

THE GRIM PARADE: SUPREME COURT OF CANADA SELF-REPRESENTED APPELLANTS IN 2017

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Self-represented litigants (SRLs) are persons who appear in legal proceedings without a lawyer. This study is a document- and court record-based quantitative, statistically valid profile of 122 SRLs who filed 125 leave to appeal applications in the Supreme Court of Canada in 2017.

Male SRLs outnumbered female SRLs almost 3:1. Most SRLs focused on their perceived rights and did not engage Canadian law. Instead, most study SRLs claimed lower court judges were biased or engaged in illegal or criminal conduct. Over a third of the study SRLs filed two or more Supreme Court leave to appeal applications over their lifetime. One filed 19 applications, all unsuccessful. Nearly one in four study SRLs were subject to court access restrictions, an extreme form of litigation management. Problematic litigation activity was associated with repeated Supreme Court appearances. Only a small number of study SRLs self-identified or were identified by a court as having mental health issues, but nearly one quarter of SRLs' litigation records exhibited an atypical pattern of expanding litigation identified by mental health professionals as a characteristic of querulous paranoia.

This investigation successfully developed a profile of the 2017 Supreme Court leave to appeal SRL population and their litigation activity and provides a model for future parallel investigations. This population is very unlikely to be representative of Canadians SRLs as a whole, but it represents a comparator and identifies characteristics that are potentially useful to understand what occurs in other Canadian appeal courts.

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I. INTRODUCTION

This article is the third part of a “technology demonstrator” to illustrate that a quantitative, statistically valid profile of a self-represented litigant (SRL) population may be developed based on documentary records (the Project). The Project’s target population are all self-represented appellants who sought to access the Supreme Court of Canada in 2017.

Self-represented appellants file a substantial part (20–30%) of all new candidate Supreme Court of Canada appeals, over 100 appeals per year.¹ The first Project article concluded SRLs who attempt to conduct Supreme Court appeals almost inevitably fail.² The overwhelming majority of candidate SRL Supreme Court appeals do not pass the leave to appeal gatekeeping process.³ That confirms Chief Justice Wagner’s report that only one or two SRL Supreme Court appeals continue to a full hearing every five years.⁴ On those rare occasions where a SRL does reach the Supreme Court of Canada, those appeals are usually dismissed.⁵

The second Project article investigated why SRL candidate appeals almost always fail.⁶ 125 leave to appeal applications (Study Group Applications) were filed with the Supreme Court of Canada in 2017 by 122 SRLs (Study Group Appellants). The memoranda of argument for the Study Group Applications were ordered and reviewed, along with other related court dockets and reported decisions.⁷

Netolitzky, “Applications” concluded SRLs encountered no obstructions during the leave to appeal process. In 2017, every time the Supreme Court of Canada opened a SRL appeal docket that candidate appeal was referred to a three-justice Supreme Court panel for full review.⁸ The Supreme Court Registry granted every fee waiver application, accepted irregular and overlong filings, and litigation management steps were only imposed after the SRL had exhausted his or her legitimate litigation steps.⁹

¹ Donald J Netolitzky, “Enforcement of Leave to Appeal Limitations Periods at the Supreme Court of Canada” (2021) 101 SCLR (2d) 165 at 166 [Netolitzky, “Limitations”].

² *Ibid.*

³ *Ibid.* at 167–71.

⁴ Right Honourable Richard Wagner, PC, Chief Justice of Canada, “Access to Justice: A Societal Imperative” (Address delivered at the 7th Annual Pro Bono Conference, Vancouver, 4 October 2018), online: <www.scc-csc.ca/judges-juges/spe-dis/rw-2018-10-04-eng.aspx>.

⁵ Netolitzky, “Limitations,” *supra* note 1 at 167–68.

⁶ Donald J Netolitzky, “The Walking Wounded: Failure of Self-Represented Litigants in 2017 Supreme Court of Canada Leave to Appeal Applications” (2021) 58:4 Alta L Rev 837 [Netolitzky, “Applications”].

⁷ *Ibid.* at 851–56.

⁸ *Ibid.* at 888–90.

⁹ *Ibid.*

Instead, the substance of the SRL filings was the critical issue. One quarter of SRL leave to appeal applications failed to provide any basis for a meaningful response.¹⁰ Some of these leave to appeal applications were boilerplate; others were essentially gibberish. A further quarter of SRL applications provided a factual narrative but did not identify relevant legal issues.¹¹ Many leave to appeal applications did not engage the Supreme Court's law-making function but instead only sought to dispute findings of fact.¹² Other applications were hopeless, for example filed when the Supreme Court of Canada had no jurisdiction.¹³ 61.2% of leave to appeal applications exhibited one or more indicia of abusive litigation.¹⁴ Even some of the most sophisticated SRL leave to appeal applications abused court processes.¹⁵

Justices of the Supreme Court have identified a number of “hot button” characteristics that attract Supreme Court of Canada intervention.¹⁶ These were largely absent from 2017 SRL leave to appeal applications. When a “hot button” appeared, that was sometimes coupled with a fatal abusive litigation characteristic, such as pseudolaw arguments.¹⁷

Combined, less than 10% of 2017 candidate SRL appeals had any realistic prospect of success, *even before evaluating the merits of their substance and arguments*.¹⁸

This serious mismatch between the substance of the Study Group Applications and the function of the Supreme Court raises questions:

- Who are the Study Group Appellants?
- Why are they pursuing appeals to Canada's highest court?
- To what degree do Study Group Appellants misuse trial and appeal court processes?

That investigation is the focus of this third component of the Project.

A. WHO ARE SRLS?

A kind of narrative has developed about Canadian SRLs and their involvement in court processes and proceedings:

1. SRL numbers are increasing;
2. SRLs are a family law phenomenon;
3. SRLs do not self-represent out of choice, but because they cannot afford a lawyer;

¹⁰ *Ibid* at 891.

¹¹ *Ibid*.

¹² *Ibid* at 891–92.

¹³ *Ibid* at 893.

¹⁴ *Ibid* at 868–75.

¹⁵ *Ibid* at 894–95.

¹⁶ *Ibid* at 846–47.

¹⁷ *Ibid* at 893–94.

¹⁸ *Ibid* at 895.

4. SRLs find the alien and complex character of Canadian law and legal procedure difficult;
5. litigation that involves SRLs is lengthier and more complex, and that stresses already over-taxed Canadian courts; and
6. almost all SRLs are good-faith, fair-dealing actors, but only a very few are “bad apples” who misuse courts and their resources.

The increased frequency of SRLs appearing before courts and the difficulty they experience are often described as being a part of an “access to justice crisis,” though the nature of “access to justice” and that crisis is amorphous.¹⁹ Despite much attention being directed to “access to justice,” the characteristics of the Canadian SRL population are surprisingly weakly defined and documented.

Netolitzky, “Applications,” reviews existing information relating to Canadian SRLs.²⁰ Most of those data come from surveys of judges, lawyers, court staff, and litigants.²¹ Data collected directly from SRLs largely focused on family law dispute litigants. Descriptions of SRLs, their characteristics, conduct, and experiences, are in some instances similar, but other times vary widely. No true population studies of Canadian SRLs exist nor have court records been used as the primary basis to investigate and characterize Canadian SRLs and their activities.

Empirical investigations of SRLs in other common law countries contradict the SRL narrative.²² These sources report little evidence of a dramatic increase in the volume of SRLs entering those court systems. SRLs appear to engage lawyers or self-represent depending on the context and complexity of litigation. Some studies have determined that matters with SRLs took less time, and more often resolved earlier. Investigators reviewed in Netolitzky, “Applications,” also noted that court worker, lawyer, and judge perceptions of SRLs appeared to focus on a small, highly problematic subpopulation, raising the possibility that SRL stereotypes are based on worst-case scenarios.

B. ABUSIVE LITIGATION AND LITIGANTS

Netolitzky, “Applications,” concluded that many Study Group Applications had limited merit. Other observations also suggest a significant portion of the Study Group Appellants’ Supreme Court and precursor lower court activities may misuse court processes. Thirteen of the 122 SRL Study Group Appellants used abusive pseudolaw arguments.²³ Preliminary investigation of the Study Group Appellants determined 37.7% (n=46) of SRL appellants had

¹⁹ *Elizabeth Bernard v Professional Institute of the Public Service of Canada*, 2020 FCA 211 at paras 25–26.

²⁰ Netolitzky, “Applications,” *supra* note 6 at 851–52.

²¹ *Ibid* at 840–43.

²² *Ibid* at 843–45.

²³ Donald J Netolitzky & Richard Warman, “Enjoy the Silence: Pseudolaw at the Supreme Court of Canada” (2020) 57:3 *Alta L Rev* 715. Note that this article measures Supreme Court activity on a “per application” rather than a “per appellant” basis and reports eight Organized Pseudolegal Commercial Argument (OPCA) leave to appeal applications in 2017, taking into account the two merged Luc Bernard d’Abadie applications.

filed multiple Supreme Court of Canada leave to appeal applications. 9.0% (n=11) of the Study Group Appellants initiated two or more Supreme Court leave applications *in 2017 alone*.

Certain Study Group Appellants have Supreme Court appeal records that go back decades. For example, between 1993 and 2017, Valery Fabrikant²⁴ and Gilles Patenaude filed 17 and 19 Supreme Court appeals, respectively. None were granted leave. Lower courts have declared both Fabrikant²⁵ and Patenaude²⁶ to be “vexatious litigants.” Together, these observations suggest that abusive litigation is plausibly a significant issue at the Supreme Court and that the Project should investigate that possibility.

