community Law Centre representative)

A minority of key informants felt that self-represented litigants may get more favourable outcomes or softer sentences. For some, this was attributed to judges giving credit for early guilty pleas, when the litigant had in fact changed plea later. Others perceived judges to be more sympathetic after hearing from the litigant first hand.

12.2.4 Specific groups of self-represented litigants

Māori

Half of the key informants could not identify any specific issues for self-represented Māori litigants compared to non-Māori. Others said the court was based on a European model which did not allow the resolution processes that they felt would be better suited to Māori, such as restorative justice, marae-based models, or allowing involvement from the wider whānau.

Particularly with Māori litigants, we are hugely, or traditionally have been a hugely, monoculture business. It has been European, laws are European, the way we speak is European, everything is European and these guys, a lot of them don't understand it. And if they do understand it, sometimes they don't want to understand it if you know what I mean. It antagonises them. (Team leader)

Some key informants felt that the disadvantage was more a feature of education and other socioeconomic factors that may disproportionately affect Māori.

Other key informants mentioned sovereignty issues where some Māori litigants denied the court had jurisdiction over them. Several key informants felt that litigants using this defence were often pressured to do so by others.

Lack of Māori lawyers was mentioned as a disadvantage in Dunedin and Tauranga. One key informant felt that Māori actually benefited because of better support networks.

...wouldn't think they'd be disadvantaged at all, I would think they were more advantaged ... they've always had support, there's always a backup for them ... whānau support group. (Court registry officer)

Pacific

Most key informants felt few Pacific people represented themselves. In most cases this was because of low numbers of Pacific litigants in general and in others it was because their low socioeconomic status meant they were eligible for legal aid.

The main concern of key informants about self-represented Pacific people and others with English as a second language was a lack of comprehension.

Well, I guess there's always a danger if they can't speak English as a prime language. They could be, you know, in some difficulty because you can't see a person's understanding. You know, you assume if they're there and they're listening, they're hearing and understanding. How do you test it? (Court registry officer).

Others were concerned that the litigants may be reluctant to argue their case out of respect for authority or because they may be embarrassed.

They have this incredible reverence and almost treat the court with god-like reverential fashion. (Judge)

Many key informants felt that the small number of self-represented Pacific people were polite and easy to deal with and often had good support networks through family or church.

I personally find them easy to deal with and they take advice and act on it. They will usually see the duty solicitor if they can't afford a lawyer. (Judge)

Other groups

Most key informants felt the system did a good job of looking after litigants with mental health or drug and alcohol problems by ensuring that they were represented.

However, some key informants were concerned that litigants may hide their mental illness or lack of comprehension.

...we have big lists and lots of things happening and I think people could easily slip through the system. (Community magistrate)

Others said litigants with borderline mental health or personality disorders may be paranoid and/or aggressive towards the court.

The ones that are [at] defended hearing, where it's themselves tend to be people who have a distorted view of life ... I'm not qualified to draw the distinction between whether

it's a mental health issue or not, but people can be fit to plead, but still have a very warped perception. (Judge)

A few key informants noted that the system was not well set up to cater for litigants with literacy issues.

12.3 Summary

- Key informants suggested that self-represented litigants' lack of knowledge of the court process, procedure and legal jargon required more time to explain and guide them through the court system. However, many key informants (court staff and police prosecution in particular) felt self-represented litigants did not have a substantial impact on them personally.
- The extra time required for guiding self-represented litigants through the process increased hearing times. Self-represented litigants' cases were slower to progress through the system because of more unnecessary adjournments and/or more cases going through to a defended hearing stage than those with representation.
- Self-represented litigants were thought to receive fair outcomes, largely due to extra effort from judges to accommodate them. However, key informants suggested that many self-represented litigants received a less favourable outcome than they would have received if they had a lawyer because they were unaware of what information to express in court (or how to express it) and their lack of knowledge on plea bargaining.
- Financial saving was the biggest advantage for self-represented litigants, followed by satisfaction of self-representation. Self-represented litigants faced difficulties with a lack of understanding of court procedures, which was noted when calling and cross-examining witnesses and presenting irrelevant and excessive material. Key informants observed that for many litigants, self-representation resulted in feelings of anxiety, stress and/or bewilderment.
- Half the key informants felt there were no specific disadvantages for Māori. Others said the European court model was inappropriate for Māori and did not allow the culturally appropriate resolution processes, or reported sovereignty issues.
- Few Pacific people were likely to be self-represented, but for those who did self-represent, language and comprehension were likely to be a problem.
- Few litigants with mental health issues were thought to be self-represented.

