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# Reducing The “Justice Gap” Through Access to Unbundled Legal Services: Utilizing an A2J Measurement Framework to Measure Unbundling Effectiveness

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Résumé de l'article

La disparité toujours croissante entre le coût des services juridiques et la capacité des Canadiens à payer pour de tels services est souvent appelée l'« écart de justice ». À mesure que l'écart prend de l'ampleur, les intervenants doivent trouver des façons novatrices de le pallier. Dans les dernières années, la capacité des avocats d'offrir des services juridiques dégroupés dans le cadre de mandats à portée limitée a souvent été considérée comme un outil de justice « personnel » ou « axé sur les usagers ». Ces services peuvent élargir l'accès à des personnes qui n'ont pas les moyens d'être totalement représentées, mais qui ne sont pas admissibles à l'aide juridique subventionnée par le gouvernement. Cependant, les études sur les services juridiques dégroupés comme outils d'accès à la justice au Canada n'en sont qu'à leurs débuts. Ainsi, le présent article contribue à la discussion en cours sur l'évaluation des services juridiques dégroupés par l'examen de leur efficacité comme outil d'accès à la justice par rapport à un cadre d'évaluation pertinent, et par l'examen d'un échantillon de données d'un sondage sur un projet pilote concernant les services juridiques dégroupés en Saskatchewan, au Canada. Nous avons également relevé l'information manquante sur l'efficacité des services juridiques dégroupés en prenant soin d'expliquer pourquoi cette information est importante. En guise de conclusion, nous illustrons nos idées sur la façon d'étudier les données manquantes en lien avec le cadre afin de réaliser une évaluation plus efficace et d'obtenir des données comparatives sur les services juridiques dégroupés des différents ressorts de compétence.

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## Reducing The “Justice Gap” Through Access to Unbundled Legal Services: Utilizing an A2J Measurement Framework to Measure Unbundling Effectiveness

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*The ever-growing disparity between the cost of legal services and Canadians’ ability to pay for those services is known as the “justice gap.” As that gap widens, stakeholders must look for innovative ways to address it. In recent years, the potential for lawyers to offer unbundled legal services [ULS] through limited scope retainers has received considerable commentary as a “person” or “user-centred” justice tool, largely based on increasing affordability. ULS may expand access to individuals that cannot afford full representation but do not qualify for government-funded legal aid. However, empirical research on ULS as an access-to-justice (A2J) tool in Canada has only begun. This article contributes to the growing discourse on measuring ULS and is novel in Canada in its examination of ULS effectiveness as an A2J tool in reference to an A2J Measurement Framework and sample survey data from a ULS pilot project in Saskatchewan, Canada. We also identify what we do not yet know about ULS efficacy and why we should care about these unknowns. We caution against some of the generalizations currently made in the literature about which individuals are best suited for ULS. Finally, we conclude with ideas on how to continue studying these unknowns in reference to the framework for more efficient evaluation and comparative ULS data across jurisdictions. Utilizing the framework to measure ULS effectiveness across jurisdictions could help determine whether such initiatives are working from an A2J view and making a difference in the overall movement to reduce the justice gap.*

*La disparité toujours croissante entre le coût des services juridiques et la capacité des Canadiens à payer pour de tels services est souvent appelée l’« écart de justice ». À mesure que l’écart prend de l’ampleur, les intervenants doivent trouver des façons novatrices de le pallier. Dans les dernières années, la capacité des avocats d’offrir des services juridiques dégroupés dans le cadre de mandats à portée limitée a souvent été considérée comme un outil de justice « personnel » ou « axé sur les usagers ». Ces services peuvent élargir l’accès à des personnes qui n’ont pas les moyens d’être totalement représentées, mais qui ne sont pas admissibles à l’aide juridique subventionnée par le gouvernement. Cependant, les études sur les services juridiques dégroupés comme outils d’accès à la justice au Canada n’en sont qu’à leurs débuts. Ainsi, le présent article contribue à la discussion en cours sur l’évaluation des services juridiques dégroupés par l’examen de leur efficacité comme outil d’accès à la justice par rapport à un cadre d’évaluation pertinent, et par l’examen d’un échantillon de données d’un sondage sur un projet pilote concernant les services juridiques dégroupés en Saskatchewan, au Canada. Nous avons*

*également relevé l'information manquante sur l'efficacité des services juridiques dégroupés en prenant soin d'expliquer pourquoi cette information est importante. En guise de conclusion, nous illustrons nos idées sur la façon d'étudier les données manquantes en lien avec le cadre afin de réaliser une évaluation plus efficace et d'obtenir des données comparatives sur les services juridiques dégroupés des différents ressorts de compétence.*

## I. INTRODUCTION

The concept of A2J is not new. In 2013, the Honourable Beverley McLachlin, chief justice of the Supreme Court of Canada, wrote “[a]s long as justice has existed, there have been those who struggled to access it.”<sup>1</sup> Despite many Canadian stakeholders working tirelessly to improve the system, it is still all too often complex, slow, and expensive, factors cited a decade ago by the Action Committee on A2J in their report, “A Roadmap for Change”.<sup>2</sup> Since the 1970s, justice stakeholders have explored and implemented programs to address A2J, but the justice landscape has evolved significantly since that time.

The traditional representation model where the lawyer assumes full responsibility for the matter is less desirable for some individuals. Besides being unaffordable, some individuals want to take a more active role in resolving their legal problems. Canadians are increasingly opting for “do-it-yourself” [DIY] options to solve legal problems, something the justice system has not traditionally been well-equipped to handle.<sup>3</sup> Parts of the traditional model still require significant technical and procedural knowledge, skills lawyers spend years studying and mastering.

Other individuals are forced into self-representation due to financial constraints or other barriers in accessing legal representation. Over the years, more public attention has been paid to the criminal justice system.<sup>4</sup> Consequently, the civil justice side has received less attention until

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<sup>1</sup> Action Committee on Access to Justice in Civil and Family Matters, “Access to Civil and Family Justice: A Roadmap for Change” (October 2013) at i, online (pdf): *Canadian Forum on Civil Justice* <[www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf)> [“AC Report”].

<sup>2</sup> *Ibid* at 1.

<sup>3</sup> Canada, Department of Justice of Canada, *Expanding Horizons: Rethinking Access to Justice in Canada* (Ottawa: Department of Justice Canada, 2001) at 1, online (pdf): *Government of Canada* <[www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00\\_2-po00\\_2/op00\\_2.pdf](http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/op00_2-po00_2/op00_2.pdf)>.

<sup>4</sup> Action Committee on Access to Justice in Civil and Family Matters, “Meaningful Change for Family Justice: Beyond Wise Words” (April 2013) at 3, online (pdf): *Canadian Forum on Civil Justice* <[www.cfcj-fcjc.org/sites/default/files/docs/2013/AC\\_Report\\_English\\_Final.pdf](http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf)>.

recently. The public often has only two options in seeking legal assistance: hiring a private lawyer or, where they qualify, acquiring free or subsidized legal assistance. For many, free or subsidized legal aid and pro bono assistance are unavailable; in Canada, legal aid and pro bono assistance is only offered to people who meet certain financial criteria.<sup>5</sup> Other pro bono organizations have higher financial cut-offs but use similar eligibility determination processes<sup>6</sup> that ultimately exclude most of the public. Furthermore, these organizations often provide assistance in limited areas of civil law.<sup>7</sup> For those who do not qualify and cannot afford to hire a private lawyer, self-representation is the only option. The increase in self-represented litigants [SRLs] is because of the “justice gap”: the lack of public subsidies for civil issues and increasing inability to afford private legal services.<sup>8</sup>

The justice gap is significant, however, and many SRLs and users of ULS make a conscious financial decision to self-represent or self-represent and pursue some ULS. The decision to not obtain full representation may be a rational choice for some individuals, given the free legal resources made available by justice stakeholders such as public legal education and information providers, groups like the National Self-Represented Litigants Project, governments, and CanLII. Since SRLs are often inexperienced with the justice system, backlogs and strain may occur for everyone involved<sup>9</sup> as judges and lawyers are assisting, and sometimes coaching, SRLs on basic court procedure. With the law permeating into more areas of people’s lives, absent “person-centred” change, strain on the justice system will only increase. As the Honourable Thomas Cromwell, former Supreme Court of Canada justice stated, “the structure urgently needs attention.”<sup>10</sup> If we do not give the structure attention, the number of people who cannot access civil justice will continue to increase. Person-centred, creative solutions – and evaluating the individual and collective impact of those solutions through a common measurement framework – are urgently needed to address structural, systemic barriers to A2J.

Enter ULS – an important, under-researched topic in the A2J literature. This article is novel in Canada in its examination of the promise and limitations of ULS in reducing the justice gap by analyzing ULS research in relation to the A2J Measurement Framework’s components. Our

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[fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf](http://fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf).

<sup>5</sup> Saskatchewan Assistance Regulations, RRS 2014, c S-8, Reg 12, s 4-13.

<sup>6</sup> Interview of Chantelle Johnson, Executive Director of CLASSIC, an inner-city poverty law clinic in Saskatoon, Saskatchewan, Canada, 26 June 2019.

<sup>7</sup> For example, in Saskatchewan, CLASSIC does not provide legal representation on family law issues, and Legal Aid Saskatchewan helps with family and criminal matters.

<sup>8</sup> Beth Bilson, Brea Lowenberger & Graham Sharp, “Reducing the ‘Justice Gap’ through Access to Legal Information: Establishing Access to Justice Entry Points at Public Libraries” (2017) 34:2 Windsor YB Access Just 99 at 100, referring to “AC Report,” *supra* note 1 at 3.

<sup>9</sup> Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report” (May 2013) at 13, online (pdf): *Representing Yourself Canada* <[representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf](http://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf)>.

<sup>10</sup> “AC Report,” *supra* note 1 at v.

inquiry is primarily limited to private bar civil, family, and administrative disputes, with some data drawn from publicly funded ULS, such as duty counsel studies, as opposed to criminal and non-contested needs. In the first section, we explore ULS as a key A2J tool by summarizing existing Canadian empirical literature and highlighting data from a recent ULS pilot project in Saskatchewan, Canada. In the second section, we identify what we do not yet know about ULS efficacy and why we should care about these unknowns. Based on our review of existing empirical literature, we provide recommendations for more nuanced empirical study of users of ULS that considers a variety of factors, including individuals' skills and personality characteristics, in relation to both the area of law and type of ULS. Finally, in the third section, we offer ideas on how to continue studying these unknowns. With an ever-growing focus in the Canadian justice system on "person" and "user-centred" change, the time is right to launch more nuanced research and data collection, informed by A2J Measurement Framework metrics, so that further ULS research and policy development can be comparative and maintain an A2J focus. Our hope is that other researchers and policy-makers will respond to our invitation and share their own experience in utilizing the A2J Measurement Framework to measure ULS effectiveness.