Abusive litigation is not a new phenomenon.²⁷ Legislative responses to manage abusive litigation date to the 1800s.²⁸ A perception exists that misuse and abuse of the courts is increasing.²⁹ Some evidence supports that conclusion.³⁰ Some observers suggest that reforms to court procedure that facilitate SRL access to court processes also promote abusive litigation.³¹ Justice Morissette and Benjamin Lévy highlight how the common law’s veneration of a right to your day in court creates a structural vulnerability, or even a blind spot, when it comes to managing abusive litigants.³²

Most abuse of court is by unrepresented persons; however, judicial experience suggests this subpopulation represents only a small and atypical facet of the SRL phenomenon.³³ The effect of abusive SRLs belies their number. These few problem individuals consume a disproportionate fraction of court resources,³⁴ cause harm that cascades outside their own proceedings, and degrade the operation and function of courts as a common community resource.³⁵

²⁴ Activities reviewed in Yves-Marie Morissette, “Querulous and Vexatious Litigants as a Disorder of a Modern Legal System” (2019) 24 Can Crim L Rev 265 [Morissette, “Disorder”].

²⁵ *Fabrikant v Canada (Correctional Service)*, 2003 CanLII 23428 at para 6 (Qc CA); *Productions Pixcom inc v Fabrikant*, 2005 QCCA 703 at para 10; *Attorney General of Canada v Dr VI Fabrikant*, 2019 FCA 198.

²⁶ *Patenaude c Québec (Procureure générale)*, 2016 QCCS 3047, aff’d 2016 QCCA 1583, leave to appeal to SCC refused, 37264 (26 January 2017).

²⁷ Grant Lester & Simon Smith, “Inventor, Entrepreneur, Rascal, Crank or Querulent?: Australia’s Vexatious Litigant Sanction 75 Years On” (2006) 13:1 Psychiatry Psychology & L 1; Gary M Caplan & Hy Bloom, “Litigants Behaving Badly: Querulousness in Law and Medicine” (2015) 44:4 Adv Q 411 at 411–16.

²⁸ Michael Taggart, “Alexander Chaffers and the Genesis of the Vexatious Actions Act 1896” (2004) 63:3 Cambridge LJ 656; Morissette, “Disorder,” *supra* note 24 at 302.

²⁹ Morissette, “Disorder,” *ibid* at 277–78; *Unrau v National Dental Examining Board*, 2019 ABQB 283 at para 89 [Unrau #2].

³⁰ Morissette, “Disorder,” *ibid* at 303, Appendix B; Lester & Smith, *supra* note 27 at 17; Netolitzky & Warman, *supra* note 23 at 730.

³¹ Morissette, “Disorder,” *ibid* at 281, 308.

³² *Ibid* at 286–91; Benjamin Lévy, “From Paranoia Querulans to Vexatious Litigants: A Short Study on Madness Between Psychiatry and the Law. Part 2” (2015) 26:1 History Psychiatry 36 at 37–43 [Lévy, “Study #2”].

³³ Morissette, “Disorder,” *ibid* at 274–75; *Unrau #2*, *supra* note 29 at paras 88–89.

³⁴ No quantitative study of abusive litigants’ impact on courts appears to exist; however, Paul E Mullen & Grant Lester, “Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour” (2006) 24 Behav Sci & L 333 at 335 report a survey of Australian “agencies of accountability” found “unusually persistent complainants” make up under 1% of complainants, but consume 15–30% of all resources.

³⁵ *Her Majesty the Queen in Right of Canada v Ade Olumide*, 2017 FCA 42 at paras 17–20 [Olumide]; *Lochner v Ontario Civilian Police Commission*, 2020 ONCA 720 at paras 17–18 [Lochner].

Canadian courts generally agree about what kinds of activity misuse court processes;³⁶ however, the language used to describe that activity is inconsistent.³⁷ Labels used include frivolous, vexatious, abusive, and querulous.³⁸ For the purposes of the Project, problematic litigation indicates that litigation exhibits one or more litigation misconduct characteristics or indicia that could merit a court terminating that action. A problematic litigant is a litigant whose activities include these indicia. An abusive action is one where a court or tribunal has concluded that a lawsuit or litigant's activities include problematic litigation indicia such that the court or tribunal took litigation management steps in response to that problematic litigation. A vexatious litigant is a person whose problematic litigation has led to court or tribunal access restrictions so that the vexatious litigant is required to seek permission, or leave, before taking certain steps. An order that imposes court or tribunal access restrictions is sometimes called a vexatious litigant order.

1. THE "DISTILLATION EFFECT"

Justice Yves-Marie Morissette of the Quebec Court of Appeal reports abusive litigants are over-represented in appellate forums.³⁹ This pattern may be the result of a "Distillation Effect," where the litigation pattern(s) exhibited by abusive litigants selects and directs these individuals into appellate courts.⁴⁰ Problematic litigants often refuse to abandon their litigation, and instead conduct appeals until that alternative is exhausted. Logically, the Distillation Effect would be most pronounced at the highest court in a jurisdiction, where the worst-case abusive litigants are selected for and funneled. In Canada, that is the Supreme Court of Canada.

2. PROBLEMATIC LITIGANT AND LITIGATION TYPES AND CHARACTERISTICS

Academic commentary about problematic litigation and vexatious litigants is sparse. While the authority of courts to terminate abusive actions is well developed, Canadian appeal courts broadly disagree on the authority and thresholds to impose court access restrictions.⁴¹ The problematic litigant population appears to be a complex one where different factors, personal characteristics, and motivations lead to abuse of court.

Unrau #2, proposed four general abusive litigant categories: (1) litigation that implicates mental health, (2) litigation based on ideology or political beliefs, (3) litigants who abuse court processes for profit or advantage, and (4) "litigation terrorists."⁴² The first three classes are self-explanatory. "Litigation terrorists" intentionally use legal proceedings to intimidate,

³⁶ The list of factors identified in *Lang Michener Lash Johnston v Fabian*, [1987] 59 OR (2d) 353 (HCJ) at 358–59 [*Lang*] is broadly endorsed, while *Unrau #2*, *supra* note 29 at paras 609–732 provides a more recent and detailed index. But see *Jonsson v Lymer*, 2020 ABCA 167 at para 40 [*Jonsson*] and *Lochner*, *supra* note 35 at paras 19–20.

³⁷ *Unrau #2*, *ibid* at paras 64–85.

³⁸ *Ibid*.

³⁹ Morissette, "Disorder," *supra* note 24 at 285, 306, n 26. The Ontario Court of Appeal has adopted this analysis and conclusion in *Lochner*, *supra* note 35 at para 16.

⁴⁰ Donald J Netolitzky, "Comment on Y.-M. Morissette, 'Querulous and Vexatious Litigants as a Disorder of a Modern Legal System'" (2019) 24 Can Crim L Rev 251 at 257 [Netolitzky, "Comment"].

⁴¹ *Unrau #2*, *supra* note 29 at paras 373–490; *Jonsson*, *supra* note 36 at paras 63–86; *Lochner*, *supra* note 35 at paras 27–35.

⁴² *Unrau #2*, *ibid* at paras 86–238.

harm, or discipline their opponents.⁴³ Associate Chief Justice Rooke in *Unrau #2* observed that these four types are not discrete or separate. Problematic litigants may belong to several categories.⁴⁴

The third grouping, litigants who abuse court processes for profit and benefit, are probably not relevant to Supreme Court of Canada litigation since these abusive litigants are unlikely to have obtained stays that may be extended by a futile appeal. The other three categories merit further description.

a. Problematic Litigation that Implicates Mental Health

Mental health professionals link problematic litigation to a range of mental health conditions, including delusional disorder, schizophrenia, bipolar disorder, and personality disorders (paranoid, narcissistic, obsessive compulsive).⁴⁵

That said, clinical investigation and academic commentary has largely focused on a long-described but little-studied, aberrant response to disputes, where the affected person experiences a negative dispute-related outcome, and then relentlessly pursues that subject, responding to each subsequent negative result by attacking other involved parties. Nineteenth century psychiatrists named this behaviour “querulous paranoia.”⁴⁶ Australian psychiatrist Grant Lester is the foremost authority on this condition,⁴⁷ and his description and explanation of querulous litigants is broadly accepted by other academic and mental health commentators.⁴⁸

Lester describes how persons who exhibit querulous dispute conduct do so with complete confidence on the correctness of their position, which they view as a point of principle. Querulous litigants place great importance on the seed dispute; however, examined objectively, that issue is often comparatively minor. Querulous litigants refuse clinical treatment. They believe their actions are reasonable, if not necessary. Those who do not entirely adopt the querulous litigant’s position are perceived as wrongdoers and deserve to be denounced and punished. This “those who are not with me are against me” perspective leads to not only a cascade of branching disputes and complaints but also to loss of employment, social isolation, and alienation. Violence sometimes occurs, typically suicide.

⁴³ *Ibid* at paras 227–28.

⁴⁴ *Ibid* at paras 239–45.

⁴⁵ Caplan & Bloom, *supra* note 27 at 422–23, 427–32; Mullen & Lester, *supra* note 34 at 343–45; Benjamin Lévy, “La «querulence processive»: vacarme, silence ou parole?” (2015) 56:3-4 C de D 467 at 479 [Lévy, “Vacarme”].

⁴⁶ See Benjamin Lévy, “From Paranoia Querulans to Vexatious Litigants: A Short Study on Madness Between Psychiatry and the Law. Part 1” (2014) 25:3 History Psychiatry 299 [Lévy, “Study #1”] and Lévy, “Study #2,” *supra* note 32 for a historical review of this topic.