13 Resources and advice for self-represented litigants in the criminal summary jurisdiction

This chapter outlines perceptions about advice or information that would assist or support self-represented litigants in the criminal court. It also describes specific court-based initiatives to help deal with self-represented litigants.

This chapter is structured as follows:

- 13.1 Current initiatives for dealing with self-represented litigants.** This section outlines strategies currently in place to assist self-represented litigants and to help the court run smoothly.
- 13.2 Unmet needs of self-represented litigants.** Key informants' perceptions of what information or support is required to best support self-represented litigants are discussed.
- 13.3 Meeting the needs of self-represented litigants through court services.** In this section, key informants suggest resources that would help them respond to self-represented litigants.

A summary of the key findings is provided at the end of the chapter.

13.1 Current initiatives for responding to self-represented litigants

Several key informants identified initiatives (some of which were court-specific) to aid self-represented litigants.

The duty solicitor scheme assists litigants at list hearings. However, some judges also ask that the duty solicitor represents litigants without counsel at the status hearing stage.

In addition to the duty solicitor scheme that operates in all criminal courts, lawyers in Palmerston North have offered to help litigants even when they are not on the duty roster. In Tauranga, some lawyers have also undertaken unpaid work.

Some courts hold hearings for self-represented litigants at specified times (eg, Palmerston North holds status hearings for represented litigants in the morning and for self-represented litigants in the afternoon).

A common practice mentioned by counter staff and judges is to allow the self-represented litigant to express their points of views before trying to deal with them. Key informants felt that while some of these litigants' expressions may be irrelevant, they were much easier to deal with once they felt they had made their point.

...often it's just something very minor that is irking them, and they just want you to know about it. And once they've let you know, and got them off their chest, you can

then say well, ok, we now need to sort of move on and look at some of the other bits and pieces. (Judge)

One lawyer included on all correspondence to self-represented litigants an explanation about what was expected from the litigants in return and where the case stood.

...in a letter that goes out, I might put a couple of words of explanation. 'I'm enclosing for you copies of the submissions in relation to such and such. This matter is going to come back before the judge next week, nobody has to appear in person, you will also just need to file your written submissions for us.' Now, you don't have to do that, but if you do, it just makes it easier to deal with the other side. (Lawyer)

13.2 Unmet needs of self-represented litigants

More than half the key informants thought not enough information was available for self-represented litigants. The most commonly identified areas in which information was required are listed below, in order of the frequency mentioned:

- An information pack/brochure/DVD about the court system and process.

It would be good, like court procedure, cos they have brochures out when it goes to a status hearing, which explains to people what happens, but there is nothing in the initial court appearance and what the purpose of that is for and what they need to be provided with before they enter pleas and so forth ... so it would be quite useful. (Duty solicitor)

- Information about the role of duty solicitor and legal aid processes.

...that would be the only thing that I could think of, some way of educating and advertising what the role of the duty solicitor is and that it's there and it's free and also the legal aid ... I don't think a lot of people really understand what legal aid is really about. (Salvation Army officer)

- Information on their charges and penalties before their court appearance.

...the only thing perhaps I could suggest is that the unrepresented person did know what the elements of the charge were ... That they were aware of what, exactly what they were defending ... And I think it would be useful if that person knew that prior to them coming in on the day, so they had time to think about what the elements of the charge were that were having to be proven to the court. (Community magistrate)

Other key informants said self-represented litigants required nothing further, or thought that more information and resources would only encourage more people to appear without representation.

I certainly wouldn't want to see signs around the court saying, you know, if you want to represent yourself here's the how to do it ... I don't think we want to encourage that. (Police prosecutor)

A few key informants suggested that information and resources were possibly not being used because of the negative attitude of many self-represented litigants.

