

Court Form Accessibility: Adopting, Designing, and Evaluating Online Guided Pathways

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Introduction

Court forms are a notorious access to justice “hot spot”. Self-represented litigants (SRLs) have repeatedly identified overly complex court forms as a major source of confusion and frustration.

Digital guided pathways have been identified as one possible means to reduce barriers that the public experiences with court forms – but how effective are guided pathways as access to justice measures? Do they, in fact, make court forms easier to fill out? If so, how can they be optimally designed and evaluated? This article reports on research seeking to answer these questions through conducting a case study of family law guided pathways developed by Community Legal Education Ontario (CLEO).

Our study yielded two major conclusions that can be used, more broadly, to inform the adoption, design, and evaluation of court form guided pathways.

First, we observed that guided pathways can significantly, albeit not completely, reduce complexity for SRLs, and thus, other jurisdictions should consider adopting them as access-enhancing measures. More particularly, in our study, through both the review of anonymized user data and human testing, we identified specific accessibility benefits. These include benefits stemming from the digital format of the guided pathway approach (such as permitting explanations to be available “on demand” and helpful streamlining) and also from design choices that centred SRLs as users (such as greater use of plain language and the addition of contextual information).

Second, we found that when designing and evaluating the design of court form guided pathways, a functional literacy framework, combined with user data and human testing, can be helpful in identifying barriers that SRLs might experience. Again, this is an observation that can be used by other jurisdictions when considering how to best design and evaluate guided pathways as access-enhancing measures. Our observations in this area stemmed from work that CLEO did, as part of our overall study, to evaluate their Guided Pathways using insights from a functional literacy framework.

This article proceeds in six parts. Part I provides background about: (a) court forms as an access to justice barrier; (b) functional literacy as an evaluative framework; and (c) the concept of “person-centred justice”. Parts II-IV of this article summarize, in turn, the three components of our research study. Part II discusses CLEO’s initial review and revisions of their family law guided pathways

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consistent with a functional literacy framework. Part III outlines our analysis of actual (anonymized) information provided by SRLs who used one particular CLEO family law guided pathway. Part IV summarizes observations from our “think aloud” interviews where individuals without legal training were asked to use fictional scenarios to “walk through” either a family law guided pathway or the corresponding Fillable-PDF court form. Finally, Part V contains some concluding reflections on both the process of evaluating guided pathways and the role that guided pathways can play in reducing complexity for users.

I. Background

a. Access to justice

Access to justice is a problem in Canada. While debates exist about what exactly the problem is, no one doubts that many Canadians struggle to have their legal needs properly met. Indeed, the data in support of this conclusion are overwhelming.¹

This study focuses on access to justice in a particular context: family law. A striking feature of contemporary family law litigation in Canada is the large number of SRLs in court. Justice system actors have estimated that between 50% and 80% of parties in Canadian family cases are self-represented.² Empirical studies of the SRL phenomenon in family law are consistent with these anecdotal impressions.³

In recent years, the legal system has started to respond to the in-court challenges that SRLs face. Judges and, to a lesser extent, opposing counsel are now recognized to have explicit obligations to facilitate fair hearings for SRLs.⁴

¹ See, for example, Trevor C W Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016); Canadian Bar Association Access to Justice Committee Final Report, *Reaching Equal Justice: An Invitation to Envision and Act* (Ottawa: Canadian Bar Association, November 2013); Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, October 2013).

² Government of Canada, Research and Statistics Division, “Self-Represented Litigants in Family Law” (June 2016), online: *Department of Justice Canada* <justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html>; Annemarie E. Bonkalo, “Family Legal Services Review” (31 December 2016), online: *Government of Ontario* <https://wayback.archive-it.org/16312/20230317190715/https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/family_legal_services_review/>.

³ Lyndsay Ciavaglia Burns, “Profile of family law cases in Canada, 2019/2020” (2021) 41:4 *Juristat* 1 at 3, online (pdf): <www150.statcan.gc.ca/n1/en/pub/85-002-x/2021001/article/00011-eng.pdf?st=IV1vI_f3> (a review of family law cases in Canada during 2019-2020 observed “more family law litigants represented themselves (58%) rather than retained representation (42%)” at 3).

⁴ With respect to judicial obligations, see, for example, Canadian Judicial Council, ‘Statement of Principles on Self-Represented Litigants and Accused Persons’ (2006), online: <cjc-ccm.ca/sites/default/files/documents/2020/Final-Statement-of-Principles-SRL.pdf>; *Pintea v Johns*, 2017 SCC 23. For discussions of opposing counsel obligations, see, for example, Jennifer Leitch, “Lawyers and Self-Represented Litigants: Taking Pintea More Seriously” (31 July 2020), online: *Slaw* <slaw.ca/2020/07/31/lawyers-and-self-represented-litigants-taking-pintea-more-seriously/>; *Girao v Cunningham*, 2020 ONCA 260.

But SRLs also face serious barriers before they even step into a courtroom. In multiple studies, SRLs have identified complex court forms as a particular “pain point” in their justice journeys.⁵ In one national study, 97% of court staff surveyed agreed that SRLs required help completing court forms.⁶ With respect to family law proceedings, more than 50% of responding litigants in one 2005 study reported they “found difficulties with the court forms and knowing their legal rights.”⁷ In another 2012 study, several SRLs are quoted expressing frustration with family law forms.⁸ For example, one respondent in this study stated, “the forms you are given to fill out are extremely difficult to understand. They are designed for lawyers to fill out and not regular people [re]presenting themselves.”⁹

While there has long been awareness that court forms cause difficulties for SRLs, only recently have there been studies about what makes court forms complex for non-legally trained people. Much of this research has focused on linguistic complexity (i.e. reading difficulty).¹⁰ A different approach has been taken by two of the authors of this article, Jacquelyn Burkell and Amy Salyzyn, who have led previous studies of court forms using a “functional literacy” framework.¹¹

⁵ Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants” (2013); Gayla Reid, Donna Senniw & John Malcolmson, “Developing Models for Coordinated Services for Self-Representing Litigants: Mapping Services, Gaps, Issues and Needs” (2004), online: *Justice Education* <http://www.justiceeducation.ca/themes/framework/documents/srl_mapping_repo.pdf> at 47; Rachel Birnbaum & Nicholas Bala, “Experiences of Ontario Family Litigants with Self-Representation” (2012), online: *Pro Bono Students Canada* <docplayer.net/16318797-Experiences-of-ontario-family-litigants-with-self-representation-rachel-birnbaum-1-nicholas-bala-2.html> at 9.

⁶ Trevor C W Farrow et al, “Addressing the Needs of Self-Represented Litigants in the Canadian Justice System: A White Paper Prepared for the Association of Canadian Court Administrators” (2012), online: *Canadian Forum on Civil Justice* <[cfcj-fcjc.org/sites/default/files/docs/2012/Addressing%20the%20Needs%20of%20SRLs%20ACCA%20White%20Paper%20March%202012%20Final%20Revised%20Version.pdf](http://fcjc.org/sites/default/files/docs/2012/Addressing%20the%20Needs%20of%20SRLs%20ACCA%20White%20Paper%20March%202012%20Final%20Revised%20Version.pdf)> at 65.