⁴⁷ Grant Lester et al, “Unusually Persistent Complainants” (2004) 184 British J Psychiatry 352; Mullen & Lester, *supra* note 34; Grant Lester, “Searching for the Spectrum of the Querulous” in Wayne Petherick & Grant Sinnamon, eds, *The Psychology of Criminal and Antisocial Behaviour: Victim and Offender Perspectives* (Amsterdam: Academic Press, 2017) 489.

⁴⁸ Caplan & Bloom, *supra* note 27 at 422; C Adam Coffee, Stanley L Brodsky & David M Sams, “I’ll See You in Court... Again: Psychopathology and Hyperlitigious Litigants” (2017) 45:1 J American Academy Psychiatry & L 62 at 65; Lévy, “Vacarme,” *supra* note 45 at 487; Morissette, “Disorder,” *supra* note 24 at 276, n 14.

Querulous individuals are predominately male.⁴⁹ While querulous litigants are comparatively normal individuals prior to them being captured in a querulous litigation whirlpool, certain “sensitizing” events and traits predispose some individuals to querulous conduct.⁵⁰ Justice Morissette hypothesizes that querulous litigation is a kind of temporary mental health disorder where the affected individual is trapped within a conceptual loop, unable to disengage from the now exponentially expanding dispute.⁵¹ Another suggestion, proposed by French psychologist Benjamin Lévy, is querulous individuals perceive themselves as unheard and ignored. They repeatedly re-engage court and dispute processes with the objective of being seen and triggering a response.⁵²

Lévy identifies a sharp divide in how civil law and common law jurisdictions respond to querulousness.⁵³ In the former, this pattern of uncontrolled litigation results in immediate mental health intervention. A person exhibiting these characteristics is identified as sick. However, in common law jurisdictions, querulous litigation is viewed as an extreme expression of a universal and fundamental right, the right to one’s day in court. Lévy observes courts are therefore left to design and develop procedures to manage and minimize the harm this psychiatric condition causes to all parties, including the querulous litigant. Justice Morissette also identifies a comparative law distinction in how abusive litigation is managed. He concludes common law courts are particularly vulnerable to abuse.⁵⁴

This study uses “Querulous Litigation Pattern” to identify the expanding dispute pattern that mental health experts identify as the cornerstone diagnostic characteristic of querulous paranoia.

In *Unrau #2*, Associate Chief Justice Rooke proposed and provided examples of a second category of mental health abusive litigation where disordered or delusional thinking provides a perceived but spurious factual basis for meritless litigation.⁵⁵ One identified example was a woman affected by somatoform disorder who sued doctors, claiming (incorrectly) that they had not removed her gall bladder during surgery for that purpose. This vexatious litigant alleged medical authorities then concealed that fact.⁵⁶ Her distorted thinking also led to false reports of an escalating range of other physical disorders. This plaintiff did not litigate out of bad intention but instead because of distorted perceptions caused by mental illness.

No academic investigation has targeted this deluded litigant abusive litigant subtype. Nonetheless, this group is likely common. Many court matters struck out in summary proceedings involve allegations and claims that suggest that distorted thinking and perceptions contributed to the futile and abusive litigation.⁵⁷

⁴⁹ Mullen & Lester, *supra* note 34 at 338; Morissette, “Disorder,” *ibid* at 273.

⁵⁰ Caplan & Bloom, *supra* note 27 at 423–25; Mullen & Lester, *ibid* at 343–45.

⁵¹ Morissette, “Disorder,” *supra* note 24 at 278–81.

⁵² Lévy, “Vacarme,” *supra* note 45 at 481–84.

⁵³ Lévy, “Study #1,” *supra* note 46 at 307–13; Lévy, “Study #2,” *supra* note 32 at 37–42.

⁵⁴ Morissette, “Disorder,” *supra* note 24 at 286–91.

⁵⁵ *Unrau #2*, *supra* note 29 at paras 146–55.

⁵⁶ *Ibid* at paras 148–50.

⁵⁷ For example, in instances where the Alberta Court of Queen’s Bench has applied the Civil Practice Note No. 7 procedure: *Aiyisa v Kasim*, 2019 ABQB 821 (allegations of black magic); *Hedding v Alberta*, 2019 ABQB 527 (conspiratorial claims versus neighbours, mental health workers, and real estate organizations); *Labonte v Alberta Health Services*, 2019 ABQB 41 (claims to be the repeated target of undercover police assassins); *Laird v Alberta (Transportation Safety Board)*, 2019 ABQB 567

Unrau #2 proposes two other abusive litigant types that may involve mental health factors. First, flurry litigants initiate many lawsuits over a very short period of time, but then lapse into inactivity.⁵⁸ Given that pattern, flurry abusive litigation is unlikely at the Supreme Court of Canada. The second subtype exhibit linear problematic litigation and engage in multiple separate disputes that they pursue vigorously but without the Querulous Litigation Pattern of adding new parties and issues.⁵⁹

b. Problematic Litigation Based on Political and Ideological Belief

The second problematic litigation category identified in *Unrau #2* flows from political and ideological belief. In Canada, this litigation usually originates from Organized Pseudolegal Commercial Argument⁶⁰ communities, though Justice Morissette also includes the little documented fathers' rights advocates in this category.⁶¹

OPCA litigants claim that conventional law is wrong or superseded by a different, concealed, but superior law that has been suppressed or hidden by conspiratorial actors. This pseudolaw is universally rejected by conventional authorities and fails whenever employed in court.⁶²

Pseudolaw, a kind of alternative legal system, has spread globally into ideologically divergent groups, ranging from American libertarian constitutionalists ("Sovereign Citizens"), to Canadian anti-authoritarian freeloaders ("Freemen-on-the-Land"), to black nationalists ("Moors" or "Aliites"), to pre-Federal Republic of Germany government revivalists ("Reichsbürgers").⁶³ OPCA theories, if true, would radically shift authority from

(extraordinary claims of police misconduct including murder and at para 19, a dog trained to "consume human flesh"); *Martinez v Chaffin*, 2019 ABQB 349 (allegations of an international conspiracy of government, court, and police actors who falsely link the litigant to a public masturbation incident); *Shariifi-Zanjani v MacEwan University*, 2019 ABQB 845 (alleged defamation by university students via unidentified hidden electronic correspondence); *Smith v Saint Jhn*, 2020 ABQB 607 (claims rapper stole song); *Woitt v Alberta Mental Health Review Board*, 2019 ABQB 449 (claims based on confessional messages heard in a rock radio station's broadcasts); *Wu v Canada (Attorney General)*, 2019 ABQB 796 (convict claims his prison transfer was in response to political conflict between China and Canada).

⁵⁸ *Unrau #2*, *supra* note 29 at paras 158, 248–50.

⁵⁹ *Ibid* at paras 159–74.

⁶⁰ *Meads v Meads*, 2012 ABQB 571 [*Meads*]; Donald J Netolitzky, "After the Hammer: Six Years of *Meads v. Meads*" (2019) 56:4 *Alta L Rev* 1167 at 1202–205 [Netolitzky, "Hammer"].

⁶¹ Yves-Marie Morissette, "Abus de droit, quérulence et parties non représentées" (2003) 49:1 *McGill LJ* 23 at 39–40; Morissette, "Disorder," *supra* note 24 at 282. See also Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments in Canadian Inter-Partner Family Law Court Disputes" (2017) 54:4 *Alta L Rev* 955 at 995–96.

⁶² *Meads*, *supra* note 60; Netolitzky, "Hammer," *supra* note 60; Caesar Kalinowski IV, "A Legal Response to the Sovereign Citizen Movement" (2019) 80:2 *Mont L Rev* 153; Colin McRoberts, "Tinfoil Hats and Powdered Wigs: Thoughts on Pseudolaw" (2019) 58:3 *Washburn LJ* 637.

⁶³ Stephen A Kent, "Freemen, Sovereign Citizens, and the Challenge to Public Order in British Heritage Countries" (2015) 6 *Intl J Cultic Studies* 1; Donald Netolitzky, "A Pathogen Astride the Minds of Men: The Epidemiological History of Pseudolaw" (Paper delivered at the Centre d'expertise et de formation sur les intégrismes religieux et la radicalisation (CEFIR) Symposium: "Sovereign Citizens in Canada," Montreal, 3 May 2018) [Netolitzky, "Pathogen"], online: <www.researchgate.net/publication/325752684_A_Pathogen_Astride_the_Minds_of_Men_The_Epidemiological_History_of_Pseudolaw>; Terri A March-Safbom, *Weapons of Mass Distraction: Strategies for Countering the Paper Terrorism of Sovereign Citizens* (MA Thesis, Naval Postgraduate School, 2018) at 15–24 [unpublished], online (pdf): *Homeland Security Digital Library* <www.hsdl.org/?view&did=811407>; McRoberts, *ibid*; Spencer Dew, *The Aliites: Race and Law in the Religions of Noble Drew Ali* (Chicago: University of Chicago Press, 2019); Florian Hartleb, *Lone Wolves: The New Terrorism of Right-Wing Single Actors* (Cham: Springer Nature Switzerland AG, 2020) at 138–41.

states and institutions to private individuals.⁶⁴ Pseudolaw is typically employed by politically-driven, anti-state groups to achieve that result, though some transient “mercenary” litigants may use OPCA techniques until those prove ineffective.⁶⁵

The highly unusual language used by pseudolaw adherents, their often radical and extraordinary conspiratorial beliefs, and persistent use of futile litigation strategies suggests a mental health aspect to this behaviour. Psychiatrists and psychologists have, however, consistently concluded the opposite and indicate belief in and use of pseudolaw reflects marginal and extremist political belief.⁶⁶ Political scientist Michael Barkun includes pseudolaw as part of a decentralized conspiracy culture: “improvisational millennialism.”⁶⁷ Some pseudolaw procedures are so illogical that these activities are arguably best evaluated as magic.⁶⁸

Pseudolaw, its host communities, and their litigation activities have attracted substantial academic investigation, in part due to an associated risk and incidence of violence.⁶⁹ Associate Chief Justice Rooke in *Unrau #2* observed that, from a litigation standpoint, pseudolaw is simple to manage since pseudolaw strategies are extremely distinctive and static.⁷⁰ OPCA lawsuits are simply dismissed once identified.