## II. WHY PEOPLE SHOULD CONSIDER ULS AS AN A2J TOOL

This section provides background on ULS and our pilot project, measuring ULS's effectiveness; how ULS measurement is advanced by using the A2J Measurement Framework; and how ULS research relates to the framework's components.

### A. ULS Background

One potential solution to address the justice gap is offering and improving ULS through limited scope retainers. A limited scope retainer is generally defined as "an agreement between the client and lawyer to limit the scope of services that the lawyer renders."<sup>11</sup> Put another way, the extent and type of ULS offered is outlined in a limited scope retainer agreement, which is "the provision of legal services for part, but not all, of a client's legal matter by agreement with the client."<sup>12</sup> Clients who receive ULS do not have full representation by counsel throughout their matter.<sup>13</sup> Instead, they receive limited assistance with services such as advice, research, drafting, and limited representation during specific proceedings (for example, court appearances, negotiations, and so on).<sup>14</sup> Other common forms of ULS may include, for example, summary advice from duty

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<sup>11</sup> Forrest S Mosten, "Unbundled Legal Services Today – and Predictions for the Future" (2012) 35:2 Family Advocacy 14 at 14.

<sup>12</sup> Federation of Law Societies of Canada (FLSC), *Model Code of Professional Conduct* (Ottawa: FLSC, 2022) at 1.1.1, online: *Federation of Law Societies of Canada* (pdf): <flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/Model%20Code%20Oct%202022%20-%20Blacklined.pdf>.

<sup>13</sup> Jessica K Steinberg, "In Pursuit of Justice: Case Outcomes and the Delivery of Unbundled Legal Services" (2011) 18:3 Geo J on Poverty L & Pol'y 453 at 454.

<sup>14</sup> Mosten, *supra* note 11 at 14.

counsel or legal coaching. When ULS is offered through legal coaching, the “lawyer-coach offers behind-the-scenes guidance on both the hard and soft skills of lawyering, in order to provide a (primarily) SRL with the strategies and tools needed to present their case as effectively as possible in the absence of counsel.”<sup>15</sup> Coaching and other forms of ULS give people who do not obtain full representation a way to navigate their legal issue with the assistance of an expert.

Codes of professional conduct and rules of court across Canada often have provisions for use of limited scope retainers, as does the Model Code of Professional Conduct issued by the Federation of Law Societies of Canada.<sup>16</sup> Rule 3.2-1A of the Model Code specifies that, when lawyers take on a client under a limited scope retainer, the lawyer must “advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.”<sup>17</sup> The use of a limited scope retainer enables the lawyer to represent their client ethically and responsibly while forgoing the onus to provide for every aspect of traditional legal representation.

There are conceptualizations of ULS that have developed. For example, ULS has been characterized in the literature as being comprised of two categories:

- Vertical or segmented: the lawyer’s role is broken up into services, and the client is free to select which ones they want or need.
- Horizontal: the lawyer is involved for a single issue, process, or appearance.<sup>18</sup>

However, Noel Semple asserts that a three-dimensional model of ULS, conceptualized as a “cube,” is more accurate.<sup>19</sup> The three dimensions of the “cube” – issues, stages, and tasks – are defined as follows:

- Issues-based unbundling: where “a client might retain a firm to handle complex legal issues (for example, matrimonial property division in a family law case), while handling more legally straightforward issues (for example, negotiating a child custody and access arrangement) him- or herself.”

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<sup>15</sup> CREATE Justice, “Saskatchewan Legal Coaching and Unbundled Services Pilot Project,” online: *University of Saskatchewan* <[law.usask.ca/createjustice/projects/ongoing-initiatives/Saskatchewan-Legal-Coaching-and-Unbundled-Services-Pilot-Project.php](http://law.usask.ca/createjustice/projects/ongoing-initiatives/Saskatchewan-Legal-Coaching-and-Unbundled-Services-Pilot-Project.php)>. For more information on legal coaching, see Nikki Gersh bain, “Family Legal Services Review Submission on Legal Coaching” (Windsor: National Self-Represented Litigants Project, 2017) at 4, online: *Representing Yourself Canada* <[representingyourselfcanada.com/wp-content/uploads/2017/05/Bonkalo-Submission-Coaching-and-Unbundling.pdf](http://representingyourselfcanada.com/wp-content/uploads/2017/05/Bonkalo-Submission-Coaching-and-Unbundling.pdf)>.

<sup>16</sup> See generally FLSC, *supra* note 12 at 3.2-1A.

<sup>17</sup> *Ibid.*

<sup>18</sup> Mosten, *supra* note 11 at 14.

<sup>19</sup> Noel Semple, “Accessibility, Quality, and Profitability for Personal Plight Law Firm: Hitting the Sweet Spot” (August 2017) at 71, online (pdf): *CBA Legal Futures Initiative* <[www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Accessibility,-Quality,-and-Profitability-for-Personal-Plight-Law-Firms.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Accessibility,-Quality,-and-Profitability-for-Personal-Plight-Law-Firms.pdf)> [Semple, “Accessibility”].

- Stages-based unbundling: where, for example, a litigator “offers representation limited to the trial of a matter on the assumption that the client has self-represented or retained another firm to handle previous stages.”
- Task-based unbundling: where “[t]he firm performs some but not all of the legal tasks required by the client, without limiting the service based on issues or litigation stages,” such as “behind-the-scenes” legal coaching on particular tasks.<sup>20</sup>

These conceptualizations are helpful ways of characterizing in what context and how ULS can arise.

In Saskatchewan, in response to justice stakeholders’ interest in engaging lawyers in a culture shift to improve A2J (for example, the 2013 and 2014 Dean’s Forum on A2J),<sup>21</sup> several organizations collaborated to support and enhance the provision of ULS. In 2019, the Law Society of Saskatchewan, the Saskatchewan Ministry of Justice, and CREATE Justice launched a provincial Legal Coaching and Unbundling Pilot Project (LCUP). LCUP sought to connect clients with lawyers who offer ULS. Fifty-nine lawyers participated in the pilot (LCUP lawyers). With support from the Canadian Foundation for Legal Research, project partners collaborated with the Canadian Hub for Applied and Social Research (CHASR) to collect feedback about LCUP lawyer and client experiences with ULS in Saskatchewan. CHASR collected experiences from twenty-one lawyers involved in LCUP across two surveys and a focus group as well as through a survey of twenty-one clients who had received ULS either through LCUP or elsewhere.<sup>22</sup> We adapted survey questions from John-Paul Boyd’s “Client and Lawyer Satisfaction with Unbundled Legal Services: Conclusion from Alberta’s Limited Legal Services Project,” to advance comparative data on ULS across jurisdictions.<sup>23</sup> The lawyers who chose to participate in the LCUP study reported taking on between one to five ULS files in a typical four-month period. Other empirical research, described below, informed the LCUP 2022 study and our ongoing work in this area.

## B. Measuring ULS’s Effectiveness

ULS has been called a “person” or “user-centred” response to the A2J crisis. ULS is generally said to target those in the “justice gap” or “low middle class,” who are defined as “individuals whose household income is too high to allow them to qualify for legal aid but too low, in many

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<sup>20</sup> *Ibid* at 71–72.

<sup>21</sup> University of Saskatchewan, College of Law, “The Dean’s Forum on Dispute Resolution and Access to Justice: Saskatchewan Experience” (2014) at 5, 49, 69, online (pdf): *University of Saskatchewan* <law.usask.ca/documents/research/deans-forum/04\_TheSecondMeeting\_2014SummaryNotes.pdf>.

<sup>22</sup> Canadian Hub for Applied and Social Research, “Saskatchewan Legal Coaching and Unbundling Pilot Project Survey Report” (January 2022), online: *University of Saskatchewan* <law.usask.ca/createjustice/documents/saskatchewan-legal-coaching-and-unbundling-pilot-project---final-22.pdf> [“LCUP Report”].

<sup>23</sup> John-Paul E Boyd, “Client and Lawyer Satisfaction with Unbundled Legal Services: Conclusions from the Alberta Limited Legal Services Project” (August 2018), online (pdf): *Canadian Research Institute for Law and the Family* <albertalegal.org/Report.pdf>.

cases, for them to be in a position to hire legal counsel to represent them in a civil law matter.”<sup>24</sup> There is a lack of data in Canada examining what type of ULS works for whom within the expansive “low middle class.” However, data is emerging – while ULS is effective for some segments of low-middle-income earners, it is not an A2J panacea. As we describe in the second section, certain types of ULS may not be as helpful for certain individuals, and caution and care should be taken in studying such unknowns to not overgeneralize findings. Ongoing ULS research will help reveal for whom ULS is an effective A2J tool. In addition to the LCUP 2022 study in Saskatchewan, key ULS data projects in Canada include:

- in Alberta, Boyd’s 2018 ULS study<sup>25</sup> and L.D. Paetsch and J.J. Bertrand’s 2017 summary legal advice study;<sup>26</sup>
- in British Columbia, a 2023 Phase 2 and 2020 Phase 1 report on implementing a prototype for continuous ULS client feedback and the final report of Mediate BC’s 2017 Family ULS Project;<sup>27</sup> and
- in Ontario, Rachel Birnbaum and Nicholas Bala’s 2021 study findings, the first time “a robust group of interrelated studies with a large number of participants has been undertaken about the use of limited scope family legal services,” and Nikki Gershain’s 2017 SRL and lawyer-focused review on ULS and legal coaching.<sup>28</sup>

Data from these studies indicate an increased demand by individuals for ULS:

<sup>24</sup> Michael Trebilcock, Anthony Duggan & Lorne Sossin, *Middle Income Access to Justice* (Toronto: University of Toronto Press, 2012) at 4.

<sup>25</sup> Boyd, *supra* note 23.

<sup>26</sup> LD Bertrand & JJ Paetsch, “Summary Legal Advice Services in Alberta: Survey Results from the First Two Years of Data Collection” (May 2018), online (pdf): *Canadian Research Institute for Law and the Family* <[prism.ucalgary.ca/bitstream/handle/1880/107582/ALF\\_Clinic\\_Survey\\_Year\\_2\\_-\\_May\\_2018.pdf?sequence=1&isAllowed=y](http://prism.ucalgary.ca/bitstream/handle/1880/107582/ALF_Clinic_Survey_Year_2_-_May_2018.pdf?sequence=1&isAllowed=y)>.