⁷ Anne-Marie Langan, “Threatening the Balance of the Scales of Justice: Unrepresented Litigants in the Family Courts of Ontario” (2005) 30:2 Queen’s LJ 825 at 833.

⁸ Birnbaum & Bala, *supra* note 5.

⁹ *Ibid.*

¹⁰ Amy Salyzyn et al, “Literacy Requirements of Court Documents: An Underexplored Barrier to Access to Justice” (2016) 33 Windsor YB Access Just 263 at 271-272 (discussing the Divorce Applications Project and the Court Guides Assessment Project that formed part of Julie Macfarlane’s ground-breaking 2013 study into self-represented litigants in Canada). See also, Tatiana Grieshofer née Tkacukova, Matt Gee & Ralph Morton, “The Journey to Comprehensibility: Court Forms as the First Barrier to Accessing Justice” (2022) 35 Int J Semiot Law 1733; Social Security Tribunal of Canada, *Enhancing accessibility in written communications: A review of forms and letters for the Social Security Tribunal* (June 2021), online: <https://www.sst-tss.gc.ca/en/our-work-our-people/enhancing-accessibility-written-communications-review-forms-and-letters-social-security-tribunal> and Maria Mindlin, “Is Plain Language Better - A Comparative Readability Study of Court Forms” (2005) 10 Scribes J Leg Writing 55.

¹¹ See Amy Salyzyn et al, “Literacy Requirements of Court Documents”, *supra* note 10; and Amy Salyzyn et al, “What Makes Court Forms Complex? Studying Empirical Support for a Functional Literacy Approach” (2019) 15(1) JL & Equality 31 at 35-36. A somewhat similar approach, albeit not explicitly identified as a “functional literacy” approach, can be found in a recently published research study by Quinten Steenhuis, Bryce Willey, and David Colarusso “Beyond Readability with RateMyPDF: A Combined Rule-based and Machine Learning Approach to Improving Court Forms” (Conference Paper In Proceedings of International Conference on Artificial Intelligence and Law 2023), online: <https://doi.org/10.1145/3594536.3595146>.

b. The functional literacy framework

The concept of functional literacy moves beyond more traditional assessments of literacy, which tend to focus on reading level, and looks to individuals' ability to understand and use information to complete tasks.¹² Functional literacy is relevant, for example, to whether a person can understand how much medicine to take after reading a prescription or to effectively apply for government benefits by filling out an applicable form.

Given this task focus, a functional literacy framework can be used to evaluate why SRLs may find court forms complex. To demonstrate this point, we (Burkell and Salyzyn) have offered the example of a prompt on a court form asking for an address.¹³ While many people will understand what "address" means in a dictionary definition sense, it may still be difficult for them to answer this prompt, depending on whether the form indicates whose address to include (e.g. is it the user's address, the opposing party's, or the court's?) and how difficult it is to find the address needed (e.g. it will be easier to give one's own address than to find a courthouse address). This very simple example helps to show why readability alone is not a complete measure of court form accessibility.

Implicit in a functional literacy framework is the notion that there are two avenues of intervention available when an individual cannot complete a task: (1) training to improve literacy skills, or (2) redesign of tasks to decrease complexity. Building on the latter, in 2005, Julien Evetts and Michel Gauthier published a guide for assessing task complexity that can be used to assign a literacy level requirement to tasks and which, in the process of doing so, identifies what features of the task are likely to make it difficult for users to complete.¹⁴

Evetts and Gauthier's task complexity assessment system is complex, and a full explanation is beyond the scope of this article. By way of example, one thing that their system examines is strategies for matching information. This means considering what a user needs to do in order to match given information (as contained in a prompt) with requested information (a correct or otherwise appropriate answer).¹⁵ The Evetts and Gauthier system acknowledges that a user's difficulty with a task can be affected by whether a user needs to use a "locating", "cycling", "integrating" or "generating" strategy.¹⁶

For example, a court form prompt that requires a user to fill in and thus "locate" their landlord's address is less complex than a prompt that asks the user to explain how they came up with a particular rent abatement (this would be a "generate" task). "Cycling" refers to "the process of making multiple matches to retrieve multiple pieces of information."¹⁷ Having to flip back and forth between a court form and a guide to filling out the court form would be an example of "cycling"; needing to cycle can

¹² Organisation for Economic Co-operation and Development (OECD) and Statistics Canada, *Literacy in the Information Age: Final Report of the International Adult Literacy Survey (2000)* at ix.

¹³ Amy Salyzyn et al, "What Makes Court Forms Complex?" *supra* note 10.

¹⁴ Julian Evetts & Michel Gauthier, *Literacy Task Assessment Guide* (Ottawa: National Literacy Secretariat, 2005).

¹⁵ *Ibid.* at 38-44.

¹⁶ *Ibid.*

¹⁷ Community Legal Education Ontario, *Family Law Guided Pathways: Reducing the Complexity of Court Forms* (July 2022), online: <cleoconnect.ca/wp-content/uploads/2022/10/CLEO-Guided-Pathways-reducing-complexity-June-2022.pdf> at 16 (describing the Evetts and Gauthier system).

make tasks more difficult to complete. Finally, “integrating” refers to “the process of contrasting and comparing information once it has been identified through cycling.”¹⁸

In addition to examining information matching strategies, Evetts and Gauthier’s system also looks at other factors, such as the nature of the information requested (e.g. is it highly concrete or abstract?), whether inferences are needed and the number of pieces of information that need to be included.¹⁹ The presence of “plausible distractors” (a term of art referring to broad descriptions or vague requests in prompts that could give rise to incorrect answers) is also recorded.

In an earlier 2016 study of court form complexity, we used the Evetts and Gauthier system to evaluate the complexity of over 280 tasks contained in four different court forms used in Ontario.²⁰ A second study, published in 2019, examined the perspective of human subjects regarding court form complexity, with the goal of assessing whether the quantitative analysis generated from the first study might be reflected in actual user experience.²¹ In large part, the results of our second study confirmed the evaluation from the first study, although there were some discrepancies (i.e. there were some tasks that were not flagged as potentially complex in the first study but which caused difficulty for multiple participants in the second study).

Two insights from these studies are particularly relevant to the research study described in this article. First, we concluded that using an instrument grounded in a functional literacy approach is a promising way to study court form complexity but that, optimally, this approach should be augmented by user-based testing of task difficulty. Complementary user-based testing can help mitigate both: (1) researcher-generated limitations (for example, pre-existing expertise) and (2) limitations inherent in the task analysis tool itself (for example, certain sources or types of complexity not being captured by the tool’s approach). Second, both studies suggested that digital interactive forms in which tailored, detailed, and context-specific assistance can be provided to users (i.e. guided pathways) could be helpful tools to reduce court form complexity.

Our study builds on our prior work to evaluate guided pathways as a person-centred access to justice intervention. Were we correct that digital court form guided pathways can be access-enhancing measures? And, if so, how can such pathways be optimally designed and evaluated?