A recent article by Netolitzky & Warman investigated pseudolaw litigation at the Supreme Court of Canada.⁷¹ In total, 51 OPCA-related leave applications were examined, though this collection is very likely incomplete.⁷² All leave applications that involved pseudolaw were denied leave, but unexpectedly, almost one-third of the Supreme Court leave applications were entirely conventional and not abusive, despite pseudolaw being employed during the earlier lower court precursor litigation.⁷³

⁶⁴ Donald J Netolitzky, “A Rebellion of Furious Paper: Pseudolaw as a Revolutionary Legal System” (Paper delivered at the CEFIR Symposium “Sovereign Citizens in Canada,” 3 May 2018) at 15–16 [unpublished] [Netolitzky, “Rebellion”], online: <www.researchgate.net/publication/325053364_A_Rebellion_of_Furious_Paper_Pseudolaw_as_a_Revolutionary_Legal_System>.

⁶⁵ Donald J Netolitzky, “Lawyers and Court Representation of Organized Pseudolegal Commercial Argument [OPCA] Litigants in Canada” (2018) 51:2 UBC L Rev 419 at 431–34; Donald J Netolitzky, “Organized Pseudolegal Commercial Arguments [OPCA] in Canada; an Attack on the Legal System” (2016) 10 JPPL 137 at 179–81 [Netolitzky, “Attack”].

⁶⁶ Jennifer Pytyck & Gary A Chaimowitz, “The Sovereign Citizen Movement and Fitness to Stand Trial” (2013) 12:2 Intl J Forensic Mental Health 149; George F Parker, “Competence to Stand Trial Evaluations of Sovereign Citizens: A Case Series and Primer of Odd Political and Legal Beliefs” (2014) 42:3 J American Academy Psychiatry & L 338; Cheryl M Paradis, Elizabeth Owen & Gene McCullough, “Evaluations of Urban Sovereign Citizens’ Competency to Stand Trial” (2018) 46:2 J American Academy Psychiatry & L 158; George F Parker, “Sovereign Citizens and Competency to Stand Trial” (2018) 46:2 J American Academy Psychiatry & L 167. However, recent psychiatric commentary has proposed classifying extremist beliefs, including belief in pseudolaw, as itself a form of mental disorder: Joseph M Pierre, “Integrating Non-Psychiatric Models of Delusion-Like Beliefs into Forensic Psychiatric Assessment” (2019) 47:2 J American Academy Psychiatry & L 171. See also Tahir Rahman, Lingjin Zheng & J Reid Meloy, “DSM-5 Cultural and Personality Assessment of Extreme Overvalued Beliefs” (2021) *Aggression & Violent Behavior* [forthcoming].

⁶⁷ Michael Barkun, *A Culture of Conspiracy: Apocalyptic Visions in Contemporary America*, 2nd ed (Berkeley: University of California Press, 2013) at 196–98.

⁶⁸ Donald J Netolitzky, “Organized Pseudolegal Commercial Arguments as Magic and Ceremony” (2018) 55:4 Alta L Rev 1045.

⁶⁹ Netolitzky, “Attack,” *supra* note 65; Barbara Perry, David Hoffman & Ryan Scrivens, “Anti-Authority and Militia Movements in Canada” (2019) 1:3 J Intelligence, Conflict & Warfare 1; McRoberts, *supra* note 62; Kalinowski, *supra* note 62; Hartleb, *supra* note 63 at 138–41.

⁷⁰ *Unrau #2*, *supra* note 29 at paras 184–89.

⁷¹ Netolitzky & Warman, *supra* note 23.

⁷² *Ibid* at 736–38.

⁷³ *Ibid* at 732–33.

c. Litigation Terrorists

The final category identified in *Unrau #2* are litigation terrorists: persons whose principle litigation purpose is “to inflict harm on targets, intimidate, and empower themselves to dominate others.”⁷⁴ These individuals weaponize legal processes.⁷⁵ Associate Chief Justice Rooke reports very few Alberta litigants are strict examples of this type.⁷⁶ Gary Caplan and Hy Bloom classify this litigation misconduct as “Retribution with Sadistic Dimensions,” and conclude that this type of behaviour “is most likely to be the work of a severe narcissist or psychopath.”⁷⁷

3. ABUSIVE LITIGATION MANAGEMENT AT THE SUPREME COURT OF CANADA

As previous indicated, there are reasons to suspect the Supreme Court is encountering a significant volume of problematic SRL litigation. But does this issue even matter? The Supreme Court is uniquely positioned among Canadian courts. While other courts are presumptively open and must accept those who seek recourse, the Supreme Court’s doors “default shut.” The nearly mandatory requirement for pre-appeal leave means that the Supreme Court may, arguably, readily manage potential problematic litigants, SRL or represented. To use security vernacular, the Supreme Court of Canada is a “hard target”: an objective that is well defended or protected. However, the leave application review mechanism still consumes the time of a very limited pool of expert judicial resources. The Supreme Court also requires staff lawyers and Registry personnel who respond to problematic Supreme Court litigants.

There is a cautionary parallel from other jurisdictions. The High Court of Australia and Supreme Court of the United States receive a disproportionate volume of unmeritorious appeals from specific, predominately SRL, populations.⁷⁸ Former Judge Richard Posner recently described how the scale of this incoming SRL prisoner workload into the United States Federal Circuit Appeal Courts requires teams of staff attorneys who greatly outnumber the courts’ judicial compliment, and whose entire workload is to evaluate SRL appeals and prepare draft decisions in response.⁷⁹

The Supreme Court might therefore face a SRL deluge. Though the Supreme Court is a “hard target,” it also has a particular vulnerability. As a statutory court, the Supreme Court of Canada is only equipped with litigation management tools provided by legislation. Justice Stratas of the Federal Court of Appeal has examined how recent Supreme Court of Canada jurisprudence appears to have narrowed the authority of statutory courts to manage and

⁷⁴ *Unrau #2*, *supra* note 29 at para 227; discussion of this category continues in paras 228–38.

⁷⁵ *Ibid* at para 227, quoting Justice Shelley in *Lee v Canada (Attorney General)*, 2018 ABQB 464 at para 155.

⁷⁶ *Ibid* at para 237. *Nesbitt v Neufeld*, 2011 BCCA 529 describes another example of this unusual type.

⁷⁷ Caplan & Bloom, *supra* note 27 at 437.

⁷⁸ Netolitzky, “Applications,” *supra* note 6 at 847–49.

⁷⁹ Richard A Posner, *Reforming the Federal Judiciary: My Former Court Needs to Overhaul Its Staff Attorney Program and Begin Televising Its Oral Arguments* (Scotts Valley, Cal: CreateSpace Independent Publishing Platform, 2017).

defend their processes.⁸⁰ That leaves the Supreme Court with only one existing mechanism, *Rules of the Supreme Court of Canada*, sections 66–67, which authorizes the Supreme Court to stay a specific proceeding conducted “in a vexatious manner” (*SCC Rule 67* order).⁸¹ In this sense the Supreme Court has much less capacity to manage problematic litigation and litigants than many Canadian trial courts.

II. METHODOLOGY

For consistency and ease of reference, leave applications are identified by the last name or organization name of the first appellant and the Supreme Court docket number. Where the appellant(s) are only identified by initials, those initials form the name. For example, “Olumide 37660” refers to the *Ade Olumide v. Canadian Judicial Council* leave application assigned Supreme Court of Canada docket 37660.

If a single Supreme Court docket record included multiple Supreme Court of Canada leave applications, individual applications are distinguished by a decimal suffix to the docket number. For example, “Bernard 36834.3” refers to the third leave application in *Elizabeth Bernard v. Canada Revenue Agency*, docket 36834, filed on 29 September 2016.

Netolitzky, “Applications,” reviews how the Study Group Applications and Study Group Appellants were identified⁸² and how data to characterize the Study Group Applications was collected and recorded.⁸³

A. STUDY GROUP APPELLANTS

Information to describe Study Group Appellants was identified and recorded in much the same way and was collected from three primary sources:

1. the Supreme Court of Canada online docket records for Study Group Applications,
2. Study Group Application five-part memoranda of argument, and
3. other reported court and tribunal decisions that relate to the application and appellant(s).

Variables recorded included:

1. the Study Group Appellant’s name;
2. demographic information, where available;

⁸⁰ The Hon Justice David Stratas, “A Judiciary Cleaved: Superior Courts, Statutory Courts and the Illogic of Difference” (2017) 68 UNBLJ 54.

⁸¹ *Rules of the Supreme Court of Canada*, SOR/2002-156, ss 66–67 [*SCC Rules*].

⁸² Netolitzky, “Applications,” *supra* note 6 at 850–53.

⁸³ *Ibid* at 853–56.