13.3 Meeting the needs of self-represented litigants through court service

More than half of the key informants said they needed nothing further to assist them in responding to self-represented litigants.

Of the remaining key informants, some noted that tackling the self-represented litigants' unmet needs through the methods suggested previously (information packs, duty solicitor awareness, information on charges) would also reduce the amount of time the staff spent explaining process and procedure to self-represented litigants.

Another suggestion was a helpline that self-represented litigants could call to ask general questions about appearing in court. Other suggestions were staff training seminars, pamphlets/brochures focusing on how to deal with self-represented litigants, and allowing more time for court staff to deal with self-represented litigants.

13.4 Summary

- Initiatives to respond to self-represented litigants reported by key informants included duty solicitors providing representation at status hearings, lawyers offering to work pro bono, setting specific hearing times, letting litigants express or vent their views, and giving them additional instruction in correspondence.
- Most key informants thought that not enough information was available for self-represented litigants. They identified that more information was required about the court system and processes (through an information pack or DVD), and about duty solicitors, charges and penalties. Others said self-represented litigants required nothing further; they thought the court already had all the necessary resources and some suggested that additional resources could encourage more people to self-represent.
- Most key informants said they did not need anything more to assist with self-represented litigants. Others said that addressing the unmet needs of self-represented litigants would free up their time. Training seminars/pamphlets for court staff on how to deal with self-represented litigants and allowing more time for staff and self-represented litigant interactions were also suggested.

14 Discussion

Internationally there has been growing concern about the number of individuals appearing in court without representation. This has led to research in the United States, Canada, Australia and the United Kingdom, which has examined the profiles of self-represented litigants, the reasons why they appear without a lawyer, and the effect of this lack of representation.

Until now, no formal research has been conducted in New Zealand which examines these same research objectives. Claims of an increase in numbers have been anecdotal, and, to our knowledge, only two courts have tried to determine numbers appearing in court without representation. In recognising these and other shortcomings, the Law Commission recommended that research be undertaken.

The research described in this report was structured around questions similar to those used in international studies. The objectives were to assess the following within the family and criminal summary jurisdictions of District Courts:

- 1 What are the key characteristics of self-represented litigants?
- 2 Why are these litigants self-represented?
- 3 What effect does lack of representation have on self-represented litigants, the other party, the court process, the judiciary, court staff, lawyers and others?
- 4 To what extent are information and resources accessed by self-represented litigants?

A mixed methodology approach was used to answer these objectives. In the criminal summary jurisdiction, qualitative interviews were held with 55 key informants. In the family jurisdiction, 133 interviews were held with 54 self-represented litigants, 21 represented other parties and 58 key informants. Quantitative analyses determined demographic and case-specific trends of all cases that went through the study court sites during the data collection period for both the criminal summary and family jurisdictions. Additional analyses determined more in-depth demographic and socioeconomic details of the interviewed litigants from the family jurisdiction.

This final chapter is structured around the four key research objectives. Under each, the key findings are revisited to highlight the similarities and differences of self-represented litigants across the two jurisdictions. The similarities between our findings and international research are also discussed. This is followed by a discussion on what these key findings mean overall and directions for future research.

14.1 What are the key characteristics of self-represented litigants?

14.1.1 Criminal jurisdiction

In the criminal court, no quantitative data are available to determine whether the numbers of self-represented litigants have increased in recent years. Key informants commonly

suggested that the numbers had not increased over the past five years. Data collected by the courts during the study showed a large regional variation in the current proportions of litigants appearing self-represented, from 0.68 percent (Dunedin) to 7 percent (Palmerston North).

In general, it appears that self-represented litigants in the criminal summary jurisdiction share similar characteristics to many other represented litigants. Demographically, both groups are more likely to be male, predominately New Zealand European, (but closely followed by a high predominance of Māori), and aged in their late 20s to early 30s. They are also similar in terms of the offences with which they are commonly charged – more likely to be low-level charges such as property-related offences, breaches of bail/sentencing/protection orders and traffic-related offences. However, represented litigants appear proportionally more likely to be charged with violent offences than self-represented litigants. Both groups are more likely to be convicted of their charges than to have their charges dismissed or withdrawn. However, in general it appears that self-represented litigants do not differ markedly from represented litigants.