This study was conducted in partnership with Community Legal Education Ontario (CLEO) and focused on CLEO’s Family Law Guided Pathways. These Pathways, developed in partnership with the Ministry of the Attorney General, are online, interactive tools that are free for public use. The Pathways take users through a series of questions and then using those questions to populate the relevant court forms.²²

¹⁸ At its simplest, an integration task might require someone to compare items in a list to fixed external criteria (Evetts & Gauthier, *supra* note 14 at 43). An example of a more complicated integration task provided by Evetts and Gauthier is to require someone to determine if they qualify for unemployment insurance by analyzing a table that details the minimum number of “insurable hours” one must have depending on their regional rate of unemployment (as list in a set of ranges).

¹⁹ Evetts & Gauthier, *supra* note 14

²⁰ Amy Salyzyn et al, “Literacy Requirements of Court Documents”, *supra* note 10.

²¹ Amy Salyzyn et al, “What Makes Court Forms Complex”, *supra* note 13.

²² See, Community Legal Education Ontario, “Guided Pathways”, online: <stepstojustice.ca/guided-pathways-home/>.

Our goal in studying these Pathways was two-fold. First, we sought to determine whether a functional literacy framework, demonstrated in our earlier research to be useful in studying and reducing the complexity of paper or PDF-based court forms, could also be useful when engaging with digital court form guided pathways. Second, we sought empirical evidence to support the suggestion in our prior work that digital guided pathways can be used to reduce court form complexity for SRLs.

This study had three components. First, the Evetts and Gauthier task complexity assessment system was used to review and revise the Pathways. This part of the study aimed to determine whether a functional literacy framework could be helpful in designing and evaluating court form guided pathways. Part II below outlines how CLEO successfully used the Evetts and Gauthier system to improve their Pathways, leading us to answer this part of the study in the affirmative.

Following these revisions, we explored the usability of the Guided Pathway for Form 8. User experience was examined through: (a) an analysis of actual (anonymized) information provided by SRLs who have used Guided Pathway for Form 8 and (b) “think aloud” interviews where members of the public without legal training were asked to “walk through” the Guided Pathway for Form 8 and also the comparator Fillable-PDF Form 8 using facts in fictional scenarios. Parts III and IV of this article describe these parts of our research in more detail and provide the supporting evidence for our conclusion that guided pathways can meaningfully improve court form useability for SRLs.

c. Person-centred justice

In its subject matter, design, and execution, this study embraces a “person-centred justice” approach, focusing on those experiencing justice needs and problems as opposed to formal institutions and systems.²³

The subject of this study – a CLEO guided pathway – aims to be a “person-centred” access to justice intervention. While official court forms are designed with justice officials—like lawyers, court clerks and judges – in mind, guided pathways are tailored-made for persons navigating the court system without direct help from legal experts. More specifically, CLEO’s guided pathways align with several recommendations in the OECD’s *Recommendation of the Council on Access to Justice and People-Centred Justice System*, including calls to ensure that justice services are “designed with people at the centre” and are “provided in clear, plain and inclusive language and manner, avoiding complexity.”²⁴ The digital nature of the guided pathways also aligns with the recommendation that “justice [be made] within reach for everyone regardless of their geographical location, including rural and remote areas, promoting mobility to bring the justice and legal services directly to the people.”²⁵

A key part of a person-centred approach is evidence gathering: “people-centered justice services must constantly strive to improve through evaluation, evidence-based learning, and the development and

²³ OECD, *OECD Framework and Good Practice Principles for People-Centred Justice* (Paris: Organization for Economic Cooperation & Development, 2021). Note that, in some contexts, the terms “person-centred” and “people-centred” have been given distinct definitions, this article uses the terms interchangeably. See, also, Andrew Pilliar, “Filling the Normative Hole at the Centre of Access to Justice: Toward a Person-Centred Conception” (2022) 55:1 UBC L Rev 149.

²⁴ OECD, *OECD Recommendation of the Council on Access to Justice and People-Centred Justice Systems* (11 July 2023), online: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0498>.

²⁵ *Ibid.*

sharing of best practices.”²⁶ As described in further detail below, this study’s second and third parts were designed to gather evidence about how users experience the Guided Pathways. This aligns with the specific call in the OCED *Recommendations* for justice-related services “based on empirical understanding of [people’s] legal and justice needs, preferences and capabilities.”²⁷

II. Revision of Guided Pathways Using a Functional Literacy Lens

This study started in summer 2019 with an internal review and revision by CLEO of three of its Family Law Guided Pathways (each corresponding to a different family law court form) using a functional literacy framework.

a. Methodology

This work involved a series of in-house workshops at CLEO engaging a multi-disciplinary team comprising of lawyers, design analysts, law and computer science students, and an independent scholar.²⁸ First, difficult tasks in the selected Pathways were identified using complexity factors identified by Evetts and Gauthier. Second, changes were made to the selected Pathways with the aim of addressing issues identified at the first stage. Third, the team assessed whether the same or similar changes should be made to other parts of the selected Pathways or to different Pathways not specifically being studied.

b. Results and observations

The CLEO review of the Guided Pathways led to multiple targeted revisions. Details of these revisions can be found in a report prepared by CLEO and published on its website.²⁹ In reflecting on the work conducted, the CLEO team concluded that using a task-based or functional literacy approach “is a good fit for reviewing complexity, especially in the context of automated legal tools....[given that] the pathways are fundamentally task based.”³⁰ In reaching this conclusion, they acknowledged that this exercise did require a significant investment of time, including learning the Evetts and Gauthier framework.

The CLEO report also comments on the value of carrying out task-based assessments of court form complexity using “multidisciplinary teams in conjunction with a system of user feedback.”³¹ The report notes that “[t]he CLEO team reviewed email inquiries from users and feedback from frontline workers and others who help people fill out court forms.”³² This observation echoes our observation in our 2019 study that, optimally, a functional literacy approach should be supplemented with user feedback and testing.

²⁶ People-Centered Justice: Putting People’s Needs and Wants at the Heart of Rule of Law Programming’, accessed 15 May 2023, https://www.americanbar.org/advocacy/rule_of_law/blog/roli-people-centered-justice-programming-1122/.

²⁷ OECD, *OECD Recommendations*, *supra* note 24.

²⁸ Community Legal Education Ontario, *Family Law Guided Pathways: Reducing the Complexity of Court Forms* (July 2022), online: <cleoconnect.ca/wp-content/uploads/2022/10/CLEO-Guided-Pathways-reducing-complexity-June-2022.pdf>.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

Finally, the CLEO report emphasizes the ongoing nature of court form improvement, observing “[c]ontinually reviewing our pathways to make improvements provides benefits to users....[and] enables us to identify principles and develop best practices to help us enhance our online legal assistance tools over time.”³³

Although this first part of our study was focused on a specific set of court form guided pathways, the results have broader applicability. Not only was the use of a functional literacy framework validated as a productive assistive measure when designing court form guided pathways, this research also provides support for concurrent user testing and continual review. These insights can be used by others to optimally design and deploy court form guided pathways in different contexts.