<sup>27</sup> BC Justice Family Innovation Lab, “The Family Law Unbundled Legal Services Research Project (ULSRP) – Phase 1 Report” (2020), online (pdf): *Family Justice Innovation Lab Society* <[www.bcfamilyinnovationlab.ca/wp-content/uploads/2021/12/ULSRP-Phase-1-Report-2021-12-08-File-No-2020-LLR-3552-no-financials.pdf](http://www.bcfamilyinnovationlab.ca/wp-content/uploads/2021/12/ULSRP-Phase-1-Report-2021-12-08-File-No-2020-LLR-3552-no-financials.pdf)> [“BC Report, Phase 1”]; BC Justice Family Innovation Lab, “The Family Law Unbundled Legal Services Research Project (ULSRP) – Phase 2 Final Report” (2023), online (pdf): *Family Justice Innovation Lab Society* <[drive.google.com/file/d/1ey7Cn\\_pwpAU0MFDWeV8kX9obYZv7lm5w/view](http://drive.google.com/file/d/1ey7Cn_pwpAU0MFDWeV8kX9obYZv7lm5w/view)> [“BC Report, Phase 2”]; BC Justice Family Innovation Lab, “Mediate BC’s Family Unbundled Legal Services Project” (2017), online (pdf): *Family Justice Innovation Lab Society* <[www.bcfamilyinnovationlab.ca/wp-content/uploads/2022/02/Unbundling-Project-Final-Report-July-7-2017.pdf](http://www.bcfamilyinnovationlab.ca/wp-content/uploads/2022/02/Unbundling-Project-Final-Report-July-7-2017.pdf)>.

<sup>28</sup> Rachel Birnbaum & Nicholas Bala, “Ontario’s Family Law Limited Scope Services Project: Rhetoric and Realities of the Family Bar Addressing Access to Justice Challenges” (2021) 40 Can Fam LQ 1; Gershain, *supra* note 15.



- In Boyd’s study, 76.6 percent of participants were satisfied with hiring a lawyer on a limited scope basis and would not have wanted full representation.<sup>29</sup> Additionally, an overwhelming 96.6 percent of respondents would consider ULS in the future.<sup>30</sup>
- In Birnbaum and Bala’s study, 55 percent of litigants were very satisfied with the work the lawyer had done for them.<sup>31</sup>
- In the LCUP study, 85.7 percent of client respondents were very/somewhat satisfied with the ULS that the lawyer had performed for them.<sup>32</sup>
- Across both Birnbaum and Bala’s and the LCUP studies, all clients indicated that they would, or may, consider hiring a lawyer to provide ULS in the future.<sup>33</sup>

This data confirms ULS is in demand – and of assistance – but research on whom ULS potentially benefits or harms is limited. The above Canadian ULS initiatives have a goal of increasing A2J, but the fundamental question is how can it be known if ULS initiatives are working from an A2J point of view, and if they are making a difference in the overall movement to reduce the justice gap, unless A2J metrics are defined and tracked?

### C. ULS Measurement Advanced by Using the A2J Measurement Framework

Coordinated justice data collection efforts are supported in Canada by the Action Committee on Access to Justice in Civil and Family Matters. This committee identified the need for a system of measurement that supports consistent and comparative evaluation of A2J initiatives across Canada.<sup>34</sup> Using a measurement framework enables data-driven decisions and establishes a future evaluation baseline.<sup>35</sup> The definition of a measurement framework in the justice context is “a guide for data collection and empirical analysis that serves as a foundation for an overarching justice metrics strategy.”<sup>36</sup> A framework enables comparative measurement of progress and collective and coordinated gathering of data across organizations and jurisdictions.<sup>37</sup> Canadian jurisdictions

<sup>29</sup> Boyd, *supra* note 23 at 30.

<sup>30</sup> *Ibid.*

<sup>31</sup> Birnbaum & Bala, *supra* note 28 at 1.

<sup>32</sup> “LCUP Report,” *supra* note 22 at 38.

<sup>33</sup> *Ibid* at 35; Birnbaum & Bala, *supra* note 28 at 5.

<sup>34</sup> See e.g. “The Access to Justice Measurement Framework” (2018) at 3, online (pdf): *Access to Justice BC* <[drive.google.com/file/d/15gtf7TpqcTofY3XIyGR-BeK74CXItelq/view](https://drive.google.com/file/d/15gtf7TpqcTofY3XIyGR-BeK74CXItelq/view)> [“A2J Measurement Framework”]. See also *Access to Justice BC*, “The A2J Triple Aim,” online: *Access to Justice BC* <[accesstojusticebc.ca/the-a2j-triple-aim/](https://accesstojusticebc.ca/the-a2j-triple-aim/)>.

<sup>35</sup> Melissa J Goertzen, “Introduction to Quantitative Research and Data” (2017) 53:4 *Library Technology Reports* 12 at 12.

<sup>36</sup> Clair McCashin, Alex Santos & Desirée Steele, “Civil and Family Justice Metrics: Towards a Framework for Saskatchewan” (March 2018) at 4, online (pdf): *University of Saskatchewan* <[law.usask.ca/documents/research/deans-forum/CivilandFamilyJusticeMetrics-PolicyDiscussionPaper.pdf](https://law.usask.ca/documents/research/deans-forum/CivilandFamilyJusticeMetrics-PolicyDiscussionPaper.pdf)>. See also Brea Lowenberger et al, “Measuring Improvements in Access to Justice: Utilizing an A2J Measurement Framework for Comparative Justice Data Collection and Program Evaluation Across Canada” (2021) 37:2 *Windsor YB Access Just* 337.

<sup>37</sup> McCashin, Santos & Steele, *supra* note 36.

such as Saskatchewan and British Columbia have taken steps towards a coordinated approach to measuring A2J initiatives (like ULS) by using a measurement framework. Due to the broad scope of A2J initiatives, a measurement framework must be comprehensive while also having flexibility. Given these criteria, we chose to implement the A2J Measurement Framework in Saskatchewan, developed by A2JBC.<sup>38</sup> This framework enables the design and monitoring of comparative data points of A2J initiatives like ULS.<sup>39</sup> The framework has three main elements, a “triple aim” approach to improving: (1) population A2J; (2) user experience of A2J; and (3) costs.<sup>40</sup> The framework narrows from the “triple aim” elements to three to four dimensions, and three to eight components within each dimension. This narrowing to more specific metrics is helpful for researchers and policy-makers because it invites a measurement of specific aspects of ULS in relation to broad and/or narrow framework metrics. The framework is beneficial since it allows for the analysis of ULS from an A2J lens and, in comparison, within the larger ecosystem of A2J initiatives.

#### D. How ULS Research Relates to the Framework’s Components

Research is canvassed in this section on the effectiveness of ULS in increasing A2J in three of the framework’s components: legal literacy/awareness; legal capability/user empowerment; and affordability of services.

##### 1. Framework Component: Legal Literacy/Awareness

Legal awareness refers to whether users gain greater awareness of the law, their entitlements, responsibilities, and rights as a result of being able to use a specific path to justice.<sup>41</sup> Research indicates ULS can help increase legal literacy/awareness since some assistance can educate individuals on the system, its procedures, nuances, and rules. For example, ULS may help individuals increase their knowledge about legal rights and responsibilities through assistance in filling out forms that are often not self-explanatory<sup>42</sup> or the provision of brief advice clinics.<sup>43</sup> Contrastingly, providing uncontextualized legal information through websites and other static

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<sup>38</sup> The A2J Measurement Framework also helped inform how British Columbia’s Family Law ULS Research Project (Phase 1) members chose to “develop and apply a common taxonomy to apply to feedback from clients and legal professionals.” “BC Report, Phase 1,” *supra* note 27 at 7. For Phase 2, members stated: “We still have much to learn about how the project’s approach links with the [Framework] Triple Aim and Measurement Working Group’s work. However, there are already positive correlations.” “BC Report, Phase 2,” *supra* note 27 at 12.

<sup>39</sup> Lisa Jewell et al, “Legal Data in Saskatchewan and Implications for a Justice Data Commons: Results from an Environmental Scan and Key Informant Interviews” (March 2023), online (pdf): *University of Saskatchewan* <[law.usask.ca/createjustice/projects/legal-data-scan-report-final-march-31-2023999134.pdf](http://law.usask.ca/createjustice/projects/legal-data-scan-report-final-march-31-2023999134.pdf)>.

<sup>40</sup> “A2J Measurement Framework,” *supra* note 34 at 5.

<sup>41</sup> *Ibid* at 29.

<sup>42</sup> Alyse Berthental, “The ‘Right Paper’: Developing Legal Literacy in a Legal Self-Help Clinic” (2017) 42:4 *Law & Soc Inq* 963 at 986.

<sup>43</sup> Linda F Smith & Barry Stratford, “DIY in Family Law: A Case Study of a Brief Advice Clinic for Pro Se Litigants” (2012) 14:2 *JL & Fam Stud* 167 at 213.

resources provides limited gains in legal awareness. While legal information tools are needed for public education, static resources without assistance leave individuals to try to understand how to apply information to their specific case.

Supporting the need for assistance, the National Self-Represented Litigants Project Report [NSRLP Report] found that giving SRLs access to legal information was ineffective if there was not some form of guidance, instruction, or question-and-answer discussions to go along with it.<sup>44</sup> The NSRLP Report also found SRLs had a harder time with substantive law and legal process issues due to a lack of knowledge.<sup>45</sup> In addition, in “Self-represented Litigants in Family Law Disputes: Views of Judges of the Alberta Court of Queen’s Bench,” judges reported that SRLs had unrealistically high expectations of outcomes, took unreasonable positions, and concentrated more on litigation than results.<sup>46</sup> Both studies indicate that availability of legal information alone provides limited gains in legal literacy/awareness. More is required to help people apply information to their legal issue, and the best resource is help from someone with legal training.<sup>47</sup> ULS, and, specifically, legal coaching and advice, can provide an individual with the opportunity to understand the system as explained by an expert. Early research on ULS impacts on layperson legal literacy/awareness is promising:

- Research like the NSRLP Report supports the proposition that ULS bridges gaps between knowledge and awareness for SRLs. It found that clients who secured ULS reported that it was “critical” in allowing them to proceed effectively in dealing with their legal issue.<sup>48</sup> For example, one respondent received summary advice from duty counsel on how to properly go through procedures necessary

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<sup>44</sup> Macfarlane, *supra* note 9 at 64.