14.1.2 Family jurisdiction

In contrast to the commonly perceived lack of change in numbers in the criminal summary jurisdiction, most key informants suggested that the numbers of self-represented litigants had increased in the family jurisdiction over the past five years. This finding is in line with that found internationally, not only in the Family Court, but also in other jurisdictions (eg, Appleby, 1997; Byrne & Leggat, 1999; Mather, 2003). However, without historical trend data we could not determine whether this perception was true. We were able to determine only the numbers of self-represented litigants through current data, which again showed regional variations in self-representation between 7 percent (Manukau) and 17 percent (Tauranga).

Another distinction in findings from the criminal jurisdiction was that self-represented litigants in the family jurisdiction had more discernible characteristics than other parties going through the Family Court. There was a difference in predominant case types (care of children and domestic violence); proportionally more self-represented litigants were likely to appear for domestic violence cases than were individuals involved in cases without self-represented litigants. They shared some similarities in age²⁷ but there was a slight difference in ethnicities – although the majority of all groups identified as New Zealand European, proportionally more self-represented litigants appeared to be New Zealand European than those with cases not involving self-represented litigants.

The differences in gender and socioeconomic status were more noticeable. The self-represented litigants frequently identified as male and (as might be expected) the represented parties in these cases frequently identified as female. Where cases did not involve self-represented litigants, gender was more equally divided between the litigants. Both the self-represented and represented other parties were more likely to have secondary school qualifications only, but self-represented litigants were more likely to be paid full-time

²⁷ However, it should be noted that many of the ages of self-represented litigants were unknown.

employees, most earning more than \$30,000 a year. In contrast, most represented other parties were more likely to earn less than \$30,000 a year.

Interestingly, these demographic characteristics of self-represented litigants differed from those found in the family jurisdiction internationally. Whereas Dewar, Smith and Banks (2000) found that self-represented litigants were more likely to have limited formal education and income and no paid employment, our interview sample showed that most were in paid employment and had a higher income than the represented litigants. However, a note of caution is necessary because our findings on education, income and employment were gained solely from our small interview sample, not from the data collection set as whole.

14.2 Why are these litigants self-represented?

Similar reasons for appearing self-represented were identified across the family and criminal summary jurisdictions, which mirrored those found in the international research (Dewar, Smith and Banks 2000; Moorhead and Sefton, 2005).

The most commonly cited reason was the cost of representation. It was felt that many self-represented litigants' incomes were not low enough to be eligible for legal aid, but insufficient for them to afford a lawyer. Self-represented litigants' earnings were higher in general than the represented litigants, but very few had earnings in the highest income categories; they were more likely to be in full-time, paid employment and very few had applied for legal aid during the study.

Other reasons for self-representation included:

- Litigants appearing in the criminal court on minor charges which were less likely to be eligible for legal aid. This fits with our findings about the types of offences the litigants were charged with.
- A perception that the case was straightforward enough to represent themselves. In the criminal court this was believed to be partly due to the standardised nature of the sentences. In the Family Court this was due to the litigant perceiving that they knew their case better than a lawyer.
- A previous bad experience or distrust of lawyers (family jurisdiction).
- A desire to get the case over with as quickly as possible (criminal jurisdiction).

14.3 What effect does self-representation have?

Of all the research objectives, this is perhaps the most interesting to stakeholders. Along with knowing whether this is an increasing or decreasing phenomenon, knowing the effects of self-representation on the court system and others can help determine what, if anything, needs to be done.

Self-represented litigants across both jurisdictions face the same main difficulties – a lack of understanding of court process and procedures. This leads litigants to make mistakes, such as presenting irrelevant and excessive material, not being aware of their options when

making pleas (criminal summary jurisdiction), and in the family jurisdiction, making errors when filing and writing documents – supporting findings from Moorhead and Sefton, 2005; Dewar, Smith and Banks, 2000. Key informants in both jurisdictions took pains to point out that judges did their best to level the playing field by adapting their approach, and it was recognised by both groups that the outcomes were fair. However, these key informants also suggested that the outcomes may have been more in the litigant's favour if they had representation, mirroring the international research findings (Hann et al, 2002). This lack of understanding can also increase the stress and frustration of the litigants themselves.