III. Data Collection and Analysis of Anonymized User Data

The second part of our study involved analyzing anonymized data from users of the Guided Pathway for Form 8.³⁴

a. Methodology

Form 8 is the form used to ask the court for decision-making responsibility (called child custody at the time of the study), parenting time (called child access at the time of the study), child support, spousal support, property division, other family law orders like a restraining order and/or a divorce together with any other orders dealing with the issues above.³⁵

We chose to study the Form 8 pathway for several reasons. Form 8 is a commonly-used family law form that applies to a wide range of potential remedies. Additionally, Form 8 was one of four court forms we studied in our 2016 quantitative study that used a functional literacy analytic framework.³⁶ Below, we use our prior task-based quantitative analysis of the Fillable-PDF version of Form 8 at several points to provide further insights and comparator information in relation to the data collected in this study of the corresponding digital guided pathway.

In this second part of our study, the data used to study the Form 8 pathway were the anonymized aggregated data from users who interacted with this pathway between September 2019 and June 2020, after CLEO undertook the functional literacy revisions described in Part II above.

The data included the region that the user was located in (based a proxy measure of the courthouse selected), the user’s age (in an age-range band), their relationship type (e.g. married or common law), type of claims made, employment status, how many times that a user engaged with the pathway and, if the user engaged more than once, at which part of the form they exited, and whether the pathway was completed.

³³ *Ibid* at 26.

³⁴ Ethics approval was obtained for this study from the University of Ottawa’s Research Ethics Board (File no S-02-20-5314).

³⁵ Community Legal Education Ontario, “Guided Pathway for children, support, and property in separation and divorce: Form 8”, online: *Steps to Justice* <stepstojustice.ca/guided-pathways/family-law-for-children-support-and-property-in-separation-and-divorce-form8/>.

³⁶ Amy Salyzyn et al, “Literacy Requirements of Court Documents”, *supra* note 10.

One limitation to our analysis was that the data collected included only users who made “clean” or “orderly” exits from the system, excluding users who did not go through the formal exit process (e.g., closed their tab/browser simply or shut off their computer). Among this group of users could be those who: browsed the pathway without entering any data; exited the pathway at the prompting of questions designed to filter out users whose cases are not suitable for the pathway; exited because of challenges related to the complexity and emotional difficulty of family law issues; experienced technical issues; or became frustrated while interacting with the system. This last group in particular could include users experiencing the greatest difficulty with the system, but our data allow no insight into their experiences. Further, the limited data available from users who made “clean” exits did not include some information that would have been interesting to analyze but which was not captured by the system, including : (1) total time to complete the form: (2) which, if any, pop-up definitions were used and (3) at which question a user exited (the data collected only indicated which section of the pathway that a user exited upon).

To supplement these data, three survey questions were added at the end of the Guided Pathway:

1. “What part of the pathway was most helpful?”
2. “What part of the pathway was most difficult?”
3. “Enter anything else you want to tell us about using the pathway”

Responses to these open-ended questions provided additional context for the data that were collected, allowing deeper insight into user experiences.

b. Results and observations

Several conclusions can be drawn from the “clean” exit data.

First, there is significant use of this online tool. Over the data collection period, 1162 new users (who made “clean exits”) engaged at least once with the Form 8 Guided Pathway. Actual users over this time period would be an even higher number, given, as explained above, that the data collected did not include anyone who failed to make the standard exit from the Pathway.

Second, there is province-wide use of the tool. The majority of users (75%, or 871) identified their region in Ontario, with slightly over half (52.1%, 454) from the Central Ontario region (Central East, Central South, or Central West), 16.2% (141) from the Eastern region, 9.1% (79) from the Northern Ontario region (Northeast, Northwest), 14.7% (128) from the Southwest region, and 7.9% (69) from the Toronto region.

Third, the tool appears to be relatively easy for many to use. A surprisingly large proportion of users who made “clean” exits (927, or 79.8%) completed the form and most of those who completed the form (607) did so in only one session (i.e. they did not leave the system, save their work and return to do more work later).³⁷ Although we cannot determine the proportion this represents out of total users, the fact that hundreds of users were able to navigate the system with apparent ease is positive.

³⁷ Note that it is possible for users could start multiple instances of a form, exiting the pathway and later returning to start a fresh, new version of the form. Among the 1162 users, 35.6% (414) started multiple instances of the Form 8 guided

Fourth, challenges experienced by users when interacting with the Pathway seemed to occur when providing information about legal claims. Among the 320 users who required more than one session to complete the form, the large majority (88.8%, 284) exited where information about the claim is required (Exit 7).³⁸ This is also the most common exit point for the 102 users who engaged in more than one session but did *not* eventually complete the form (51%, or 52 users). The questions asked in this section depend on the user's circumstances and the claims advanced. For example, someone claiming spousal support would be asked about the amount they wish to claim and also about relevant background information, including employment, childcare arrangements or medical conditions. It is not surprising that users who exited most often left while completing the section relating to claims. Prior to this part of the Pathway, the tasks include: (1) identifying claims to be pursued; (2) adding biographical information about themselves and their spouse and (3) basic details about the marriage. In our previous 2016 quantitative study of the Fillable-PDF Form 8, the fields that required the user to provide biographical information and basic details about the marriage were ranked as low complexity given that the information elicited was highly concrete and was likely very accessible to the user (i.e. could be elicited either from memory or easily available personal documents).

A total of 227 users completed one or more of the survey questions, and these data yielded additional insights. In large part, those responding to the survey expressed satisfaction with the Pathway's usability. By far, the most common responses to the question "What part of the pathway was most difficult?" were variations on either "none" or "nothing". Similarly, the most common responses to the question "What part of the pathway was the most helpful?" were variations on "all of it" or "everything".

Several survey responses supported our previous prediction that interactive online forms would be easier for members of the public to navigate. For example:

*"I looked at the forms before and was lost. This is a much better process."
"While there's a bit of blind faith in this approach, it's extremely helpful to think I can complete the required documents and submit them to the courts correctly without having to navigate the government websites and forms on my own (hoping I'm doing them correctly) or relying on legal services and paying legal fees for what 'should' be a straight-forward process."*

Users also identified specific design features as reducing complexity:

- Multiple users lauded the "step-by-step instructions" as particularly helpful. As noted in one response: "the organized questionnaire broke down each step and made it a lot easier and less overwhelming to fill out."
- Users also specifically complimented the hyperlinked definitions and the "learn more" boxes.

pathway. If a user had multiple instances, our analysis is focused on the first of these instances only: data associated with a second or later instance of the same form are not included in this analysis.

³⁸ Note that we focused on where these users exited on their *first* session, reasoning that this is the point in the form that presented initial challenges to them.

- Survey responses highlighted the plain language used in the Pathway. For example, one response complimented the helpfulness of “the way each question is broken down in simple terms without all the legalese” and another praised “how legible the questions read so straight forward and not overwhelming causing panic and anxiety.”