<sup>45</sup> *Ibid* at 31.

<sup>46</sup> John-Paul E Boyd & Lorne D Bertrand, “Self-Represented Litigants in Family Law Disputes: Contrasting the Views of Alberta Family Law Lawyers and Judges of the Alberta Court of Queen’s Bench” (July 2014) at 25, 27, online (pdf): *Canadian Research Institute for Law and the Family* <ajrndotco.files.wordpress.com/2016/10/crilf-self-represented-litigants-in-alberta-boyd-bertrand-2014.pdf>.

<sup>47</sup> While beyond the scope of this article, further attention on how trusted intermediaries and community workers, as well as limited license practitioners, factor into the continuum of provision of legal information and advice as it relates to unbundled legal services (ULS) should be further studied. See e.g. Karen Cohl et al, *Part 1 Summary and Recommendations – Trusted Help: The Role of Community Workers as Trusted Intermediaries Who Help People with Legal Problems* (Toronto: Law Foundation of Ontario, 2018); Karen Cohl et al, *Part 2 Detailed Research Findings – Trusted Help: The Role of Community Workers as Trusted Intermediaries Who Help People with Legal Problems* (Toronto: Law Foundation of Ontario, 2018); Julie Mathews & David Wiseman, *Community Justice Help: Advancing Community-Based Access to Justice a Discussion Paper* (Toronto: Community Legal Education Ontario, 2020); “Saskatchewan Access to Legal Information (SALI)” (2021), online: *Law Society of Saskatchewan* <www.lawsociety.sk.ca/initiatives/access-to-justice/saskatchewan-access-to-legal-information/>; Legal Services Task Team, “Final Report of the Legal Services Task Team” (August 2018), online: *Law Society of Saskatchewan* <www.lawsociety.sk.ca/wp-content/uploads/2020/03/107840-legal\_services\_task\_team\_report\_august\_14\_2018-1.pdf>.

<sup>48</sup> Macfarlane, *supra* note 9 at 86.

to resolve her legal issue,<sup>49</sup> giving context to general information. Summary advice and other ULS can allow SRLs to have someone “check their work” and advise them, increasing awareness of rights, how to protect them,<sup>50</sup> and what they are entitled to in relation to those rights.

- Joanne Paetsch and Lorne Bertrand’s study measured satisfaction of clients who received summary legal advice in Alberta, finding that clients felt they had a better understanding of legal options, responsibilities, and rights than before attending the clinic where they received advice.<sup>51</sup>
- The LCUP study found that all surveyed clients who accessed ULS reported an increased understanding of law that applies to their legal problem and an improved confidence in dealing with other people involved in their legal problem.<sup>52</sup> There was also substantial improvement in clients’ ability to identify and deal with future legal problems (94.1 percent).<sup>53</sup> In total, 94.7 percent of clients surveyed felt an improved understanding of their own legal rights and entitlements related to their legal problem.<sup>54</sup>
- The findings of the LCUP study echoed those from Boyd’s study, which also found significant increases in legal awareness among individuals who retained ULS.<sup>55</sup>

The above findings on legal literacy suggest that, with ULS, people may be better prepared, make better submissions,<sup>56</sup> and understand their responsibilities as they proceed through the legal process. The increased awareness acquired by retaining ULS may have impacts on the broader legal system as well. As SRLs become better equipped and produce stronger arguments, they concurrently become better advocates for the subject pertaining to them and aid in advancing the proceedings. Further research creating a larger data set of ULS’s impact on legal literacy levels would be helpful.

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<sup>49</sup> *Ibid.*

<sup>50</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 209.

<sup>51</sup> Joanne J Paetsch & Lorne D Bertrand, “Summary Legal Advice Services in Alberta: Year 1 Results from the Community Legal Clinic Surveys” (March 2017) at 47, online (pdf): *Canadian Research Institute for Law and the Family*, online: <[www.canlii.org/en/commentary/doc/2017CanLIIDocs324#!fragment/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA](http://www.canlii.org/en/commentary/doc/2017CanLIIDocs324#!fragment/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA)>.

<sup>52</sup> “LCUP Report,” *supra* note 22 at 5.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> Boyd, *supra* note 23.

<sup>56</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 200.

## 2. Framework Component: Legal Capability/Empowering Individuals

Legal capability refers to whether individuals feel empowered in their experience with the justice system and the self-confidence to manage or resolve their legal problems.<sup>57</sup> Some clients are wanting more of a DIY approach, with control over their case and how it progresses.<sup>58</sup> ULS may increase the empowerment of people by increasing their voice and participation in legal matters as well as giving them choice in their path to justice. Voice and participation refer to a person's ability to participate meaningfully in proceedings to resolve legal issues. The full representation model often involves minimal client participation, sometimes leading to a loss of control and responsibility<sup>59</sup> over their legal matter.<sup>60</sup> Choice in the path to justice, however, speaks to decisions that the person makes in addressing their legal problems.<sup>61</sup> Some individuals have expressed the importance of being involved in major decisions about the direction and outcomes of their case.<sup>62</sup> ULS may give individuals an opportunity to play a direct role, with studies showing that ULS clients feel they have control of their case.<sup>63</sup> Since clients felt their legal issues were high stakes, having control over certain tasks made them feel they had responsibility for an important issue.<sup>64</sup> Three of the four most common responses when LCUP client participants were asked why they chose ULS instead of full representation was wanting to be involved in their legal process:

- 28.6 percent of respondents wanted to learn more about their rights and responsibilities;
- 23.8 percent of respondents felt they could do some work themselves; and
- 19 percent of respondents wanted control over their legal issue.<sup>65</sup>

Interestingly the fourth (not the first) reason expressed by 23.8 percent of respondents on why they chose ULS was cost.<sup>66</sup> The NSRLP Report further confirms individuals seek ULS to have

<sup>57</sup> "A2J Measurement Framework," *supra* note 34 at 29.

<sup>58</sup> Paetsch & Bertrand, *supra* note 51 at 122; Gershain, *supra* note 15 at 12.

<sup>59</sup> Canadian Bar Association (CBA), "The Limited Scope Retainer" (n.d.) at 3, 8, online (pdf): *Canadian Bar Association – Alberta Branch* <[www.cba-alberta.org/getattachment/Publications-Resources/Resources/Handbooks-Reports/Limited-Scope-Retainers/limited-scope-retainers\\_FINAL.pdf](http://www.cba-alberta.org/getattachment/Publications-Resources/Resources/Handbooks-Reports/Limited-Scope-Retainers/limited-scope-retainers_FINAL.pdf)>. See also Semple, "Accessibility," *supra* note 19 at 80.

<sup>60</sup> "A2J Measurement Framework," *supra* note 34 at 29.

<sup>61</sup> *Ibid* at 12.

<sup>62</sup> Macfarlane, *supra* note 9. See also Semple, "Accessibility," *supra* note 19 at 82.

<sup>63</sup> Ipsos Mori Social Research Institute, "Qualitative Research Exploring Experiences and Perceptions of Unbundled Legal Services" (August 2015), online: *Legal Services Board* <[legalservicesboard.org.uk/wp-content/media/14-086345-01-Unbundling-Report-FINAL\\_060815.pdf](http://legalservicesboard.org.uk/wp-content/media/14-086345-01-Unbundling-Report-FINAL_060815.pdf)>.

<sup>64</sup> *Ibid*.

<sup>65</sup> "LCUP Report," *supra* note 22 at 26.

<sup>66</sup> *Ibid*. This data point contrasts, for example, with lawyers' perspectives surveyed in Gershain's study, which found that "the number one [ULS] benefit described by 95% of [lawyer] respondents is cost savings for clients." Gershain, *supra* note 15 at 11. See Gershain's findings for a full list of ULS benefits expressed by lawyers (*ibid*).

choice and control over their legal matters.<sup>67</sup> Some individuals also expressed wanting legal coaching to act as a check, assistance, and support, while they complete most work on their file.<sup>68</sup> ULS can encourage a more “client-centred” model, empowering clients to take on a range of tasks to help resolve their matter within their resources and abilities.<sup>69</sup> However, some lawyers resist their client’s desire to be more involved in decision-making and minor tasks.<sup>70</sup> Despite this, research indicates lawyers are being hired to help on a ULS basis with formulating arguments, drafting materials, and/or oral advocacy.<sup>71</sup> In both LCUP and Boyd’s study:

- over 80 percent (80.9 percent and 93.1 percent, respectively) of ULS clients strongly agreed/agreed with the statement: “Hiring a lawyer to provide limited legal services lets me choose which services I want the lawyer to perform”<sup>72</sup> and
- over three-quarters (76.5 percent and 82.8 percent, respectively) of ULS clients strongly agreed/agreed with the statement: “Hiring a lawyer to provide limited legal services lets me say how my legal problem is managed.”<sup>73</sup>

These findings demonstrate an appealing middle ground between no representation and full representation. ULS clients can tackle parts of their case and hire a professional for the parts that are complex,<sup>74</sup> retaining more control over how their legal problem is personally managed<sup>75</sup> and dividing up the work appropriately for their skill and comfort level. In total, 81 percent of LCUP client respondents indicated that they had engaged in some of the work required to resolve their legal issue. Of those respondents,

- 70.6 percent filled out forms;
- 64.7 percent participated in a negotiation, mediation, or settlement;
- 35.3 percent prepared for appearances related to their legal matter; and
- 29.4 percent made an appearance related to their legal matter.<sup>76</sup>

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<sup>67</sup> Macfarlane, *supra* note 9 at 41.

<sup>68</sup> *Ibid* at 11. See generally Gershbain, *supra* note 15 at 4.

<sup>69</sup> CBA, *supra* note 59 at 8.

<sup>70</sup> Julie Macfarlane, “Getting the Public and the Profession on the Same Page about Unbundled Legal Services,” an article cited in CBA, *supra* note 59 at 6.

<sup>71</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 199.

<sup>72</sup> Boyd, *supra* note 23 at 30; “LCUP Report,” *supra* note 22 at 39.

<sup>73</sup> *Ibid*.

<sup>74</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 210.

<sup>75</sup> In total, 89.7 percent of clients strongly agreed or agreed with the statement: “Hiring a lawyer to provide limited legal services lets me control how I manage my legal problem.” Boyd, *supra* note 23 at 30.