Their lack of legal understanding and of processes affects others as well – it is believed to increase hearing times (and also case progression in the Family Court) because court staff, lawyers, judges and prosecution have to guide the litigants through the process. Interestingly, most key informants in the criminal court felt that although there were difficulties dealing with self-represented litigants, it did not affect them greatly. However, the effects on key informants in the family jurisdiction were more pronounced. The difference may be that a smaller proportion of self-represented litigants were found in the criminal summary jurisdiction overall than in the family jurisdiction. Also, because Family Court cases can be more complex and personal, self-represented litigants were more likely to stay in the court system longer and make repeated requests on key informants' time. In contrast, the criminal court is more well known for the large volume and speed of cases it handles. – as one team leader put it: *“it's like a sausage factory – the defendants come in and get spat out the same day.”* Thus, in this respect, key informants in the criminal summary jurisdiction may be less likely to have to deal with repeated requests from the same litigant and have fewer litigants to deal with overall, compared to key informants in the family jurisdiction.

The impacts of self-represented family litigants are also spread further (due to the more complex and personal nature of their cases) than those of the criminal self-represented litigant. Self-represented family litigants were found to increase costs and stress levels for the other party. Depending on the personality of the self-represented litigant and the ages of the children involved, it may also be upsetting and unsettling to their children.

14.4 To what extent are information and resources accessed by self-represented litigants?

Due to difficulties contacting self-represented criminal litigants, we were unable to assess what kind of information and what resources they had sought. However, family litigants had frequently sought the advice of court staff, Community Law Centres, Internet, family and friends for information on court procedure, process, applications, affidavits, case laws and general case advice. These resources were also accessed (although less frequently) by most represented litigants for the same reasons.

Across both the criminal summary and family jurisdictions, several court-specific initiatives were mentioned to aid in dealing with self-represented litigants and to help the courts run more smoothly. Common strategies across the two jurisdictions include setting specific hearing times and showing litigants where to go for hearings. Other criminal summary jurisdiction strategies included letting litigants express their views, providing extra instructions

in correspondence, and lawyers offering pro bono work. In the Family Court more specific strategies included giving 'how-to' handouts and delegating one staff member to deal with problem litigants.

Similar suggestions were raised to address the needs of self-represented litigants in the criminal summary and family jurisdictions. An information pack or DVD outlining court processes and procedures was proposed (with additional information on duty solicitors, charges and penalties for the criminal jurisdiction). To ensure that people fully understand the implications of self-representation, some informants felt that the common difficulties self-litigants could face could also be outlined in this pack. Given that many represented litigants also said they had sought similar types of information, it was likely that an information pack, if the content was generic, may benefit this group as well. Furthermore, an information pack was identified as also benefiting court staff because it would free up more of the time they spent dealing with self-represented litigants. The idea of an information pack is not a new one – the United States and Canada use them (Law Commission, 2003).

Most key informants in the criminal summary jurisdiction suggested they needed nothing further to help them deal with self-represented litigants. However, most key informants in the family jurisdiction wanted more training in how to deal with self-represented litigants. The different perceptions in what the key informants in the two jurisdictions needed may again reflect the heavier burden felt by the family key informants when dealing with self-represented litigants and the higher proportions of self-represented litigants observed in their jurisdiction.

14.5 What does this all mean?

The purpose of this study was exploratory, with the aim of answering the four key questions to build a picture of the self-represented litigants in New Zealand's criminal summary and family jurisdictions:

- What are the key characteristics of self-represented litigants?
- Why are they self-represented?
- What effect does their lack of representation have on them, the other party, the court process, the judiciary, court staff, lawyers and others?
- To what extent are information and resources accessed by self-represented litigants?

It was *not* intended to make recommendations towards law reform or to make recommendations about what should or should not be done for self-represented litigants. Although we have presented the key findings for these four objectives, we do feel there are some points that warrant further discussion.