3. information on the number of Supreme Court applications that had been conducted by the Study Group Appellant;
4. information about all Supreme Court leave applications filed by the Study Group Appellant, and the frequency at which the Study Group Appellant's Supreme Court activity involved events such as fee waivers, cost awards, and reconsideration applications;
5. whether a lower court decision concluded the Study Group Appellant had engaged in abusive litigation, or imposed court or tribunal gatekeeping restrictions that require the Study Group Appellant obtain permission prior to taking a dispute litigation step;
6. whether:
 - (a) the Study Group Appellant was or is subject to court-ordered steps based on the Study Group Appellant's mental health condition,
 - (b) a court or tribunal decision concluded that the Study Group Appellant's dispute actions or claims were the product of delusion, or
 - (c) the Study Group Appellant self-identified as mentally ill, being impaired by mental health issues, having a mental health condition, or having suffered from brain or neurological injuries; and
7. whether the Study Group Appellant exhibited the Querulous Litigation Pattern.⁸⁴

The process of identifying and evaluating characteristics of the Study Group Appellants was usually straightforward. One potentially complicating factor was whether litigation, court records, and other information that involve someone with the same name represented the same or different individuals. Where someone had the same first and last name as a Study Group Appellant no common identity was presumed unless linking information was located. Litigation was presumed to involve the same individual if the two candidate litigants had the same first and last name, and also a common middle initial or middle name. In some cases, common identity was confirmed by application personal service information.

Otherwise, the available documentary record was frequently sufficient to link candidate records by facts such as common events, litigation opponents, and dispute issues. In other instances, common identity was confirmed when reported court decisions surveyed the litigation record of a Study Group Appellant, usually in the context of whether to impose court access restrictions.

Appellant gender was determined based on how Study Group Appellants self-identified in their filings via pronouns or gender-specific terminology. Only male and female gender types were identified.

Whether a Study Group Appellant was subject to court or tribunal access restrictions involved review of court and tribunal reported decisions and court docket records for

⁸⁴ See Part I.B.2.a, above.

instances where gatekeeping steps were imposed on the Study Group Appellant so that the Study Group Appellant must obtain court or tribunal permission prior to taking designated litigation steps. A simple statement that a person was “vexatious” or “querulous” did not satisfy this criterion. Registries of persons subject to court access restrictions in Alberta⁸⁵ and Quebec provincial courts⁸⁶ were also searched.

A lower court proceeding determined a Study Group Appellant had engaged in abusive litigation when:

1. a court or tribunal decision concluded that the Study Group Appellant’s dispute activities were “abusive,” an “abuse of process,” “frivolous,” “querulous,” or “vexatious,” or otherwise misused court processes;
2. pleadings or applications by the Study Group Appellant were struck out because that litigation was on its face hopeless, for example under *Ontario Rule 2.1*,⁸⁷ Alberta Court of Queen’s Bench Civil Practice Note No. 7,⁸⁸ or per the Rule in *kisikawpimootewin*⁸⁹ that the filing did not permit a meaningful response;
3. a court ordered elevated costs against the Study Group Appellant in response to litigation misconduct;
4. a court or tribunal imposed court or tribunal access restrictions because of the Study Group Appellant’s litigation misconduct;
5. a court or tribunal removed or prohibited a Study Group Appellant from acting as a litigation or dispute representative in a third party’s litigation for bad conduct;
6. the Study Group Appellant employed OPCA litigation strategies and motifs; or
7. a court or tribunal decision identified litigation activities that satisfy established court-identified criteria as being abusive.⁹⁰ For example, a court decision that rejects allegations of judicial bias as having no basis, that litigation was a collateral attack or other form of re-litigation, or that litigation was conducted for a wrongful and abusive purpose.

⁸⁵ The Alberta registry is operated by Alberta Resolution and Court Administration Services and is available to internal staff, including the author. Lawyers may request that Court Clerks check whether a person is listed in this registry.

⁸⁶ “Registre public des plaideurs sujets à autorisation de la Cour supérieure du Québec,” online: <justice.gouv.qc.ca/en/programs-and-services/registers/public-registry-of-litigants-subject-to-authorization-by-the-superior-court-of-quebec>.

⁸⁷ *Rules of Civil Procedure*, RRO 1990, Reg 194, s 2.1 [*Ontario Rules*].

⁸⁸ *Unrau v National Dental Examining Board*, 2018 ABQB 874 [*Unrau #1*].

⁸⁹ *Unrau #2*, *supra* note 29 at paras 626–30.

⁹⁰ *Ibid*; *Lang*, *supra* note 36.

B. STATISTICAL CONVENTIONS AND LINKAGE

This study uses certain statistical conventions to express data. “N” indicates the number of a total population. “n” indicates the number of individuals or examples in a larger population who possess a characteristic. For example, “77%, n=17” indicates that in a total population of 22 (N), 77% of the population, 17 individuals (n), share a common characteristic.

Mean or average indicate the arithmetic mean: the sum of numerical values in a data set divided by N. Median indicates the numerical value in a data set that separates the upper half and lower half of the data set’s numerical values, and so is the “midpoint” value in a sequence of values.

The statistical relationship between certain binary Study Group Appellant characteristics was evaluated with the chi-squared (χ^2) test using a 0.05 significance (p) level. The chi-squared test calculates the probability (p) that the different frequencies that two or more populations exhibit characteristics is the result of random chance.

The 0.05 significance threshold means the probability that random chance could account for observed population characteristic differences is 5%, or 1 in 20. If p is greater than 0.05 then the chi-squared test concludes that random chance is a possible basis for the observed differences. For example, if p were 0.0035, then the probability that observed population characteristic differences were the result of random chance is 0.35%. As a p value of 0.0035 falls below the 0.05 significance threshold, this represents a statistically significant difference between the populations.

C. NODDLE 37706: EXAMPLE OF STUDY GROUP DATA ACQUISITION PROCESSES

Noddle 37706 illustrates the methodology used to characterize Study Group Appellants. A second example of the Project’s methodology that evaluates Lanigan 37717.1 is found in Netolitzky, “Applications.”⁹¹

Darren Ross Noddle has filed one Supreme Court leave application, Noddle 37706, which was identified as a new candidate study application during review of the 15 September 2017 Bulletin. The Noddle 37706 docket record identifies Noddle as self-represented, and that this appeal is from a British Columbia criminal litigation matter. Noddle’s first contact with the Supreme Court Registry occurred on 11 March 2016, however no file was opened until over a year later, on 24 August 2017.

The docket records imply that Noddle had some difficulty completing his application, since the Registrar on three occasions returned documents to Noddle along with “a kit.”⁹² After receiving a response from the respondent, the file was submitted to Chief Justice McLachlin and Justices Côté and Brown on 16 October 2017. The Court, on 30 November

⁹¹ *Supra* note 6 at 856–59.

⁹² Noddle 37706 docket records: 19 May 2016; 4 July 2016; 1 September 2016.

30, 2017, granted an application to extend the Supreme Court's service and filing limitations period but dismissed a motion to appoint counsel and the leave to appeal application itself. Costs are not indicated.

Noddle sought reconsideration of that result on 13 April 2018, but his reconsideration application was not accepted for filing by the Registrar on 8 June 2018. Noddle submitted two more documents, identified as "Information" (4 July 2018) and "Letter with respect to a motion" (9 July 2018). This correspondence was not accepted by the Registrar. The file was closed on 27 July 2018.

Noddle's leave to appeal memorandum of argument was obtained from the Supreme Court Registrar. This 20-page typed document was difficult to interpret.

The 30 November 2017 Supreme Court decision that dismissed Noddle 37706 identifies the leave application as being from *R. v. Noddle*, 2016 BCCA 164, however that decision is never mentioned in the Noddle 37706 leave to appeal application. Instead the application identifies Noddle not as a criminal accused, but instead as "The Applicant (The Plaintiff)," and names the Attorney Generals of British Columbia, Canada, and Ontario, "The Ministry of Justice," and "The Ministry of Health" as "Respondents (The Defendants)."

The first part of Noddle 37706 states that Noddle was prescribed a drug called "Aldara," and that he experienced serious negative effects as a consequence, including him being arrested, prosecuted, and almost killed by beatings that he received while detained. Paragraph two of the application reads: "ALDARA WILL KILL YOU !!! Aldara, DO NOT USE ALDARA."⁹³ The materials that follow at times imply a kind of *Charter*-based⁹⁴ claim concerning state obligations to provide healthcare, complain that Noddle was denied a court appointed lawyer of his choice,⁹⁵ but also a claim that a Crown Prosecutor had improperly failed to provide medical records and medical information relating to Aldara to Noddle's at trial defence counsel.⁹⁶ Noddle identifies this last item as a *R. v. Stinchcombe*⁹⁷ disclosure issue.

Almost a third of the Noddle 37706 memorandum of argument appears to have been copied from several sources, including the Law Society of British Columbia code of conduct for lawyers,⁹⁸ and what appears to be a number of legal information resources, including a website titled "The Canadian Criminal Law Notebook."⁹⁹

⁹³ Noddle 37706 at para 2.

⁹⁴ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

⁹⁵ Noddle 37706 at paras 14–36.

⁹⁶ *Ibid* at paras 37–38, 42–51.

⁹⁷ *R v Stinchcombe*, [1991] 3 SCR 326 [*Stinchcombe*].

⁹⁸ Noddle 37706 at 5–9; Law Society of British Columbia, *Code of Professional Conduct for British Columbia* (Vancouver: Law Society of British Columbia, 2013).

⁹⁹ Noddle 37706 at 10; Peter Dostal, "Appellate Evidence," online: *The Canadian Criminal Law Notebook* <criminalnotebook.ca/index.php/Appellate_Evidence>.