<sup>76</sup> “LCUP Report,” *supra* note 22 at 35.

The broad range of distinct services that ULS can offer means individuals have access to a greater range of services to choose from, especially if they are self-representing. Judges surveyed in Alberta reported SRLs are much less likely to consider settlement as an option if they are unrepresented.<sup>77</sup> This demonstrates that, when left unassisted, SRLs may not be aware of all available options (and the benefits/limitations associated with their options), which may result in beliefs that restrict resolving disputes (for example, the perception that the only option is “winning” in court). ULS empowers access to services such as legal advice where limited scope clients can be advised of their options at different process stages. ULS could thus bring processes like mediation, negotiation, and settlement options into the view of an unrepresented individual to knowledgeably choose what best suits their situation. ULS is empowering since it can increase legal knowledge, while shifting decision-making power for clients to do some work themselves or self-select services at different stages.

### 3. Framework Component: Affordability

ULS may allow for greater financial A2J, addressing populations that would otherwise not be able to – or choose not to – access legal assistance because of financial constraints.<sup>78</sup> Since the scope of ULS is limited, there is greater opportunity for services to be offered on a fixed fee basis, allowing clients to budget appropriately.<sup>79</sup> This may not be the case with traditional full-service retainers where clients are more likely than ULS clients to be charged on the open-ended billable hour model. In a full-service model, clients may feel uninformed about how far their retainer goes with the open-ended billable hour, due to inexperience with the complexity and cost of resolving legal matters.

We collected data points that highlight how unaffordable legal assistance is for most Canadians as well as demonstrating the need for ULS. The justice gap is illustrated in the numbers. First, according to the World Justice Project, which measures “the rule of law as experienced by ordinary people” in 140 countries and jurisdictions, Canada is ranked twelfth in the world overall.<sup>80</sup> However, Canada scores considerably lower when it comes to affordability of civil justice. To report on this metric, the project measures “affordability of civil courts, including whether people ... can access and afford legal advice and representation; and can access the court system without incurring unreasonable fees.” Canada’s rank in this category was twenty-second, which is by far the country’s lowest score.<sup>81</sup> What is troubling is that this number has not changed significantly in the last several reports, despite significant efforts by Canadian stakeholders to

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<sup>77</sup> Boyd & Bertrand, *supra* note 46 at 25.

<sup>78</sup> *Ibid* at 14–15, 21. See also Semple, “Accessibility,” *supra* note 19 at 74.

<sup>79</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 197.

<sup>80</sup> World Justice Project, “Rule of Law Index 2022” (2022) at 9, 10, 183, online: *World Justice Project* <[worldjusticeproject.org/rule-of-law-index/downloads/WJPIIndex2022.pdf](http://worldjusticeproject.org/rule-of-law-index/downloads/WJPIIndex2022.pdf)>.

<sup>81</sup> *Ibid* at 18, 62.

improve A2J. When compared with the rest of the world, Canada’s civil justice system has room for improvement in increasing affordability through initiatives like ULS.

Lack of affordability has also been recognized by local justice system insiders. In Paetsch and Bertrand’s 2012 survey, judges recognized cost as a major factor in the increase of SRLs in the courtroom, specifically noting an inability to pay for full representation and being unable to qualify for legal aid.<sup>82</sup> Also, a review of cost of legal services coincides with judges’ remarks. The average cost of a two-day civil trial in Canada is \$25,570.<sup>83</sup> To afford legal services of that magnitude would require significant assets beyond what many Canadians earn on an annual basis. Affordability issues may put individuals in an all or nothing situation where they must find a way to pay for full representation or represent themselves. From an A2J perspective, ULS offers a more affordable option halfway between self-representation and full representation. As Semple indicates, the “unbundling cube” can be “sliced by task, stage, or issue, and individual blocks or irregular shapes can be broken out to meet the diverse needs and budgets of ... clients.”<sup>84</sup> ULS packages offered at specific price points might include, for example, “task-based unbundling” such as drafting a pleading where a client enlists a lawyer into a “flat or otherwise price-certain billing,” which does not “hinge on the unpredictable behavior of the client, the adversary and the court.”<sup>85</sup> Unbundling is cost-effective, as Semple puts it, “if and when the firm and the client can identify the constituent ‘blocks’ of the case cube for which the firm’s services are most needed.”<sup>86</sup> ULS has potential as an A2J solution since individuals choose the services they desire and can afford. Clients from the LCUP and Boyd’s study reflected on affordability:

- 81 percent and 86.7 percent, respectively, strongly agreed/agreed with the statement: “Hiring a lawyer to provide limited legal services lets me control how much I spend on my legal problem”<sup>87</sup> and
- two-thirds or more of clients surveyed (66.5 percent and 80 percent, respectively) were charged less than one thousand dollars and no one was charged more than ten thousand dollars.<sup>88</sup>

Since legal services costs can be high, it is not surprising that most respondents from the above studies felt the price for ULS was reasonable<sup>89</sup> and that hiring a lawyer through a limited scope

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<sup>82</sup> Paetsch & Bertrand, *supra* note 51 at 23.

<sup>83</sup> “2021 Legal Fees Survey: Results,” *Canadian Lawyer* (2021), online: <[www.canadianlawyermag.com/news/features/2021-legal-fees-survey-results/362970](http://www.canadianlawyermag.com/news/features/2021-legal-fees-survey-results/362970)>.

<sup>84</sup> Semple, “Accessibility,” *supra* note 19 at 84.

<sup>85</sup> *Ibid* at 74.

<sup>86</sup> *Ibid*.

<sup>87</sup> “LCUP Report,” *supra* note 22 at 39; Boyd, *supra* note 23 at 30.

<sup>88</sup> “LCUP Report,” *supra* note 22 at 23; Boyd, *supra* note 23 at 29.

<sup>89</sup> *Ibid*.



retainer was cheaper than full representation.<sup>90</sup> ULS clients have more ability to budget and control how much they spend due to the á la carte nature of ULS, increasing A2J by giving more individuals access to affordable options between self-representation and full representation.

In the first section, we analyzed ULS research associated with three framework components, which revealed ULS has potential as an A2J solution by increasing legal literacy, empowering individuals, and improving affordability. ULS should be evaluated on an ongoing basis in relation to these and other framework components, which is discussed in the next section.

### III. WHAT WE DO NOT YET KNOW ABOUT ULS EFFICACY AND WHY WE SHOULD CARE ABOUT THESE UNKNOWNNS

The analysis in the first section establishes that ULS is an effectual tool for improving A2J but also suggests that it is a “capped” A2J initiative – that is, it is of limited assistance to some members of the population (for certain types of services and areas of law). There are unanswered questions on the effectiveness of ULS in relation to the framework’s components. This section addresses three unanswered questions regarding who ULS is most appropriate for; the outcome of matters using ULS; and ULS specific costs.

#### A. Framework Component: Accessibility of Justice

Accessibility encompasses the public’s ability to use, navigate, access, understand, and afford services within the justice system to manage their legal problems.<sup>91</sup> Accessibility as conceptualized in the framework applies to all people regardless of demographic status (that is, geography, Indigeneity, mental illness, immigrant/refugee status). It is these sub-populations that are identified in the framework’s dimension of “fair and equitable access to justice” where ULS data is lacking.<sup>92</sup>

#### 1. Consideration of Client Skills/Personality, Types of Services, and Legal Areas Best Suited for ULS

ULS may better help specific members of the population, and ULS effectiveness may depend on the type of service and area of law in question. As identified in the first section, some existing research suggests those identified as part of the “middle-class” or a “sophisticated litigant” may have the abilities necessary to use ULS.<sup>93</sup> Caution and care need to be taken, however, in labelling, over-generalizing, or stereotyping which “classes” of individuals may or may not be well-suited for certain types of ULS and why. While those in the justice gap (the low middle class) may be

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<sup>90</sup> *Ibid* at 30.

<sup>91</sup> “A2J Measurement Framework,” *supra* note 34 at 14.

<sup>92</sup> *Ibid* at 14.

<sup>93</sup> Birnbaum & Bala, *supra* note 28 at 15: “Over 2/3 of the lawyers interviewed (18/26) indicated that the ‘sophisticated litigant’ benefits the most from the limited scope family law retainer.”

best served by ULS given their limited financial means, some lower-income and higher-income people may also benefit and, based on the legal capability/user empowerment data identified in the first section, desire an unbundled approach. That said, people with skills, for example, related to education, literacy, English language fluency, numeracy, and personality characteristics such as psychological resilience and confidence may be better able to be an active participant in certain types of ULS:

Some clients are better positioned than others to “pick their spots.” [One legal professional] suggested that the clients best able to benefit from unbundling are those with education and self-confidence. Insofar as such people are more likely to have money, [the legal professional] observed the irony that unbundling provides the greatest assistance for those who [are] already reasonably affluent and who may therefore be best able to afford traditional full-scope representation. [Citations omitted]<sup>94</sup>

Some types of ULS require clients to have legal awareness, reasoning skills, and comfort with decision-making that some people may not possess.<sup>95</sup> Without such skills and personality characteristics, individuals may be unable to effectively choose appropriate services nor represent themselves in parts of their dispute. Julie Macfarlane and Lidia Imbrogno suggest that lawyers ask questions regarding support levels, awareness, and understanding of work levels required of the client<sup>96</sup> when determining if an individual is right for ULS.

The area of law in relation to a client’s skills/personality and the type of ULS should also be considered in determining the appropriateness of ULS for a client. ULS has been reported to be more problematic, for example, in criminal defence matters.<sup>97</sup> Contrastingly, ULS has been reported to be “‘absolutely’ helpful in family court,” especially in preparing affidavits.<sup>98</sup> A family law child custody matter (where ULS parties may have a continuing relationship) may be very different in dynamics, relative resources, and so on from, for example, a civil or residential tenancy matter. More nuanced research is necessary since the ability of a client to access particular skills may differ with the area of law or type of ULS and their interest and stake in the outcome. A client may have no problem with document organization and the preparation of an affidavit of documents but find completing a draft of the pleadings for a matter to be too technical and psychologically distressing despite their intellectual ability to do so, given their closeness to the

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<sup>94</sup> Semple, “Accessibility,” *supra* note 19 at 76.

<sup>95</sup> Birnbaum and Bala’s study provides a helpful summary of qualities that make a client well-suited or not in the context of ULS family retainer. Birnbaum & Bala, *supra* note 28 at 9, 15.