Firstly, our findings generally reflect those found internationally. Although small discrepancies were noted in the Family Court litigants' characteristics, on the whole they match what has been found about why litigants appear self-represented, the mistakes they make, the effects on others and themselves. Our findings are thus nothing startling in that respect. The similarity of our findings suggests that if the phenomenon of self-represented

litigants is addressed in the future, the approaches these other countries have adopted may be worth considering in New Zealand.

Secondly, the regional variation of numbers of self-represented litigants, in both the family and criminal summary jurisdictions, warrants further investigation. It is not clear whether it is a function of the availability or cost of lawyers, the type of cases in particular areas, or a greater acceptance or desire for self-representation in particular regions. In the future it would be useful if court information systems could more accurately record self-represented litigant numbers, rather than relying on the brief snapshots of this study. Insufficient data make research in this area difficult and it would be helpful for future research if data collection systems were implemented.

Thirdly, it appears that self-represented litigants are more of an issue in the family jurisdiction than in the criminal summary jurisdiction. While there are many similarities across the jurisdictions – they have similar reasons for self-representing, have similar effects in terms of the extra time and guidance to get through their hearings and cases, and encounter similar problems navigating through the court system – there are also notable differences. As highlighted earlier, there are differences in the proportion of self-represented litigants in each jurisdiction. Differences have also emerged in perceptions – family key informants suggest self-representation is increasing while criminal summary court key informants believe there has been little change in numbers over recent years. The perception from most key informants in the criminal summary court is that even though there are effects on their time and effort, it is not such a problem for them, compared to the more noticeable burden it has on family key informants. Although self-representation may not be so much of an issue in the criminal summary jurisdiction, this does not mean it should be ignored, especially considering the regional variations in numbers. Again, further research is warranted before any decisions on what steps are needed to address self-representation in one or both jurisdictions.

Finally, this study is only a first step in assessing self-represented litigants in New Zealand. Other jurisdictions (such as the civil and High Court) also have self-represented litigants. As mentioned in the introduction, further research may be needed in these jurisdictions. Discussions with key informants during the current research suggest that similar to the findings in the criminal summary and Family Courts, numbers of self-represented litigants in the civil court may also vary regionally. Without better data, it is difficult to draw firm conclusions – not only on whether a similar study in other courts should be pursued, but also how to address the findings from the current study. Before any other steps are taken we strongly suggest that systems allow for more rigorous data collection, so the nature of self-representation has a stronger evidence base and can be more fully assessed.

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Appendix 1: Research questions

The following research questions have been formed from the four research objectives. While research questions have been grouped according to the objective they predominantly relate to, some questions might relate to more than one objective.

Objective 1

To identify the key characteristics of unrepresented litigants in the criminal summary jurisdiction of district courts and Family Courts.

- What proportion of litigants are self-represented in the criminal summary jurisdiction of the district court and in the Family Court?
- What proportion of self-represented litigants are New Zealand European, Māori, Pacific people and other ethnic groups?
- What proportion of self-represented litigants are women?
- Are there any other demographic commonalities between self-represented litigants?
- What prior experience have self-represented litigants had with the court system; have they appeared self-represented before?
- What prior knowledge do self-represented litigants have of the court system?
- What proportion of self-represented litigants have been declined legal aid? What were the reasons for legal aid being declined?
- What proportion of self-represented litigants did not apply for legal aid? Why?
- What types of charges are self-represented litigants/defendants facing in the criminal summary jurisdiction of the district court?
- What types of cases are self-represented applicants and respondents involved in within the Family Court?
- Do key informants perceive that the number of self-represented litigants is increasing?

Objective 2

To investigate the reasons why litigants are not represented.

- What reasons do litigants give for being self-represented?
- Would self-represented litigants prefer to have a lawyer if circumstances allowed?
- Do self-represented litigants apply for legal aid? Why/why not?
- Are self-represented litigants aware of legal aid?
- Do self-represented litigants report barriers or supply issues in accessing lawyers and/or legal aid?

- Have self-represented litigants had a lawyer in the past (for this case and for past cases)?
- What are key informants' perceptions of the reasons for litigants being self-represented?

Objective 3

To identify the extent to which information and resources (such as Community Law Centres) are accessed by self-represented litigants.