At the same time, some user surveys also identified challenges when using the Pathway:

- One set of challenges relates to the underlying complexity of the family law process. For example, some users expressed difficulty “locating” requested information – multiple users identified, as a specific challenge, needing to remember dates that the Pathway asked for.
- Some users expressed difficulty when it came to questions where they had to “generate” information (i.e. provide an explanation). For example:

“Where I have to write examples of what I do. Like caregiving. I’m not sure what kinds of things to write”

“The open information areas. Typing space is small. Also vague on just how much one should really say.”

“There should be more of an explanation as to what to answer and what not to put in each area.”

- The overall length and time it took to complete the Pathway was identified as a challenge by some.
- One user identified the “unexpected emotional toll” of the process as being the most difficult part of the process.

In summary, the survey data appear to confirm the value of a guided pathway approach to filling out a court form while also underscoring an observation in our 2016 study that the underlying complexity of the family law system limits the ability of form redesign to remove all the barriers experienced by SRLs.

IV. Think-aloud Interviews and Debriefs

A third part of our study involved having non-legally trained individuals complete Form 8 using a hypothetical scenario, thereby supplementing, with “real time” observational data, the anonymized user data that we also gathered and analyzed.

a. Methodology

Participants were randomly assigned one of four hypothetical scenarios and were asked to complete either the fillable PDF format or the Guided Pathway version for Form 8.

Nineteen individuals participated, recruited from a pool of undergraduate students receiving academic credit for participating in research studies. The education level of these participants is consistent with the approximately two-thirds of SRLs reported to have university degrees or college diplomas.³⁹ Law students were excluded, as were any individuals with significant legal training (i.e. anyone who was a lawyer or paralegal). Participants were required to be fluent in English.⁴⁰

Participants were asked to verbalize their thoughts as they completed either the Fillable-PDF Form 8 or the Guided Pathway using their assigned fictional scenario. This concurrent think-aloud protocol, which is a widely employed method to study the usability of tools or interfaces,⁴¹ “has high face validity, since the data obtained reflect the actual use of an artefact, and not the participants’ judgements about its usability.”⁴² Participants also engaged in a debriefing interview where they reflected on their experiences completing the form.

We considered recruiting as study participants individuals with active family law matters, since, as observed by Steenhuis et al, “the most reliable way to improve a form is to conduct an observational study of real self-represented litigants completing the form and then to identify areas where litigants experience difficulty.”⁴³ Ultimately, however, ethical concerns mitigated against this option. Actual users would be individuals with important legal rights at stake but who lack expert legal help. If they were to participate in the study, we could observe the challenges that they were experiencing when completing Form 8, but we would be unable to assist, even in the face of observable errors that could compromise their legal rights. Although it might have been possible to build in subsequent legal help—for example, after the participants complete the study, they could be provided with a lawyer to help them re-do the form—this would have exceeded the budget for this study. Additionally, the questions asked or the information revealed with third-party researchers present would presumably not be subject to solicitor-client privilege and, as such, could potentially be used prejudicially against a participant in later proceedings.

One important consequence of not using real litigants in our observational study is the inability to fully capture any impact of user emotional stress/distress. Family law litigation is notoriously stressful. Empirical studies have confirmed, unsurprisingly, that emotional stress can negatively impact cognitive performance.⁴⁴ We would, therefore, expect that difficulties experienced by our study participants would be compounded in the experience of at least some real litigants given the emotional intensity of the subject matter.

³⁹ Julie Macfarlane and Charlotte Sullivan, *Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2019-2021* at 8.

⁴⁰ Ethics approval was obtained for this study from the University of Ottawa’s Research Ethics Board (File no S-11-19-5131).

⁴¹ See, MJ Van den Haak, MDT de Jong, and PJ Schellens, “Retrospective vs. concurrent think-aloud protocols: testing the usability of an online library catalogue” (2003) 22(5) *Behaviour & Information Technology* 339.

⁴² *Ibid.* at 339.

⁴³ Steenhuis et al, *supra* note 11.

⁴⁴ Gerald Matthews, “Distress” in *Stress: Concepts, Cognition, Emotion, and Behavior* (Elsevier Inc., 2006) (eds. George Fink) at 219-226.

b. Results and observations

In general, our observations from the think-aloud interviews confirmed the usefulness of a guided pathway approach for reducing user challenges when completing court forms.

i. Interface advantages

There were several features of the Guided Pathway digital interface that improved useability.

First, the digital format allowed for “just-in-time” information or contextual help through hyperlinked definitions and links where users could learn more about a specific prompt. These features appeared to mitigate user difficulties with understanding legal and technical terms.⁴⁵ We observed, for example, that participants using the Fillable-PDF Form 8 often expressed frustration with the “legal jargon” used and the lack of definitions. In some cases, these participants did not express difficulty but did misunderstand the meaning of some of the legal terms they engaged with: for example, multiple Fillable-PDF Form 8 participants selected “costs” as a claim, but misinterpreted this claim to relate to expenses such as moving costs or financial support generally, when it, in fact, specifically relates to legal costs associated with the proceeding.⁴⁶ In contrast, participants using the Guided Pathway generally made repeated use of the hyperlinked definitions associated with claims when trying to decide what claims to choose. In their debrief interviews, several participants identified these definitions as particularly helpful.

Second, the ability of the Guided Pathway to “streamline” – that is, only present to a user what they need to see for their particular situation – reduced opportunities for confusion.⁴⁷ For example, one area that Fillable-PDF participants found confusing was a section with several blanks following a heading “to the respondent”:

TO THE RESPONDENT(S):

A COURT CASE HAS BEEN STARTED AGAINST YOU IN THIS COURT. THE DETAILS ARE SET OUT ON THE ATTACHED PAGES.

THE FIRST COURT DATE IS (date) _____ AT _____ a.m. p.m.
or as soon as possible after that time, at: (address) _____

NOTE: If this is a divorce case, no date will be set unless an Answer is filed. If you have also been served with a notice of motion, there may be an earlier court date and you or your lawyer should come to court for the motion.

THIS CASE IS ON THE FAST TRACK OF THE CASE MANAGEMENT SYSTEM. A case management judge will be assigned by the time this case first comes before a judge.

THIS CASE IS ON THE STANDARD TRACK OF THE CASE MANAGEMENT SYSTEM. No court date has been set for this case but, if you have been served with a notice of motion, it has a court date and you or your lawyer should come to court for the motion. A case management judge will not be assigned until one of the parties asks the clerk of the court to schedule a case conference or until a motion is scheduled, whichever comes first.

IF, AFTER 365 DAYS, THE CASE HAS NOT BEEN SCHEDULED FOR TRIAL, the clerk of the court will send out a warning that the case will be dismissed within 60 days unless the parties file proof that the case has been settled or one of the parties asks for a case or a settlement conference.

IF YOU WANT TO OPPOSE ANY CLAIM IN THIS CASE, you or your lawyer must prepare an Answer (Form 10 – a blank copy should be attached), serve a copy on the applicant(s) and file a copy in the court office with an Affidavit of Service (Form 6B). YOU HAVE ONLY 30 DAYS AFTER THIS APPLICATION IS SERVED ON YOU (60 DAYS IF THIS APPLICATION IS SERVED ON YOU OUTSIDE CANADA OR THE UNITED STATES) TO SERVE AND FILE AN ANSWER. IF YOU DO NOT, THE CASE WILL GO AHEAD WITHOUT YOU AND THE COURT MAY MAKE AN ORDER AND ENFORCE IT AGAINST YOU.