Part III of the Noddle 37706 memorandum of argument, “Statement of Argument,” reads, in total:

The criminal code allows those who have been injured or disabled to give evidence as a witness in any way that is intelligible.

I do not understand or comprehend the rules of the Canadian courts. Why am I being legally bullied after *BRAIN TISSUE DAMAGE* from their medical assault for attempting to seek compensation ?

Why am I being refused legal counsel after being injured. I have spent 8 months everyday attempting to comprehend court proceedings, and claims are begin struck because I don't know how to comprehend the rules of the courts, that is why citizens must have legal representation, or automatically lose their court cases.

My constitutional rights precede the rules of the court. The FACT that I was injured in May 2010 and the *BRAIN TISSUE DAMAGE* just started healing enough in January 2016 to express what has happened, has left me without compensation. The court rules are incredibly difficult, on a level I cannot comprehend.¹⁰⁰

Noddle then seeks the following remedies:

Any person who has been disabled or injured by the Ministry of Health in Canada from any medication, does not have the burden to prove the dangers of the medications, but the results of medical evidence from the the medication, has the right to select any counsel of his choosing, to represent the injured party in civil proceedings.

The Appellant/Plaintiff has a right to counsel under the charter of rights, but there is no affective way to get counsel. It is just empty words on a piece of paper if there is no means to get counsel due to lack of funding, and lack of available lawyers. *Section 24 of the Canadian Charter of Rights and Freedoms provides for remedies available to those whose Charter rights are shown to be violated.*¹⁰¹

At various points, Noddle 37706 implicates *Charter* sections 6(2), 6(3), 7, 9, 12, 15(1), 24(1) and “675(1).” The only *Charter* right that is factually developed in any manner is the section 7 *Stinchcombe* complaint. Noddle alleges bad conduct on the part of the Crown Prosecutor, who he says concealed information critical to his defence.¹⁰² Confusingly, Noddle claims he has no right to represent himself because he lacks “legal capacity.”¹⁰³

The Noddle 37706 application is an example of how less organized leave to appeal applications may be difficult to evaluate and score. On one hand, Noddle appears to be advancing a kind of civil litigation claim to an absolute right to counsel of his choice. If so, then that is an impossible remedy. This is a criminal matter, and the Noddle 37706 leave to appeal application is therefore a problematic proceeding. Aspects of Noddle 37706 resemble a medical malpractice action, but other times the application focuses on a criminal litigation issue: the Crown intentionally concealing records to sabotage Noddle's defence.

¹⁰⁰ Noddle 37706 at 28 [emphasis in original].

¹⁰¹ *Ibid* at 29 [emphasis in original].

¹⁰² *Ibid* at paras 48–50.

¹⁰³ *Ibid* at paras 15–16, 34–35.

Noddle 37706 was assigned a Sophistication Score (SS) of 2, but that was only because the facts of the alleged *Stinchcombe* complaint were clearly stated.¹⁰⁴ Noddle 37706 straddles the threshold of SS level one and two. Noddle does not explicitly link the alleged disclosure defect to a remedy, but what Noddle is trying to do in his application (at least in part) seems to be a challenge to the fairness of an earlier criminal proceeding. To the degree the disclosure issue is discernable, it related to findings of fact or applications of facts to a legal standard. For instance, Noddle does not say *Stinchcombe* was wrong, only that it ought to have been applied. This means the Disruption Score¹⁰⁵ for this application is 1. Noddle 37706 does not seek to revise Canadian law, and the proposed appeal is only relevant to Noddle himself.

Noddle is the subject of 17 reported Canadian court decisions. These disclose a sad and troubling narrative. Noddle, in 2014, was convicted of criminal harassment and breaches of recognizance.¹⁰⁶ The trial prosecution is not reported. Noddle filed a late appeal that was denied by the British Columbia Court of Appeal.¹⁰⁷ That is the decision that the Supreme Court identifies as the target of Noddle 37706.

In 2018, Noddle was convicted of criminal harassment a second time. This time the trial conviction and sentencing decisions are reported and provide much more context regarding Noddle and his circumstances.¹⁰⁸ Noddle was represented in both his 2014 and 2018 trial proceedings. The complainant in the two prosecutions was the same woman, a psychiatrist who Noddle had known in grade school.¹⁰⁹ In brief, over a decade later, Noddle exhibited escalating stalking behaviour and breached orders that prohibited contact with the complainant. His later communications include conspiratorial claims about threats to world populations¹¹⁰ and that Noddle, as an inventor, had created countermeasures for these.¹¹¹

During sentencing Noddle became agitated and interrupted the sentencing justice, saying, among other things:

You will not give me a lawyer. I would have happily had a lawyer. If you gave me a lawyer, [the complainant] would have been served by somebody else, but I do not have that option. I do not have any money. I do not know anything about civil law. I was placed in this position to protect Canadians. You are talking about harming people's genitals, their reproductive organs. Fucking Canadians, we have a right not to be injured this way.¹¹²

To be clear, at this point, Noddle was represented by a lawyer.

¹⁰⁴ See Part III.C, below at note 123; Netolitzky, "Applications," *supra* note 6 at 356–59.

¹⁰⁵ See Netolitzky, "Applications," *ibid* at 356–59.

¹⁰⁶ *R v Noddle*, 2016 BCCA 164 at para 2 [*Noddle #2*].

¹⁰⁷ *Ibid*.

¹⁰⁸ Conviction: *R v Noddle*, 2018 BCSC 1780 [*Noddle #3*]. Sentencing: *R v Noddle*, 2018 BCSC 2013 [*Noddle #4*].

¹⁰⁹ *Noddle #3*, *ibid* at para 6.

¹¹⁰ *Ibid* at paras 7–43.

¹¹¹ *Ibid* at paras 42–43.

¹¹² *Noddle #4*, *supra* note 108 at para 97.

Noddle as an SRL appealed his 2018 conviction on several bases, including that he could not be convicted because brain injury meant he was incapable of forming intent. Noddle applied for court appointed counsel, which was dismissed.¹¹³

In 2016, Noddle was made subject to court access restrictions in the British Columbia Supreme Court.¹¹⁴ Noddle was conducting civil lawsuits in multiple jurisdictions; Noddle engaged in “forum shopping” his civil lawsuits.¹¹⁵

Noddle exhibits the Querulous Litigation Pattern of expanding and abusive litigation, for example suing all provincial and territorial Attorneys General, judges, police involved in his criminal investigations, and even the psychiatrist who was the target of his criminal harassment.¹¹⁶ Noddle’s claims involve excessive and impossible remedies, such as \$5 trillion in compensation and punitive, aggravated, and special damages.¹¹⁷ Noddle’s conduct satisfied both the lower court abusive litigation and court access restrictions characteristics. Noddle was also coded as self-reporting a brain injury.¹¹⁸

III. RESULTS AND OBSERVATIONS

Netolitzky, “Applications” reports the results of the Project’s first major objective: characterizing the 2017 SRL leave to appeal applications.¹¹⁹ The Project’s second major objective is to investigate the 122 SRLs who filed those 125 Study Group Applications.

A. DEMOGRAPHIC PROFILE

Male appellants substantially outnumber female appellants: 69.7% (n=85) and 26.2% (n=32), respectively. Five appellants were corporations (4.1%).

Unexpectedly, review of the Study Group Applications, reported decisions, and other litigation record information provided substantial data on employment and profession for over 80% (N=117) of the non-corporation Study Group Appellants. Table 1 summarizes this information.

¹¹³ *R v Noddle*, 2019 BCCA 140.

¹¹⁴ *Noddle v Canada (Attorney General)*, 2016 BCSC 607 at para 23 [*Noddle v Canada #1*].

¹¹⁵ *Ibid*; *Noddle v The Deputy Attorney General of Canada*, 2016 ONSC 4866 [*Noddle v Canada #2*]; *Noddle v The Attorney General of Canada*, 2017 ONSC 215; *Noddle v The Attorney General of Ontario*, 2017 ONSC 4461; *Darren Ross Noddle v Her Majesty the Queen*, 2016 FC 966; *Darren Ross Noddle v Her Majesty the Queen*, 2016 FC 967; *Darren Ross Noddle v Her Majesty the Queen*, 2016 FC 968; *Darren Ross Noddle v Her Majesty the Queen*, 2016 FC 969; *Noddle v R* (6 August 2019), Vancouver T-812-19 (FC).

¹¹⁶ *Noddle v Canada #1*, *supra* note 114.

¹¹⁷ *Noddle v Canada #2*, *supra* note 115 at para 5.

¹¹⁸ *Noddle* 37706 at Part III.

¹¹⁹ Netolitzky, “Applications,” *supra* note 6.

**TABLE 1:
STUDY GROUP APPELLANT EMPLOYMENT AND PROFESSION**

Category	Number
Self-Employed	32
Drug producer/trafficker	2
Farmer	1
Inventor	3
Large business owner	2
Small business owner	24
Non-government Employee	11
Blue collar/trades	5
White collar/office	6
Government Employee	11
Professional	41
Accountant	4
Architect	1
Computer/IT	4
Economist	2
Engineer	6
Healthcare (non-doctor)	2
Human resources	1
Journalist	1
Land surveyor	1
Medical doctor	5
Paralegal	1
Physical sciences	5
Pilot	1
Social sciences	1
Teacher	6
Academic	5
Staff	3
Student	2
Not Employed	20
Detained for mental health reasons	2
Retired	7
Minor	2
Social assistance	9
No Information	23

Table 1: Employment and Profession of Study Group Appellants. In certain instances a single Study Group Appellant was entered in more than one category. N=117.