- Where/how do self-represented litigants get information about their case?
- Do self-represented litigants access community organisations for legal advice or information and which ones?
- Are self-represented litigants assisted by other people? If so, who?
- In criminal cases, do self-represented litigants/defendants routinely receive sufficient and timely disclosure?
- What questions remain unanswered for self-represented litigants?
- What needs do self-represented litigants have for assistance?
- What legal advice or information would have helped self-represented litigants?
- What gaps in support/information/advice are identified by key informants for self-represented litigants?

Objective 4

To identify the effect that lack of representation has on self-represented litigants, on opposing parties, the court process, the judiciary and lawyers.

- To what extent are self-represented litigants satisfied with both the process and outcome of representing themselves?
- Do self-represented litigants understand the reason for/process of the litigation?
- Do self-represented litigants report any problems with the court process? Do they perceive the court process as fair?
- Do self-represented Māori litigants have particular issues in common with or distinct from other litigants? How can these be addressed?
- Do self-represented Pacific litigants have particular issues in common with or distinct from other litigants? How can these be addressed?
- Do other groups have special needs in relation to self-represented litigation? How can these be addressed?
- Do key informants perceive that self-represented litigants take up more court time?
- Do key informants perceive that self-represented litigants/defendants take up more police time?

- Do key informants perceive that self-represented litigants take up more time for court staff outside the court?
- Do key informants perceive any advantages or disadvantages for litigants representing themselves?
- Do self-represented litigants perceive any advantages or disadvantages to representing themselves?
- Do self-represented litigants perceive their outcomes as fair?
- Do key informants perceive that the outcomes for self-represented litigants are fair?
- How can the court assist self-represented litigants more effectively?
- What problems do self-represented litigants report with the court process?
- In the Family Court, do parties opposing self-represented litigants perceive any advantages or disadvantages for self-represented litigants on themselves or others?
- Do the opposing parties perceive the judicial process as fair when dealing with these litigants?

Appendix 2: Details of interview and data collection samples

Table 23: Case types of self-represented interview sample, represented interview sample and all cases involving self-represented parties

| | Interviewed self-represented litigants | | Interviewed represented litigants | | All cases involving self-represented | |
|-----------------------|--|----|-----------------------------------|----|--------------------------------------|----|
| | No. | % | No. | % | No. | % |
| Care of children | 32 | 59 | 15 | 71 | 40 | 35 |
| Domestic violence | 10 | 19 | 4 | 19 | 39 | 34 |
| Care and protection | 7 | 13 | 1 | 5 | 28 | 25 |
| Dissolution | 0 | 0 | 0 | 0 | 1 | 1 |
| Relationship property | 2 | 4 | 0 | 0 | 2 | 2 |
| Other family | 3 | 6 | 1 | 5 | 4 | 4 |
| Total | 54 | | 21 | | 114 | |

Tables 24, 25 and 26 show the gender and ethnicity of the self-represented and represented litigants who were interviewed compared with the larger sample. The differences between the groups were minor in these respects.

Table 24: Gender of all litigants sampled

| | Interviewed self-represented | | All self-represented | | Interviewed represented | | All represented | |
|---------|------------------------------|----|----------------------|----|-------------------------|----|-----------------|----|
| | No. | % | No. | % | No. | % | No. | % |
| Male | 39 | 72 | 91 | 66 | 5 | 24 | 18 | 16 |
| Female | 15 | 28 | 47 | 34 | 16 | 76 | 72 | 62 |
| Company | 0 | 0 | 0 | 0 | 0 | 0 | 26 | 22 |
| Unknown | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 54 | | 138 | | 21 | | 116 | |

Table 25: Ethnicity of all self-represented litigants sampled

| | Interviewed self-represented | | All self-represented | |
|-----------------------|------------------------------|----|----------------------|----|
| | No. | % | No. | % |
| New Zealand European | 31 | 56 | 81 | 59 |
| Māori | 9 | 16 | 19 | 14 |
| Māori and NZ European | 5 | 9 | 1 | 1 |
| Pacific peoples | 1 | 2 | 5 | 4 |
| Other | 7 | 13 | 3 | 2 |
| Asian | 0 | 0 | 4 | 3 |
| No response/unknown | 1 | 4 | 25 | 18 |
| Total | 54 | | 138 | |