<sup>96</sup> Julie Macfarlane & Lidia Imbrogno, “The Nuts & Bolts of Unbundling: A NSRLP Resource for Lawyers Considering Offering Unbundled Legal Services” (November 2016) at 2, online (pdf): *Representing Yourself Canada* <representingyourselfcanada.com/wp-content/uploads/2016/11/Nuts-and-Bolts-FINAL.pdf>.

<sup>97</sup> Semple, “Accessibility,” *supra* note 19 at 70, 80.

<sup>98</sup> *Ibid* at 79.

issue and nature of the dispute. A client's psychological resilience and ability to participate in ULS may depend on how well they are able to actually access their existing skills. Put simply, different areas of law and types of ULS may have different stakes that impact clients' participation in ULS. There should be careful consideration between the lawyer and the client about whether ULS is a good fit given the client's background and circumstances and the type of ULS and the area of law in question.<sup>99</sup>

## 2. Sub-population Individuals

Canada is demographically diverse. The inability to state that ULS increases universal accessibility is due in part to a lack of data on such sub-groups, be it gender, ability, geographical location, and so on. In relation to location, for example, getting general legal services, let alone ULS, to rural and remote populations can still be difficult,<sup>100</sup> and such barriers should be considered in implementing ULS. Boyd's study found that 46.4 percent of participants lived outside the two largest Albertan cities (Calgary and Edmonton).<sup>101</sup> However, Boyd's study does not address the degree of accessibility of ULS outside urban centres. This and other research demonstrate a need for ULS study outside urban centres. For example, Michele Statz, Robert Friday, and Jon Bredeson call for more rigorous location-based ULS research: "[T]he benefit of unbundling is not merely the cost savings, but that it enables the client to be a participant in the legal process [citation omitted]. This is a compelling but ... perhaps, spatially-specific – claim, particularly as other research demonstrates higher levels of dissatisfaction for rural residents who use unbundled/limited legal services."<sup>102</sup> ULS studies on sub-population demographics such as geographical location, will provide more depth to existing research.

In addition, further ULS research is warranted on the needs of vulnerable and marginalized populations. Marginalized groups may include people with disabilities, LGBTQ2S+, immigrants and refugees, Indigenous populations, and so on.<sup>103</sup> Assumptions can be inferred from existing research but require testing. For example, Sarah Buhler and Catriona Kaiser-Derrick's review of residential tenancy files finds a substantial percentage being closed due to loss of contact.<sup>104</sup> Since some vulnerable individuals have a difficult time addressing legal issues in the traditional justice system with full representation, some members of this population may fare worse with certain

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<sup>99</sup> Macfarlane & Imbrogno, *supra* note 96 at 2.

<sup>100</sup> The 2018 *Dean's Forum Report* found that, in Saskatchewan, A2J was hampered by an inability to access things like high-speed Internet and telephone services in some communities. Living in a rural community also meant litigants must travel to urban centres for programs like court-mandated mediation. See McCashin, Santos & Steele, *supra* note 36.

<sup>101</sup> Boyd, *supra* note 23 at 15.

<sup>102</sup> Michele Statz, Robert Friday & Jon Bredeson, "'They Had Access, But They Didn't Get Justice': Why Prevailing Access to Justice Initiatives Fail Rural Americans" (2021) 28:3 *Geo J on Poverty L & Pol'y* at 361.

<sup>103</sup> The Canadian Legal Problems survey worked on addressing this gap, however ULS was not addressed in the study. Laura Savage & Susan McDonald, "Experiences of Serious Problems or Disputes in the Canadian Provinces" (January 2022), online (pdf): *Statistics Canada* <[www150.statcan.gc.ca/n1/daily-quotidien/220118/dq220118c-eng.htm](http://www150.statcan.gc.ca/n1/daily-quotidien/220118/dq220118c-eng.htm)>.

<sup>104</sup> Sarah Buhler & Catriona Kaiser-Derrick, "Home, Precarious Home: A Year of Housing Law Advocacy at a Saskatoon Legal Clinic" (2020) 32 *JL & Soc Pol'y* 45 at 55.

types of ULS, which require greater client self-directedness. Indeed, in a review of tenant duty counsel [TDC] in Ontario where a form of ULS is provided in landlord and tenant board matters, “[t]here was general recognition that TDC is of different benefit for different case types.”<sup>105</sup> Further study, such as that which involved TDC in Ontario, is required on how marginalized groups fare with different types of ULS. Relatedly, in relation to marginalized and vulnerable populations, Peter Angelica cautions that ULS may be “of limited effectiveness in addressing the broad economic and political inequities that provide the conditions for a legal dispute.”<sup>106</sup> Further study that focuses on what areas of law and types of ULS work for marginalized and vulnerable populations is necessary.

The framework aspires to fair and equitable A2J for all. While there is anecdotal and some user data on ULS offering increased A2J for some individuals, more rigorous research is needed on how it impacts sub-populations.<sup>107</sup>

## **B. Framework Component: Impact on Outcomes**

There is still little evidence on “legal” or “justice outcomes” and “user satisfaction” for ULS clients as compared to outcomes for SRLs or clients with full representation.<sup>108</sup> Legal outcomes, however, should not be confused with user satisfaction. An example of a “legal” or “justice outcome” could mean people receiving child support that would otherwise go without because they had access to ULS. Legal outcomes measure success of the result of a legal matter, while user satisfaction with the outcomes of the justice process refers to how much users perceive their best interests were considered, fulfilled, and reflected in the outcome of their legal matter.<sup>109</sup> Of course, both outcomes and satisfaction matter when it comes to dispute resolution. The reason that clients are willing to pay a lawyer’s retainer is to ensure the most favourable outcome as well as because having a lawyer may make the litigation process easier, less stressful, and less time-consuming. Legal matters can be high risk and may have a massive impact on people’s lives so the lack of data on ULS outcomes needs to be addressed. This section examines ULS research in relation to legal outcomes generally; legal outcomes associated with the legal area/type of service; and non-legal outcomes.

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<sup>105</sup> See Emily Paradis, “Access to Justice: The Case for Ontario Tenants: Final Report of the Tenant Duty Counsel Review” (October 2016) at 14, online (pdf): *Advocacy Centre for Tenants Ontario* <[www.acto.ca/production/wp-content/uploads/2017/07/TDCP\\_Report\\_2016.pdf](http://www.acto.ca/production/wp-content/uploads/2017/07/TDCP_Report_2016.pdf)>.

<sup>106</sup> Peter C Angelica, “Limited Scope Representation When an Appearance Is Made and the Ethics of Lawyering” (2022) 49:8 *Fordham Urban LJ* 1203 at 1247.

<sup>107</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 204. See also Molly M Jennings & D James Greiner, “The Evolution of Unbundling in Litigation Matters: Three Case Studies and a Literature Review” (2012) 89:4 *Denv UL Rev* 825 (where it was argued that the alleged benefits of ULS “have never been credibly evaluated”) at 832.

<sup>108</sup> Steinberg, *supra* note 13 at 456.

<sup>109</sup> “A2J Measurement Framework,” *supra* note 34 at 28.

## 1. ULS Impact on General Legal Outcomes

The LCUP study provides mixed results with the outcome still seeming to be indicative of clients' future interest in, if needed, enlisting ULS:

- Overall, 57.1 percent of clients indicated that the outcome was good for the price they paid and that the result would make them want to use ULS again.<sup>110</sup> However, 28.6 percent strongly disagreed that the result made them want to use ULS again.<sup>111</sup>
- Although 47.6 percent indicated the outcome was better than they had expected and was good considering the amount of work they were required to do, when asked about whether the outcome was better than if they had used full representation, 61.9 percent neither agreed nor disagreed.<sup>112</sup>

This finding – that respondents are undecided on whether the ULS outcome was better than if they had used full representation – highlights a key data gap: in one of few studies exploring ULS outcomes, Jessica Steinberg relatedly confirms “unbundling has rarely been subject to empirical analysis to test whether it is effective in producing outcomes that are more just or favorable than its recipients could otherwise have achieved on their own.”<sup>113</sup> The data gap concerns how ULS outcomes compare to outcomes with full or no representation both legally and from the perspective of ULS clients? Without this knowledge, ULS cannot be said to conclusively produce better/similar outcomes with higher/similar satisfaction levels. The above LCUP study findings signal that ULS clients may experience an increase in satisfaction with a legal outcome, but this area would benefit from further exploration on understanding why or why not in order to determine how ULS impacts legal and justice outcomes and user satisfaction.<sup>114</sup> As Gary Blasi observes, “when we speak of ‘[A2J]’ we must mean more than ‘access to the means of feeling as though one has had justice.’ In the end, we must attend to outcomes.”<sup>115</sup>

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<sup>110</sup> “LCUP Report,” *supra* note 22 at 33.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> Steinberg, *supra* note 13 at 456.

<sup>114</sup> Brandon Fragomeni, Kaila Scarrow & Julie Macfarlane, “Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2018–2019” (January 2020) at 25, online: *National Self-Represented Project* <[representingyourselfcanada.com/wp-content/uploads/2020/01/Intake-Report-2019-Final.pdf](http://representingyourselfcanada.com/wp-content/uploads/2020/01/Intake-Report-2019-Final.pdf)>.

<sup>115</sup> Gary Blasi, “How Much Access – How Much Justice” (2004) 73:3 *Fordham L Rev* 865 at 872.

## 2. ULS Impact on Outcomes Related to the Legal Area/Type of Service

We know little about the effectiveness of ULS on outcomes in general, let alone how outcomes are related to specific areas of law or the types of ULS provided.<sup>116</sup> Several studies, however, identify areas of law that ULS addresses that may lead to favorable outcomes:

- A few randomized studies have looked at the impact of full representation on the outcomes of tenancy cases. Studies by both Emily Paradis and James Greiner found that some intervention of counsel in tenancy cases has led to better outcomes than if the litigant did not receive full representation.<sup>117</sup> These studies offer insight into the impact of counsel; however, they focus only on housing-related issues. More study should occur on legal area/type of service to determine whether ULS would work as well for other types of matters.
- Steinberg’s study involving California eviction cases for low-income tenants accessing legal aid ULS reveals an impact on outcomes. Steinberg found that outcomes were the same or less for ULS as SRLs (no representation) and less than full representation.<sup>118</sup> Specifically, there was more procedural fairness than if clients had no representation, but procedural gains did not translate into more favourable substantive outcomes.<sup>119</sup> The findings also indicated that, although results with ULS were different, they were not necessarily more favourable for the individual.<sup>120</sup> This study does have limitations regarding size and the specific sample group; however, it raises important questions regarding ULS’s usefulness as an A2J solution. Steinberg recognizes that the study’s limitations may skew the results and recommends that other areas (not eviction situations) might be better suited for ULS.
- Some documented legal areas better suited for ULS include foreclosure actions<sup>121</sup> and some family law related services.<sup>122</sup>

In addition to considering the *area* of law, further research would be helpful on how the *type(s)* of ULS undertaken impact legal outcomes. Some types of ULS to explore as potentially obtaining

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<sup>116</sup> See e.g. Birnbaum & Bala, *supra* note 28 at 34–36. For example, both this Ontario study and the “BC Report, Phase 1,” *supra* note 27, are in the area of family law work (only).