⁴⁵ For a general discussion of contextual help when designing digital tools, see Sarah Edwards, “UX/UI tips: A guide to contextual help” (2 September 2022), online: *Medium* <bootcamp.uxdesign.cc/ux-ui-tips-a-guide-to-contextual-help-11971550acb>.

⁴⁶ Participant 1 (Fillable-PDF), Participant 3 (Fillable-PDF) and Participant 4 (Fillable-PDF).

⁴⁷ For a general discussion of reducing cognitive load, see W. Schnotz & C Kürschner, C. “A reconsideration of cognitive load theory” (2007) 19 *Educational Psychology Review* 469.

Although a court clerk would typically fill in this section, participants assigned the Fillable-PDF version attempted to complete the section and expressed difficulty with the prompts, especially with respect to whether their case was on the “fast track” or “standard track”. In our 2016 quantitative study of Form 8, this section was identified as complex because, among other things, an applicant could easily be confused about whether to fill it out. By not requiring a user to view this material, the Guided Pathway eliminates the potential for this sort of confusion.

Similarly, Fillable-PDF participants also expressed difficulty navigating the portion of the form where they needed to choose their claim:

CLAIM BY APPLICANT

I ASK THE COURT FOR THE FOLLOWING:
(Claims below include claims for temporary orders.)

Claims under the Divorce Act <i>(Check boxes in this column only if you are asking for a divorce and your case is in the Superior Court of Justice or Family Court of the Superior Court of Justice.)</i>	Claims under the Family Law Act or Children's Law Reform Act	Claims relating to property <i>(Check boxes in this column only if your case is in the Superior Court of Justice or Family Court of the Superior Court of Justice.)</i>
00 <input type="checkbox"/> a divorce 01 <input type="checkbox"/> support for me 02 <input type="checkbox"/> support for child(ren) – table amount 03 <input type="checkbox"/> support for child(ren) – other than table amount 04 <input type="checkbox"/> custody of child(ren) 05 <input type="checkbox"/> access to child(ren)	10 <input type="checkbox"/> support for me 11 <input type="checkbox"/> support for child(ren) – table amount 12 <input type="checkbox"/> support for child(ren) – other than table amount 13 <input type="checkbox"/> custody of child(ren) 14 <input type="checkbox"/> access to child(ren) 15 <input type="checkbox"/> restraining/non-harassment order 16 <input type="checkbox"/> indexing spousal support 17 <input type="checkbox"/> declaration of parentage 18 <input type="checkbox"/> guardianship over child's property	20 <input type="checkbox"/> equalization of net family properties 21 <input type="checkbox"/> exclusive possession of matrimonial home 22 <input type="checkbox"/> exclusive possession of contents of matrimonial home 23 <input type="checkbox"/> freezing assets 24 <input type="checkbox"/> sale of family property
Other claims 30 <input type="checkbox"/> costs 31 <input type="checkbox"/> annulment of marriage 32 <input type="checkbox"/> prejudgment interest 33 <input type="checkbox"/> claims relating to a family arbitration	50 <input type="checkbox"/> Other <i>(Specify.)</i>	

Multiple participants expressed confusion about which legislation and court applied to their claims. In the words of one participant, “I didn’t even understand what was going on with the different rows [sic]”⁴⁸ Another participant stated “[i]t doesn’t really explain what these terms mean....or what the different acts are...because I filled it out by myself I found some parts confusing.”⁴⁹

Participants assigned the Guided Pathway did not experience the same challenges navigating the list of potential claims. One reason for this was the different presentation of information – on the Guided Pathway, the claims were not organized in columns and with reference to different courts and legislation but were instead presented in single lists, which were in turn curated depending on the initial description of the user’s situation (e.g. a user without children would not see the claims relating to child support).

Third, the Guided Pathway hyperlinked to relevant external resources, including government child support guidelines and table amounts. This type of feature mitigated a source of frustration: the Fillable-PDF version participants repeatedly expressed that they did not know what “table amount” meant in relation to child support and that they wanted more information.

⁴⁸ Participant 2 (Fillable-PDF).

⁴⁹ Participant 4 (Fillable-PDF).

ii. Advantages from design focus on non-legally trained users

Guided Pathway users also experienced advantages resulting, not from the digital interface *per se*, but rather from using a tool specifically designed for use by persons without legal training.

First, the Guided Pathway contained more plain language. For example, some study participants using the Fillable-PDF Form 8 were confused about whether the fictional character that they were representing was the “applicant” or the “respondent” (although all of these participants ultimately made the correct choice after some deliberation). In the words of one participant, “I didn’t know what word ‘respondent’ meant...like at first...like I had never heard anyone use that word before.”⁵⁰ Participants using the Guided Pathway did not experience challenges with the terms “applicant” and “respondent” because of a different design choice. Instead of prompting a user to fill in the “applicant” and “respondent” information, the Guided Pathway asks for “your information” and “your partner’s information”. Participants appeared to easily understand whose information went into each of these sections given the prompts’ plain language. Similarly, multiple participants using the Fillable-PDF Form 8 were confused about what address to include – one asked whether “address for service” meant their workplace and another was confused about whether they should include the address where they currently lived or where they used to live with their former spouse. The Guided Pathway instead prompts for “mailing address”, which provides context as to why the information is required and includes explanatory language clarifying that an address is required “so the court can send you mail.”

Second, the person-centred design of the Pathway resulted in additional context relevant to non-legally trained users. Several participants using the Fillable-PDF version wished for context about what was being asked of them. As noted by one participant, “I would want more specificity in general – like I would want to have a clearer idea of the process as a whole.”⁵¹ In contrast, a participant using the Guided Pathway volunteered that the process was “pretty straightforward ... in the beginning before we even started the pathway, it told me a list of things I needed to fill out the forms.”⁵²

iii. Remaining difficulties

At the same time, our observations from the think-aloud study suggest that court form design improvements have limits.

One area of difficulty was open-ended prompts that asked participants to provide details or an explanation about their claims. Those assigned the Fillable-PDF version were presented with two very general prompts:

Give details of the order that you want the court to make. (Include any amounts of support (if known) and the names of the children for whom support, custody or access is claimed.)

Important Facts Supporting My Other Claim(s) (Set out below the facts that form the legal basis for your other claim(s). Attach an additional page if you need more space.)

⁵⁰ Participant 12 (Fillable-PDF).

⁵¹ Participant 7 (Fillable-PDF).

⁵² Participant 5 (Guided Pathway).

In our 2016 quantitative study, these tasks were evaluated as being highly complex, in part because the response must be generated based on an individual's circumstances. Answering the prompt also requires high inference, expert legal knowledge of what type of orders can be made, and an ability to explain one's factual situation and legal case effectively.