Table 26: Ethnicity of all represented litigants sampled

| | Interviewed represented | | All represented | |
|-----------------------|-------------------------|----|-----------------|----|
| | No. | % | No. | % |
| New Zealand European | 13 | 62 | 58 | 42 |
| Māori | 4 | 19 | 11 | 8 |
| Māori and NZ European | 0 | 0 | 0 | 0 |
| Pacific people | 0 | 0 | 4 | 3 |
| Asian | 0 | 0 | 0 | 0 |
| Other | 2 | 10 | 4 | 3 |
| No response/unknown | 2 | 10 | 39 | 28 |
| Total | 21 | | 116 | |

Appendix 3: Breakdown of case type by gender

Table 27 shows a breakdown of all the cases that involved self-represented litigants by the gender of the self-represented litigant.²⁸ When examined further, males were more likely than females to be self-represented in care of children (66 percent of the self-represented litigants in these cases were male) and domestic violence (74 percent of self-represented litigants were male). Care and protection cases were the opposite, with 54 percent of the self-represented litigants being female in these cases. Too few self-represented litigants were in the remaining case types to analyse further.

Table 27: Case types by gender of self-represented litigant

| Case type | % in which UL was male | % in which UL was female |
|---|------------------------|--------------------------|
| Care of children | 66 | 34 |
| Domestic violence | 74 | 26 |
| Care and protection | 46 | 54 |
| Dissolution* | N/A | N/A |
| Relationship property* | N/A | N/A |
| Protection of personal and property rights* | N/A | N/A |
| Other family* | N/A | N/A |

* The numbers of self-represented litigants involved in these cases were too low to make these figures meaningful.

²⁸ Where a case involves more than one unrepresented litigant, they will be counted twice.

Appendix 4: Additional socioeconomic details of interview sample

The following tables show the socioeconomic details of both the self-represented and represented litigants, which were gained from our interviews.

As shown in Table 28, most self-represented and represented litigants were born in New Zealand, although it appears that a slightly higher proportion of the represented sample was born in New Zealand than the self-represented sample.

Table 28: Interview sample – Number of litigants born in New Zealand

| | Self-represented | | Represented | |
|-------|------------------|----|-------------|----|
| | No. | % | No. | % |
| Yes | 45 | 83 | 20 | 95 |
| No | 9 | 17 | 1 | 5 |
| Total | 54 | | 21 | |

All but one self-represented litigant spoke English at home. Two represented and two self-represented litigants were bilingual.

The majority of both self-represented and represented parties in our study sample did not claim to have any long-term disability or impairment (defined as lasting six months or more). See Table 29 for details.

Table 29: Interview sample – Litigants with disability or impairment

| | Self-represented | | Represented | |
|-----------|------------------|----|-------------|----|
| | No. | % | No. | % |
| Yes | 12 | 22 | 4 | 19 |
| No | 41 | 76 | 17 | 81 |
| No answer | 1 | 2 | 0 | 0 |
| Total | 54 | | 21 | |

More than half of both the self-represented and represented groups of litigants were not married or living with a partner. See Table 30.

Table 30: Interview sample – Marital status

| | Self-represented | | Represented | |
|---|------------------|----|-------------|----|
| | No. | % | No. | % |
| Married or civil union/live with partner | 21 | 39 | 9 | 43 |
| Not married/civil union/living with partner | 31 | 57 | 12 | 57 |
| No answer | 2 | 4 | 0 | 0 |
| Total | 54 | | 21 | |

As shown in Table 31, more than half of the self-represented and represented litigants in the study sample had one or two children at the start of their court case.

Table 31: Interview sample – Number of financially dependent children of litigants at start of case

| | Self-represented | | Represented | |
|-------|------------------|----|-------------|----|
| | No. | % | No. | % |
| 0 | 11 | 20 | 2 | 10 |
| 1 | 15 | 28 | 7 | 33 |
| 2 | 16 | 30 | 6 | 29 |
| 3 | 8 | 15 | 3 | 14 |
| 4 | 4 | 7 | 3 | 14 |
| Total | 54 | | 21 | |



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