<sup>117</sup> Paradis, *supra* note 105; D James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, “The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future” (2013) 126:4 Harv L Rev 901.

<sup>118</sup> Steinberg, *supra* note 13 at 482.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> James G Mandilk, “Attorney for the Day: Measuring the Efficacy of In-Court Limited-Scope Representation” (2018) 127:7 Yale LJ 1828.

<sup>122</sup> Smith & Stratford, *supra* note 43.

more favourable legal outcomes include less complicated services, tribunal cases (as they have less strict or not as many evidentiary and procedural rules), and cases that do not require court appearances (or have limited appearances).<sup>123</sup> This recommendation is supported, for example, by Leslie Levin's scan of studies relating to the effectiveness of lawyers. Her scan revealed that, as procedural complexity increases, lawyer representation had an increased impact on client's chances of winning, more so than if they had been self-represented.<sup>124</sup> Levin also notes that lawyers tend to be more impactful in adversarial situations such as a trial court and less so in tribunal situations, which is most likely due to the difference in procedural complexity.<sup>125</sup> Although inferences can be made from such studies, much data considers outcomes addressing full representation as opposed to outcomes of SRL or ULS clients. More ULS research is needed on different types of services and areas of law in relation to legal outcomes.

### 3. ULS Impact on Non-legal Outcomes

Legal/monetary outcomes are not the only potential outcomes associated with ULS. Physical, social, emotional, and mental outcomes (non-legal outcomes) may also be a positive/negative consequence for clients who engage in ULS. Some data suggests high levels of satisfaction among ULS clients. Boyd's study found that 87.6 percent of clients who purchased ULS were satisfied with the services provided, with only 3.1 percent being dissatisfied, suggesting largely positive emotional outcomes.<sup>126</sup> The LCUP survey also found that ULS may impact non-legal outcomes:

- ULS had an impact on most people's emotional well-being, with 68.4 percent of respondents agreeing that the lawyer's help had a positive impact on their emotional well-being.<sup>127</sup>
- More than half the sample also agreed that ULS had a positive impact on financial (65.0 percent) and social (57.1 percent) well-being.<sup>128</sup>
- There was less of an impact on physical well-being, with 42.9 percent of clients agreeing that ULS had a positive impact.<sup>129</sup>

Non-legal outcomes are closely tied to user experiences. Despite these positive insights on non-legal ULS outcomes, this section has demonstrated that legal outcome questions remain: are the legal outcomes better, or is it when individuals are no longer faced with being alone in the process that they perceive a better legal outcome? As Steinberg's study demonstrates, simply giving the

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<sup>123</sup> *Ibid* at 504.

<sup>124</sup> Leslie C Levin, "The Monopoly Myth and Other Tales About the Superiority of Lawyers" (2014) 82:6 *Fordham L Rev* 2611 at 2618.

<sup>125</sup> *Ibid* at 2619.

<sup>126</sup> Boyd, *supra* note 23 at 25.

<sup>127</sup> "LCUP Report," *supra* note 22 at 37.

<sup>128</sup> *Ibid*.

<sup>129</sup> *Ibid*.

public more access to lawyers (and better non-legal outcomes) does not necessarily translate into A2J if clients do not have an opportunity to get results comparable to full representation. With limited data on individuals’ outcomes when using ULS versus full or no representation, we cannot fully understand the efficacy of ULS.<sup>130</sup> The several targeted studies summarized in this section are a positive development; however, ongoing research is needed to measure ULS impact on not only user satisfaction, but also legal outcomes.

### C. Framework Component: Cost of ULS

Cost of services in this section refers to the costs of delivering ULS to the whole and sub-populations.<sup>131</sup> As described in the first section, there is commentary on the overall cost improvements and financial flexibility<sup>132</sup> that ULS can offer, but little examining its actual costs,<sup>133</sup> such as the average cost and per-user cost; non-financial costs; and the costs of delivering ULS to whole and sub-populations.

#### 1. Average Cost and Per-User Cost of ULS

The fact that services are unbundled does not mean that they will be affordable. As ULS matters become more complicated and require more assistance, costs will increase.<sup>134</sup> ULS may look more affordable in the beginning, but clients could find that ULS is no longer within their price range. Some matters will be complex, requiring significant lawyer involvement. However, with current data, there is no way to know how many ULS an average individual may need. This data will be difficult to gather; with so many variables (type and complexity of the matter and so on), each case will determine the number of services. There are some lawyers who advertise ULS packages with fixed fees on their websites, which give the public a sense of average costs and costs per ULS. For example, “[f]amily lawyer Joel Miller’s ‘Family Law Coach’ service includes several ‘single use support’ services” where “[f]or \$85 plus tax, Miller’s ‘Quick Communication Coach’ service offers ‘an email response to a single question.’”<sup>135</sup> Similarly, Evolve Law offers an “Off

<sup>130</sup> In the “BC Report, Phase 1,” *supra* note 27 at 14, the researchers provided an appendix of client comments regarding their experience with ULS. While these anecdotal comments are useful for identifying some instances of user satisfaction and positive legal outcomes, they also identify broader questions to be answered through the kind of large-scale studies for which this article advocates. Notably, Rachel Birnbaum and Nicholas Bala’s study included two surveys of judges, four years apart, regarding their views about the efficacy of ULS. Birnbaum & Bala, *supra* note 28 at 28.

<sup>131</sup> “A2J Measurement Framework,” *supra* note 34 at 30.

<sup>132</sup> See e.g. Birnbaum & Bala, *supra* note 28 at 36.

<sup>133</sup> Birnbaum and Bala’s study used the feedback of lawyers to draw some conclusions about affordability for clients. Birnbaum & Bala, *supra* note 28 at 17–19. And the “BC Report, Phase 1” recorded anecdotal survey responses mentioning cost as well as an aggregated score for “affordability.” “BC Report, Phase 1,” *supra* note 27 at 7, 14. In both cases, the information provides a good starting point but lacks the specificity to measure the true costs of ULS. See generally Noel Semple, “The Cost of Seeking Civil Justice in Canada” (2016) Can Bar Rev 639 [Semple, “Seeking Civil Justice”] (who argues: “[H]ow analysis of the private costs of civil justice can facilitate access to justice innovations both in public policymaking and in private legal practice”).

<sup>134</sup> Trebilcock, Duggan & Sossin, *supra* note 24 at 216.

<sup>135</sup> Semple, “Accessibility,” *supra* note 19 at 72 [citations omitted].



the Shelf” Family Law Services Price List.<sup>136</sup> With more data and analysis about average costs and costs per ULS service, analysis of the affordability of ULS as an A2J solution could improve.

## 2. Non-financial Costs

Often, ULS focuses on financial costs, understandably, as these are the most tangible for clients. However, another area requiring more data is understanding the impact of ULS on non-financial costs. The “costs of seeking civil justice” may include:

- Monetary costs, including court fees, miscellaneous goods and services, and legal professional fees;
- Temporal costs, including duration, workload, and opportunity; and
- Psychological costs, ranging from interactions with individuals and the system.<sup>137</sup>

The latter two “non-financial cost” considerations raise a question about whether ULS reduces other, less direct costs of A2J. As discussed, some research has found that particular individuals are better suited to ULS.<sup>138</sup> Some forms of ULS (though not all forms) may require the client to take on much of the responsibility and case work. For someone who is not a trained legal expert, taking on a significant amount of the case work is a steep learning curve and time commitment even with assistance. The trade-off from the full representation model is thus the time and psychological costs that the client must put in. Saving money from reduced lawyer's time necessarily involves the client spending more of their own time working on the matter. This may not work for all individuals as they may not have the ability to put the time in. As such, the reduction in financial costs that ULS offers may possibly be offset by non-legal costs.<sup>139</sup> Further specific study is needed on the impact of ULS on non-financial costs.

## 3. Costs of Delivering ULS to Whole and Sub-populations

The final cost-related question involves, more broadly, the universal accessibility or the cost to get ULS to all, regardless of individuals’ location or sub-population. Making ULS more readily available means convincing or encouraging existing lawyers to offer ULS and/or adding more lawyers to the market offering those services. However, in reaching individuals in rural and remote areas, for example, introducing ULS could be difficult and more costly. Online ULS could

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<sup>136</sup> Evolve Law, “Flat Rate Price List,” online: *Evolve Law* <evolve<sup>law</sup>.ca/pricing/>.

<sup>137</sup> Semple, “Seeking Civil Justice,” *supra* note 133 at 644. See also Michaela Keet et al, “Anticipating and Managing the Psychological Cost of Civil Litigation” (2017) 34 *Windsor YB Access Just* 73.

<sup>138</sup> For example, one judge in Birnbaum and Bala’s study observed: “Matters where the client doesn’t have the capacity to present in court either intellectually or emotionally” and “[m]atters which are heavy in the law . . . would be better with a lawyer.” Birnbaum & Bala, *supra* note 28 at 12. Birnbaum and Bala’s study also found “most problematic clients also appeared to have specific personality traits, such as being a procrastinator, unreasonable, . . . too emotionally invested or emotionally immature” (*ibid* at 16).

<sup>139</sup> See e.g., *ibid* at 32. See also Semple, “Accessibility,” *supra* note 19 at 22, 79.

be considered, however, in rural and remote areas, Internet availability permitting, especially when the legal service is needed for an online court or tribunal matter, such as at the online Civil Resolution Tribunal in British Columbia. There is also a cost-related question of how ULS will be made available to vulnerable and marginalized populations. Some members of vulnerable groups may face additional challenges – for example, in terms of language – and may need more assistance, even on a ULS basis, as compared to non-vulnerable populations. Since some groups face even more barriers to A2J, knowing how viable ULS is as an option for these populations is paramount to understanding how effective it is as an A2J tool overall.