Some Study Group Appellants are included in several Table 1 categories. For example, Raynald Grenier, a now retired dermatologist, has over decades engaged in a second major activity, large-scale silviculture holdings, making him one of the largest such land-owners in Quebec.¹²⁰ Grenier is therefore present in three categories: “Professional - Medical doctor,” “Large business owner,” and “Retired.”

Though not indicated on Table 1, four of the 11 government employees were involved with the Canada Revenue Agency in some capacity.

B. SUPREME COURT OF CANADA LITIGATION ACTIVITY

91% (n=111) of the Study Group Appellants filed only one Supreme Court leave application in 2017. The remainder filed two or more. The most active appellant, Ade Olumide, submitted six applications on the same day: 27 January 2017. Overall, each Study Group Appellant on average filed 1.16 (N=122) Study Group Applications.

When all Supreme Court activity by Study Group Appellants recorded in Supreme Court dockets up to 1 May 2020 was reviewed, 62.3% (n=76) of the Study Group Appellants had filed only one leave application. Over a third of the Study Group Appellants were repeat Supreme Court litigants. On average, Study Group Appellants each filed 2.45 Supreme Court of Canada leave to appeal applications, up to 1 May 2020.

Figure 1 illustrates the frequency at which the Study Group Appellants sought leave to appeal from the Supreme Court in 2017 and overall.

FIGURE 1:
NUMBER OF LEAVE APPLICATIONS FILED BY STUDY GROUP APPELLANTS

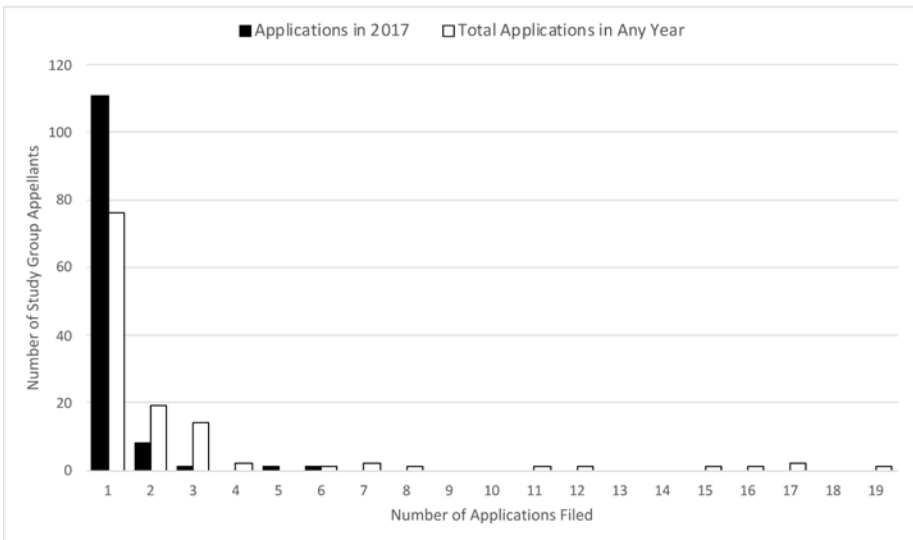


Figure 1: Frequency at which Study Group Appellants filed Supreme Court leave applications in 2017, and in any year, up to 1 May 2020 (N=122).

A significant portion of the Study Group Appellants sought access to the Supreme Court of Canada six or more times (9%, n=11).

Most Study Group Appellants (88.5%, n=108) only filed civil leave applications; however, smaller but equal proportions (5.7%, n=7) filed criminal, or both civil and criminal leave to appeal applications. Figure 2 illustrates how the distribution of litigation subject types appears to have no relationship to the number of leave applications filed by a Study Group Appellant.

**FIGURE 2:
SUBJECTS OF SUPREME COURT OF CANADA APPEALS
FILED BY STUDY GROUP APPELLANTS**

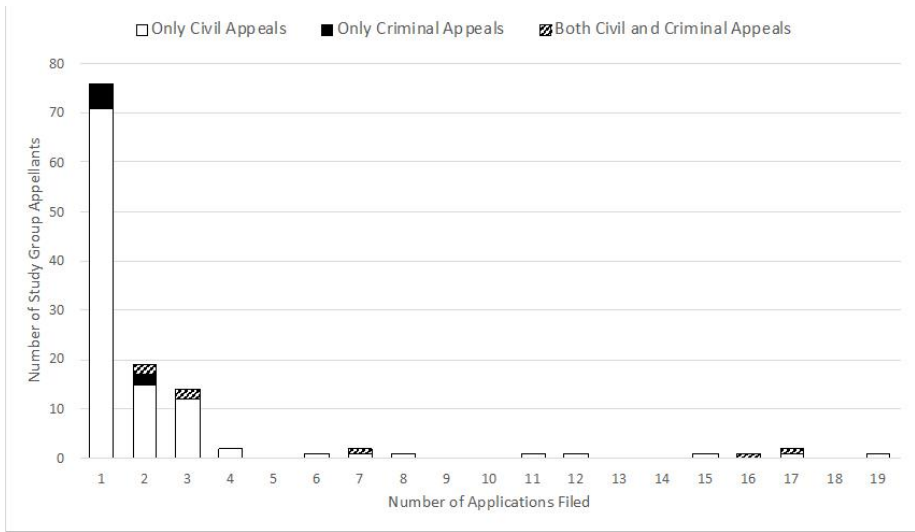


Figure 2: Frequency at which Study Group Appellants filed civil and criminal subject leave to appeal applications in any year, up to May 1, 2020 (N=122). Civil and criminal subject matter was defined by how the Supreme Court of Canada Registry classified candidate appeals.

Two Study Group Appellants obtained leave to appeal:

- Kassam Mazraani, leave granted 2 November 2017, appeal dismissed 16 November 2018.¹²¹
- Elizabeth Bernard, leave granted 16 March 2012, appeal dismissed 7 February 2014.¹²²

These two appeals were Mazraani and Bernard's first Supreme Court of Canada matters. Mazraani has not apparently engaged in other litigation. Bernard subsequently filed a further

¹²¹

¹²²

Mazraani v Industrial Alliance Insurance and Financial Services Inc., 2018 SCC 50.
Bernard v Canada (Attorney General), 2014 SCC 13.

eight Supreme Court leave applications and has been made subject to Federal Court of Appeal court access restrictions as a vexatious litigant.¹²³

C. CHARACTERIZING THE STUDY GROUP APPELLANT POPULATION

Characteristics of Study Group Appellants are organized around two variables:

1. Sophistication Scores assigned to the appellant's 2017 leave to appeal application(s); and
2. the number of leave to appeal applications filed by the appellant, up to 1 May 2020.

Sophistication Score, or "SS," is a five-level index assigned during review of Study Group Applications, as fully described in Netolitzky, "Applications."¹²⁴ SS measures the degree to which a Study Group Application successfully identifies and communicates the proposed appeal's substance. In brief:

- SS=1 applications are so incomplete or incoherent that the facts and issues are unclear (N=21),
- SS=2 applications provide a factual narrative, but do not identify issues (N=35),
- SS=3 applications provide both relevant facts and issues (N=37),
- SS=4 applications in addition provide some relevant and accurate legal citations and authorities (N=18), and
- SS=5 applications are professional or near professional products that fully explain the basis for the appeal, identify relevant law, and why the Supreme Court of Canada should grant leave to the candidate appeal (N=7).

Four Study Group Appellants filed more than one 2017 Supreme Court of Canada leave application and the SS assigned to those leave applications were different. If the Study Group Appellant had two leave to appeal applications the higher SS score was used to reflect the Study Group Appellant's best demonstrated capacity. Otherwise, the more common SS score was used.

Figure 1 illustrates that the frequency at which Study Group Appellants attempt to access the Supreme Court exhibits a logarithmic decay relationship. The result is a long 'tail' of high activity Study Group Appellants. These Study Group Appellants would provide an inadequate sample if evaluated individually. Study Group Appellants were therefore grouped into four categories determined by the number of leave applications they had filed:

- One application - 76 Study Group Appellants
- Two applications - 19 Study Group Appellants
- Three to four applications - 16 Study Group Appellants

¹²³ *Elizabeth Bernard v Bonnie Gail Baun, Attorney General of Canada and Public Service Alliance of Canada*, 2019 FCA 144.

¹²⁴ Netolitzky, "Applications," *supra* note 6 at 853–56.

- Six to nineteen applications - 11 Study Group Appellants

Analysis using the two organizing variables is only useful if the two variables are independent of each other. The mean number of leave applications filed by Study Group Appellants was 2.45. However, almost two-thirds of Study Group Appellants only filed one Supreme Court of Canada leave application, so the median (most common) number of applications filed by Study Group Appellants was one.

Figure 3 illustrates how the mean and median number of leave applications filed by Study Group Appellants relate to SS Score.