In the current study, participants assigned the Fillable-PDF Form 8 gave relatively short (and sometimes blank) responses to these prompts. Some participants expressed uncertainty as to whether they were providing correct responses: one participant stated "basically that chunk where I can write a paragraph. I had no idea what to write there. If it was just facts...[or] like why I was asking for those claims or the details of what had happened."⁵³

The Guided Pathway takes a different approach to obtaining details about user claims. If a claim is selected, the system then asks a series of sub-questions seeking to elicit potentially relevant information. For example, if a user selects a child support claim, they are asked 12 sub-questions ranging from relatively basic questions like "amount you earn in a year" and "date you want child support payments to start" to much more specific questions such as "do you want to ask for an order that [your former partner] be required to make an annual financial disclosure relating to your claim for child support?" In general, the presence of these sorts of sub-questions, which do not appear on the Fillable-PDF Form 8, led participants to provide more details about their claims. For some sub-questions, the Guided Pathway also provides a clickable feature "How to answer this question" with further guidance. Participants assigned the Guided Pathway version often made use of this feature.

But, the design of the Guided Pathway did not eliminate every difficulty users had in explaining legal claims. Some participants still expressed confusion. For example, one participant noted they were not sure "how much to fill out...am I filling in too little or too much?"⁵⁴ and another participant commented that such prompts caused "a bit" of confusion because "I wasn't sure if it was legally correct, what I was writing, or if it was vague."⁵⁵

A second area of enduring difficulty was the interpretation of legal terms. Notwithstanding the use of hyperlinked definitions or "learn more" boxes in the Guided Pathway, some participants using the Pathway had difficulty understanding the nature of the possible claims. For example, one participant clicked on the definition for "prejudgement interest" in the claims section and noted "it gives a definition but honestly I still don't know what a prejudgement interest is."⁵⁶ Other claim types that caused challenges were "claims relating to family arbitration" and "exclusive possession of matrimonial home".

Third, both groups of participants commented on the length of the process to complete the form, volunteering, for example, "I thought it was, like, very long"⁵⁷, "I think it is a bit long"⁵⁸ and "Yeah, I think the form is pretty long."⁵⁹

⁵³ Participant 16 (Fillable-PDF).

⁵⁴ Participant 10 (Guided Pathway).

⁵⁵ Participant 9 (Guided Pathway).

⁵⁶ Participant 5 (Guided Pathway).

⁵⁷ Participant 5 (Guided Pathway).

⁵⁸ Participant 10 (Guided Pathway).

⁵⁹ Participant 13 (Fillable-PDF).

V. Concluding Reflections

In this final part, we offer some brief reflections on (1) the value of using a functional literacy framework when designing and evaluating court form guided pathways; and (2) the role that guided pathways can play in reducing complexity for court form users.

a. The value of a functional literacy approach in the design and evaluation of court form guided pathways

The results of this study confirm, in our view, the value of using a functional literacy approach combined with robust human testing to identify challenges that users might experience when interacting with court form guided pathways.

First, as summarized in Part II, after applying a functional literacy framework to evaluate their Guided Pathways, CLEO concluded that this was a useful approach to locate potential trouble spots and guide targeted solutions. This part of our study provides a “real world” demonstration of how a functional literacy framework can be used to help design and evaluate court form guided pathways.

Second, in our view, the usefulness of a functional literacy approach was confirmed in the “think-aloud” portion of our study (summarized in Part IV). There, the participants’ experiences were largely consistent with the results of our 2016 quantitative study of Form 8 using the Evetts and Gauthier task complexity assessment system. Those parts of Form 8 that were identified as complex in the 2016 quantitative study using a functional literacy framework also tended to be experienced as complex by participants using the Fillable-PDF Form 8 to conduct the think-aloud. This correspondence provides some measure of validation that those parts of a court form which the Evetts and Gauthier system will identify as difficult will, in fact, be experienced as difficult by users.

Although these observations were made in the context of studying one family law court form, they have broader resonance: they suggest that a functional literacy framework can be generally useful in the design of court form guided pathways to ensure they are optimally accessible to the public. In our work, we first used the Evetts and Gauthier approach in 2016 to assess the complexity of paper or PDF-based court forms, and again used this approach to assess interactive guided pathways for the current study described in this article. We chose the Evetts and Gauthier system given its systematic task-based approach. That said, there have been other approaches to assessing form usability published subsequent to Evetts and Gauthier’s 2005 work which also adopt a functional literacy perspective and which may be also usefully used to assess court forms. A recent example is Steenhuis et al.’s use of the framework set out by Jarrett and Gaffney in *Forms that Work* when developing a web application that can be used to measure and improve the usability of court forms.⁶⁰

Regardless of the specific framework chosen, it is important to recognize that a functional literacy approach will not identify all challenges that users might experience with guided pathways. It is just one diagnostic tool that can be deployed alongside others. For example, persons with physical and mental disabilities may need particular measures in order to provide them with effective access. Additionally, in the case of online tools, not everyone has access to the hardware (e.g. computers or

⁶⁰ Steenhuis et al, *supra* note 11.

smartphones) or the appropriate level of “digital literacy” required to effectively use the tool. A functional literacy framework is not designed to identify all types of accessibility concerns.

Moreover, as discussed in Part I above, the functional literacy framework may miss certain barriers. This was demonstrated in our current study: although the outcomes of our think-aloud interviews largely confirmed our 2016 quantitative complexity analysis of the Fillable-PDF Form 8, they also revealed additional potential barriers that were not previously identified. Testing with human subjects can provide important additional insights.

However, robust human testing in relation to proposed access to justice measures can also come with ethical challenges, as observed above. One way to address some of these ethical issues but to also hear from real users is to collect anonymized user data, as we did in the second part of the study.

The value in analyzing anonymized user data will be dependent, of course, on the user data that the system actually collects. As noted in Part III above, in the course of this study, we observed that we did not have access to all of the anonymized data that we might have wanted to study. At the outset of the project, CLEO believed that their system (the reuse of a publicly-funded existing system) would collect many of these data points. However, missing data and relationships between different data sets were identified through the research. One important outcome from this project was that CLEO took steps to have their Guided Pathway platforms gather more data points from users.

Theoretically, some of these issues might have been avoided by taking an “evaluation by design” approach at the outset. This would involve identifying, at the design stage, what data points the system should be capturing, and how best to capture them, in order to assess access to justice impacts.⁶¹ But practically, designing to capture all the needed evaluation data upfront is not entirely straightforward or always possible. There are serious budgetary, time, and privacy and security implications involved with data capture that are beyond the scope of this article but which create their own limitations. Taking an iterative approach to data collection within the confines of these practical boundaries, as CLEO has done, is a good practice.

b. Online, interactive court forms as A2J-enhancing tools

The results of our study strongly suggest that a guided pathway approach can yield significant accessibility benefits for many SRLs.⁶² These benefits were confirmed in both the anonymized survey data and through the think-aloud sessions.