ULS shows potential for increasing affordability of legal services; however, more data are required regarding both the financial and non-financial costs of ULS. Improving data on ULS affordability would be significant. For example, determining the average number of ULS services that individuals need and the associated costs for certain types of issues would allow for general conclusions to be drawn regarding overall affordability. Also, further data collection on costs to bring ULS to all populations, including those living in rural areas, as well as to marginalized and vulnerable peoples would help determine ULS’s overall cost-effectiveness as an A2J solution. The analysis in section 3 has revealed that more rigorous and targeted ULS research is necessary. With little known about accessibility, outcomes, and costs, ULS cannot be said to meet these parts of the framework. However, as more rigorous research is undertaken, the effectiveness of ULS as an A2J solution will become clearer.

#### IV. HOW TO CONTINUE STUDYING THESE UNKNOWNNS

While ULS addresses some of the framework’s parts, more data would improve the understanding of its effectiveness regarding other components. As Deborah Rhode has put it, “[t]he most definitive conclusion from this body of research is the need for more rigorous studies. Conflicting outcomes, methodological limitations, and competing explanations of prior work underscore the need for more data.”<sup>140</sup> While studies analyzed in the previous section are an exception, our canvassing of literature revealed that most ULS data is anecdotal commentary,<sup>141</sup> small-scale research,<sup>142</sup> or user-experience data,<sup>143</sup> all of which form a foundation upon which to build more comprehensive empirical research. The time is right to launch more rigorous research, informed by the framework, so that ULS developments can be made based on comparative design

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<sup>140</sup> Deborah L Rhode et al, “Access to Justice through Limited Legal Assistance” (2018) 16 *Northwestern J Human Rights Hum Rts* 1 at 9.

<sup>141</sup> Kristen M Blankley, “Adding by Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services” (2013) 28:3 *Ohio St J Disp Resol* 659.

<sup>142</sup> Steinberg, *supra* note 13.

<sup>143</sup> Smith & Stratford, *supra* note 43.

and data.<sup>144</sup> This section explores the pros and cons of three tools that build off the findings of the framework analysis of ULS and could fill research gaps.

### A. Administrative Collection Points

Collecting data at administrative collection points could include working with tribunals, courts, and legal service providers (pro bono clinics, justice community organizations, libraries, and so on) to gather information on clients seeking ULS. This could be done by analyzing data already collected or partnering with organizations to collect and analyze data related to who is seeking ULS services,<sup>145</sup> what legal issues it is meant for,<sup>146</sup> how many individuals are seeking ULS, and, potentially, some outcome-related data for ULS clients.<sup>147</sup> Administrative collection points are a logical starting place to inform researchers on where to focus further, larger-scale investigations. These data often come at a lower cost to obtain as they may already be collected or require minimal effort to begin collecting. Working with administrative collection points also offers an opportunity to build partnerships with the collecting agencies.

However, administrative collection points sometimes only provide snapshot data specific to the collecting organization. Because of this, available data may yield limited useable information in understanding ULS. Data may also require time and effort to analyze. A survey of Saskatchewan justice service providers has found that organizations were collecting but not processing or using data due to technology and limitations in human capital.<sup>148</sup> In these situations, data may require significant work to become usable. Another concern is reliability; since this data is collected by another party, it may not be possible to verify the collection methods. Finally, there could be privacy concerns with using the data; organizations may be unable to share since information may be collected on the basis that it is kept private and only used internally.

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<sup>144</sup> Alongside the A2J Measurement framework, for further guidance, see Rhode and colleagues, who suggest possible ways to measure the efficacy of ULS, and Hugh McDonald offers a framework on how to measure the impact of such initiatives. Rhode et al, *supra* note 140; Hugh McDonald, “Assessing Access to Justice: How Much ‘Legal’ Do People Need and How Can We Know?” (2021) 11 UC Irvine L Rev 693. In addition, James Mandilk reviewed previous efficacy studies of unbundled/limited scope legal services and discussed how efficacy can be measured. Mandilk, *supra* note 121. A final ULS-specific example is Lisa Moore’s comprehensive discussion of potential ways to measure efficacy of legal services such as ULS. A list of recent legal services studies is included, as are suggestions on research design and methodology for legal research/experiments. Lisa Moore, “Measuring Impacts of Legal Services: A Literature Review on Research Design and Methodology” (2020), online (pdf): [Canadian Forum on Civil Justice <cfcj-fcjc.org/wp-content/uploads/Measuring-Impacts-of-Legal-Services-A-Literature-Review-on-Research-Design-and-Methodology-Lisa-Moore.pdf>](http://Canadian Forum on Civil Justice <cfcj-fcjc.org/wp-content/uploads/Measuring-Impacts-of-Legal-Services-A-Literature-Review-on-Research-Design-and-Methodology-Lisa-Moore.pdf>). Moore’s literature review is “designed to support and promote much needed innovative, empirical, access to justice research” (*ibid* at 5). Finally, see generally Sarah A Sutherland, *Legal Data and Information in Practice: How Data and the Law Interact* (London: Taylor & Francis, 2022). For a helpful theoretical foundation for measuring legal service value, see also generally Noel Semple, “Measuring Legal Service Value” (2018) 52:3 UBC L Rev 943.

<sup>145</sup> CREATE Justice, “Justice Data Inventory Survey Report” (June 2019) at 10, online (pdf): [University of Saskatchewan <law.usask.ca/createjustice/documents/justicedatainventory\\_executivesummary\\_june2019.pdf>](http://University of Saskatchewan <law.usask.ca/createjustice/documents/justicedatainventory_executivesummary_june2019.pdf>).

<sup>146</sup> *Ibid* at 21–22.

<sup>147</sup> Mandilk, *supra* note 121.

<sup>148</sup> *Ibid* at 13.

## B. Targeted Studies

More ULS studies focused on specific demographics, areas of law, and types of services sought could provide detailed and useful information. This would increase data on accessibility of ULS to specific sub-populations and subject area efficacy. Combining quantitative/qualitative approaches in these targeted studies would be helpful since qualitative data could increase clarity on ULS clients’ experiences. Targeted studies could offer insights into, for example, ULS effectiveness in relation to vulnerable and marginalized populations, specific areas of the law, and types of services. With smaller targeted studies, research costs may be lower. It may also be easier to find funding for targeted studies since stakeholders may have a specific interest in gathering such focused data.

However, targeted studies could gather data that is too specific or statistically insignificant to make conclusions about specific populations.<sup>149</sup> Gathering these data could also pose challenges; working with minority populations requires methodological considerations such as an ability to meaningfully engage with those communities. Also, it may not be possible to do randomized studies on such specific sub-populations, and, thus, groups of people surveyed may not accurately reflect the population group.<sup>150</sup>

## C. Large-Scale User Experience Surveys

Large-scale user experience surveys, particularly legal needs and ULS-specific surveys, could give detailed data regarding users’ perceptions/experiences of ULS.<sup>151</sup> They would provide the most comprehensive data on how clients are using ULS to resolve legal issues, how many people have access to ULS, and how effective ULS is from the user perspective. Large-scale user surveys could offer a fuller picture on the effectiveness of ULS outcomes. Large-scale surveys, specifically legal needs surveys, help policy-makers understand how justice issues arise and how they affect many different sectors.<sup>152</sup> Collecting data on large-scale legal needs in relation to ULS will allow for the assessment of the whole scope of needs, including, for example, legal problems that may go unnoticed that could benefit from an ULS approach.<sup>153</sup> Large-scale user surveys could advance valuable ULS research and thus improve data-informed decisions on the topic. These studies also have the potential to create interest and excitement that could advance opinions and a cultural narrative surrounding ULS.

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<sup>149</sup> Steinberg, *supra* note 13 at 496.

<sup>150</sup> *Ibid.*

<sup>151</sup> See, for example, publications of the Cost of Justice Project, a large-scale public-focused study that examined “the social and economic costs of Canada’s justice system.” Canadian Forum on Civil Justice (CFCJ), “Cost of Justice,” online: [CFCJ<cfcj-fcjc.org/cost-of-justice/>](http://CFCJ<cfcj-fcjc.org/cost-of-justice/>).

<sup>152</sup> Organization for Economic and Co-operative Development (OECD) & Open Society Foundation, “Legal Needs Surveys and Access to Justice” (2019) at 26, online (pdf): [OECD<oeed-ilibrary.org/docserver/g2g9a36c-en.pdf>](http://OECD<oeed-ilibrary.org/docserver/g2g9a36c-en.pdf>).

<sup>153</sup> *Ibid.*

However, due to the scale and the fact that it is user-specific data, these surveys are often costly and time-consuming to implement and analyze.<sup>154</sup> Because of the study size and how comprehensive the data collection is, it may be difficult to get buy-in from stakeholders and funders who may feel there is no need to collect large-scale data. Also, unless the questions are carefully tailored, data gained through large-scale user surveys are less suited for looking at the impacts of specific initiatives, especially if they are smaller in scale, as they usually take a broader-scope approach.<sup>155</sup>

In summary, utilizing these multiple tools in relation to the framework will be ideal to gain a more comprehensive picture of how well a ULS initiative is working. All three tools could advance rigorous ULS research, and their use will depend on the objective of the data collection.

## V. CONCLUSION

ULS has been proposed as an A2J solution, as identified in the first section, in large part because of its affordability factor. However, there are more factors involved in the effectiveness of an A2J solution than just affordability, and, thus, ULS has been analyzed against the A2J measurement framework. This analysis has highlighted the strengths of ULS as well as the research gaps. Research gaps identified in the second section included, first, the need for more detailed information on who the ideal ULS client is in relation to specific types of ULS and the areas of law. Currently, commentary suggests that low- and middle-income earners are ideal ULS candidates, but this label is too broad; data on ULS accessibility to sub-populations is needed. Second, future research should explore what impact on outcomes ULS has versus SRL or full representation. Finally, specific financial and non-financial costs for users related to ULS are largely unknown. Suggested tools to address these gaps, explored in the third section, have included administrative data, targeted studies, and large-scale user experience surveys. This article has aimed to analyze our LCUP study and other ULS research through the lens of the framework and inspire others to do the same. We hope that other researchers and policy-makers will join us in using the framework to inform ULS program design, data collection, and evaluation and to continuously improve ULS and comparative data across jurisdictions.

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<sup>154</sup> John-Paul Boyd's study had the surveys active for approximately one year. Boyd, *supra* note 23 at 49.

<sup>155</sup> OECD & Open Society Foundation, *supra* note 152 at 27.