As discussed in more detail in Parts III and IV, the digital format of guided pathways proved to assist non-legally trained users by allowing for additional explanations to be available “on demand” and by helpfully streamlining the form (e.g. if only 20% of the form is relevant to a user, a guided pathway can show the user only those parts of the form which are relevant to them and not confuse them by

⁶¹ The suggestion to adopt an “evaluation by design” approach is inspired by the concept of “privacy by design” which aims to capture proactive measures taken the design stage to protect users’ privacy interests (See Ann Cavoukian, *Privacy by Design: The Seven Foundational Principles*, Ontario Office of the Information and Privacy Commissioner, January 2011).

⁶² Again, in making this statement we acknowledge that there will be some SRLs for whom a guided pathway is not a viable or helpful solution. For example, there will be some SRLs who lack access to the necessary digital tools or digital literacy to effectively operate guided pathways.

also showing the irrelevant 80%). Additionally, our study revealed that the Guided Pathway offered improvements largely independent of the digital format, resulting instead from a design approach that centred SRLs as users. These improvements included greater use of plain language and the addition of contextual information.

At the same time, our research underscores that design reforms cannot alleviate all difficulties experienced by family law SRLs. First, the full meaning of some terminology may not be captured in “plain language” alternatives.⁶³ In some cases, terminology may be simplified at its source by replacing technical terms with more common and simple language (e.g. replacing “respondent” with “your partner”), but this is not always appropriate. It would be a disservice, for example, to convert “arbitration” into a different plain-language term or phrase when the prompts relating to arbitration are referring to a very specific legal concept. As Rabeea Assy has observed in his scholarship on the limitations of the plain language movement in the legal context, “technical expressions [in law] are typically incomprehensible to laypeople because their legal meaning is not contained or exhausted in their linguistic meaning; accordingly, the use of ordinary words would not dispel their unintelligibility. Their legal meaning can be grasped only by possessing specialized knowledge of the legal context in which these expressions operate.”⁶⁴ While a guided pathway can substantially reduce terminological challenges by using simpler terms upfront or, in the alternative, providing more information about the meaning of a term, it is unlikely to eliminate all terminological challenges for every user.

Second, our study reveals that some users will find the length of time that it takes to fill out the form to be taxing. However, the length of the process cannot necessarily be materially reduced. As one study participant acknowledged: “I see why [the length is] necessary because like anything dealing with court and law, they must like try to get enough information to make a fair judgement.”⁶⁵ This participant’s comments echo an observation from Shannon Salter and Darin Thompson: “[d]esigning justice processes to meet the needs of users is not a matter of devising the simplest processes possible. There will naturally be a certain degree of complexity within a system that must resolve potentially complicated disputes.”⁶⁶ Perhaps the best that can be done here is what CLEO does for the Form 8 Guided Pathway: set expectations for users at the outset about how long the process may take and provide appropriate context about how the different tasks that a user is prompted to complete are related to the interests that the user wants to advance.

Third, another area of observed continuing complexity was responding to open-ended prompts. A guided pathway format has some significant advantages here as it can provide users with more explanation about what can or should be included in a response; prompts can also be broken down into sub-questions that more directly elicit possibly legally relevant information. Notwithstanding these advantages, this was still an area that created difficulty for some users and participants. This is not surprising: because the information best included in response to these prompts is often highly personalized, it is difficult for a general system to provide contextualized, detailed, and prescriptive

⁶³ B Hunt, “Plain language in legislative drafting: An achievable objective or a laudable ideal?” (2003) 24:2 Stat L Rev 112.

⁶⁴ Rabeea Assy, “Can the Law Speak Directly to its Subjects? The Limitation of Plain Language” (2011) 38(3) J of L & Soc’y 376 at 400.

⁶⁵ Participant 10 (Guided Pathway).

⁶⁶ Shannon Salter & Darin Thompson, “Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal” (2016-2017) 3 McGill Journal of Dispute Resolution 113 at 123.

guidance to individual users that will always clearly orient them to an ideal personalized response. Challenges in answering open-ended prompts are also presumably driven by the underlying complexity involved in crafting legal narratives. As Toy-Cronin et al observe:

A conflict narrative told for a court...is not simply a precise version of one told out of court; it is a story told with entirely different cultural norms. A disputant cannot simply acquire these new norms by “being precise”. Engaging in competent legal storytelling requires mastery of an entirely different register and an awareness of the need to include certain facts and leave others out.”⁶⁷

By adding-in sub-questions, the Guided Pathway assists SRLs in crafting their legal narratives, directing them towards providing legally relevant information. The Pathway, based on the advice of practicing family law lawyers, includes prompts based not only on the original court form but also on the legal test set out in legislation and its interpretation by courts in previous cases. But even this form of guidance has limits. In a particular case, it is possible that a lawyer would see different information as being relevant than that elicited by the pathway or suggest different ways of presenting the same information. As Branting and McLeod observe, “[i]t is the role of a legal counsel to identify the goals that the client hopes to achieve through a legal process and then to elicit a coherent narrative that is relevant to one or more possible legal remedies that could achieve those goals.”⁶⁸ While the Guided Pathway provides some indirect access to legal expertise via sub-questions that seek to elicit legally relevant facts, a residual challenge arising from the nature of legal reasoning is likely to remain.

In general, the issue of how to successfully elicit legally salient and effective narratives is a challenge for those seeking to design A2J-enhancing digital tools for use without direct assistance from lawyers. As an alternative to the approach taken by the Guided Pathways (i.e. adding sub-questions in an automated form), Branting and McLeod have, in recent work, explored a more dynamic “narrative-driven case fact elicitation.”⁶⁹ Following the public release of ChatGPT in November 2022, there has also been growing interest in whether generative AI can provide a more “conversational” means for the public to interact with digital tools to describe their factual circumstances and craft those into the narrative most effective for addressing their legal needs.⁷⁰

c. Final thoughts

The nature of family law and other areas of “personal plight” law may mean that having expert legal assistance is ideal. But, the reality is that the vast majority of people cannot access legal assistance. We need immediate and practical solutions to assist SRLs.

⁶⁷ Bridgette Toy-Cronin, David Nichols & Sally Jo Cunningham *Designing Online Court Forms: Recommendations for Courts and Tribunals in Aotearoa* (June 2021).

⁶⁸ Branting K, McLeod S. Narrative-Driven Case Elicitation. Workshop on Artificial Intelligence for Access to Justice (AI4AJ 2023). 2023 Jun.

⁶⁹ *Ibid.*

⁷⁰ Indeed, CLEO itself has started to research “how Generative Artificial Intelligence (GenAI) can help people tell their story in legal proceeding” and, as of June 2024, was testing an AI prototype that aimed to help users create narratives for legal documents (<https://www.cleoresearch-ai.com/>).

We know that conventional court forms are generally quite challenging, if not virtually impossible, for SRLs to complete. The results of this study points towards one type of measure that can significantly reduce complexity: the use of court form guided pathways, particularly when these pathways are designed with literacy principles in mind.

In detailing the results from our multi-faceted case study, we hope that others interested and engaged in court form design can gain insights into the specific strengths of the guided pathway approach and how to optimally design and evaluate the usability of court forms offered to the public through this type of digital format.