**FIGURE 3:
AVERAGE NUMBER OF LEAVE APPLICATIONS FILED BY
STUDY GROUP APPELLANTS BY SOPHISTICATION SCORE**

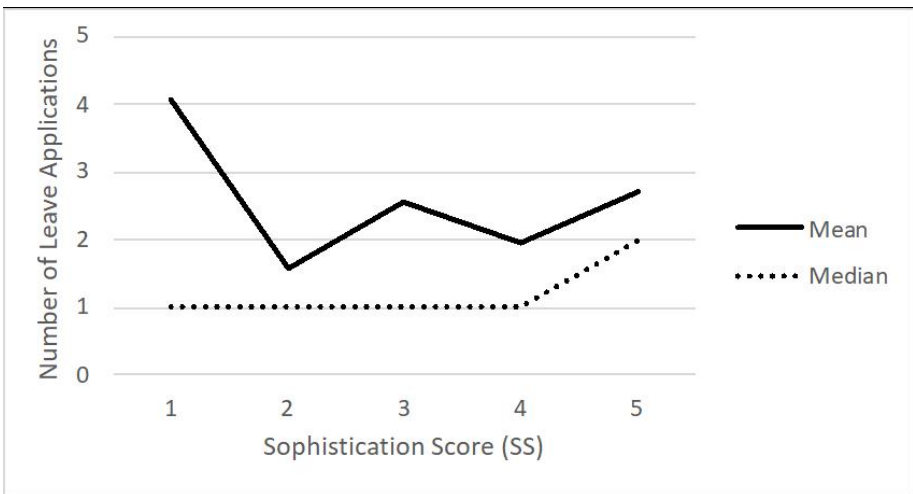


Figure 3: Mean and median number of leave to appeal applications filed by Study Group Appellants distributed by the Study Group Appellants' Sophistication Score (SS) rating (N=118).

A simple arithmetic mean suggests that low Study Group Appellant SS is linked to high Supreme Court activity, but the median values illustrate that the more common situation at the Supreme Court of Canada is that Study Group Appellants at all but SS=5 file only one leave application and then end their interaction with the Supreme Court of Canada. What the mean value for SS=1 actually indicates is that the Study Group Appellants include a disproportionate number of highly active but low sophistication (SS=1) appellants.

On this basis, SS scores and number of leave applications appear to be unrelated for most Study Group Appellants. The exceptional population, if any, are highly sophisticated SRL litigants (SS=5).

Figure 4 evaluates the reciprocal relationship and plots the mean and median SS Scores for the four Study Group Appellant litigation activity groups.

**FIGURE 4:
AVERAGE SUPREME COURT OF CANADA LEAVE APPLICATION SOPHISTICATION SCORE
FOR STUDY GROUP APPELLANTS BY NUMBER OF LEAVE APPLICATIONS FILED**

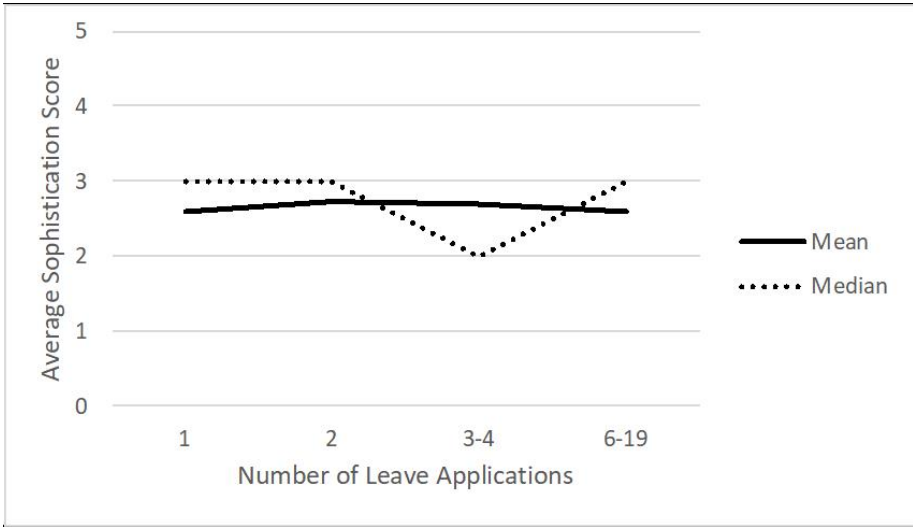


Figure 4: Mean and median Sophistication Score (SS) ratings for Study Group Appellants who had filed different numbers of leave to appeal applications (N=118).

Both the mean and median SS scores for the four Study Group Appellant litigant activity groups is essentially constant as the number of leave applications filed increases. This observation supports no relationship exists between the capacity of Study Group Appellants to advance legal matters (measured by Sophistication Score) and the volume of Study Group Appellant Supreme Court of Canada activity (measured by the number of leave to appeal applications).

The next step is to investigate whether Study Group Appellant SS and leave to appeal application volume is each related to four subjects:

1. common aspects of SRL Supreme Court of Canada litigation activity;
2. abusive litigation and court responses to litigation misconduct;
3. mental health factors; and
4. whether the Study Group Appellant exhibited a Querulous Litigation Pattern.

1. STUDY GROUP APPELLANT SUPREME COURT ACTIVITY

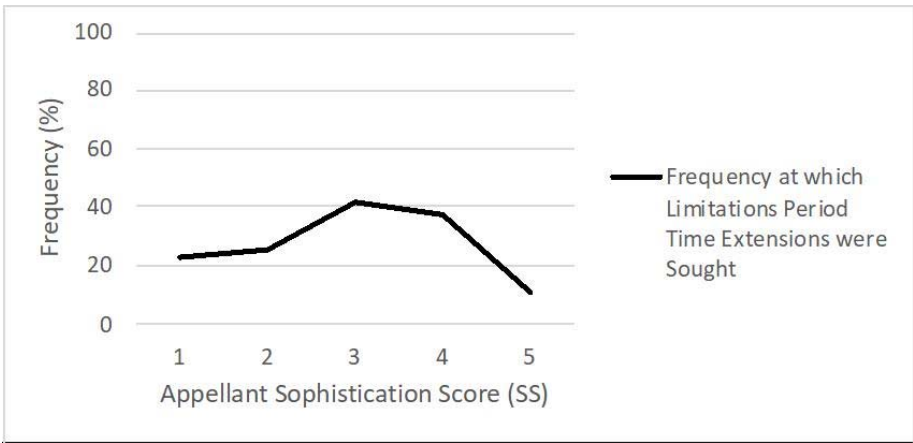
As previously indicated, SRLs are rarely successful at the Supreme Court. Only two of the 299 leave to appeal applications filed by the Study Group Appellants were granted leave.

A substantial portion (30.4%, n=91) of the leave applications brought by the Study Group Appellants were not filed in a timely manner and required a limitations period time

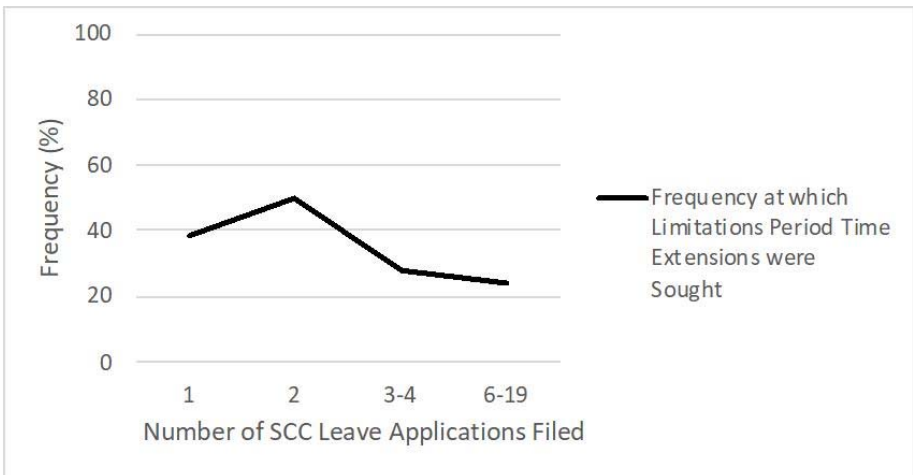
extension. Most (73.6%, n=67) of those time extension motions were granted. The frequency at which Study Group Appellants sought limitations period extensions showed a significant relationship to SS ($\chi^2(4, N=291)=12.1, p=0.0163$) and litigation volume ($\chi^2(3, N=299)=11.7, p=0.00853$) but not whether those applications were successful (SS: $\chi^2(4, N=88)=6.36, p=0.174$; application number: $\chi^2(3, N=94)=0.904, p=0.824$).

Figures 5A and 5B illustrate the relationship between the incidence of Supreme Court of Canada limitations period time extension applications, and Study Group Appellant SS and litigation volume.

**FIGURE 5A:
LIMITATIONS PERIOD TIME EXTENSIONS FOR
STUDY GROUP APPELLANTS BY SOPHISTICATION SCORE**



**FIGURE 5B:
LIMITATIONS PERIOD TIME EXTENSIONS BY
NUMBER OF LEAVE APPLICATIONS FILED**



Figures 5A and 5B: Frequency at which Study Group Appellants sought an extension to the 60-day limitations period to serve and file their Supreme Court of Canada leave to appeal applications, distributed by Study Group Appellant Sophistication Score (SS) rating (Figure 5A) (N=289), or by the number of leave to appeal applications filed by the Study Group Appellant (Figure 5B) (N=299).

Costs awards were often made against Study Group Appellants. Overall, 62.3% (n=76) of Study Group Appellants were the subject of one or more unfavourable Supreme Court of Canada cost awards.

Somewhat over half (54.5%) of the 299 leave to appeal applications filed by the Study Group Appellants resulted in an unfavourable costs award. The probability of an individual unsuccessful leave application resulting in an unfavourable costs award exhibits a significant association to SS ($\chi^2(4, N=289)=14.7, p=0.00533$) but not to litigation volume ($\chi^2(3, N=299)=0.723, p=0.868$). Figure 6 illustrates the former relationship.

FIGURE 6:
COST AWARDS BY STUDY GROUP APPELLANT SOPHISTICATED SCORE

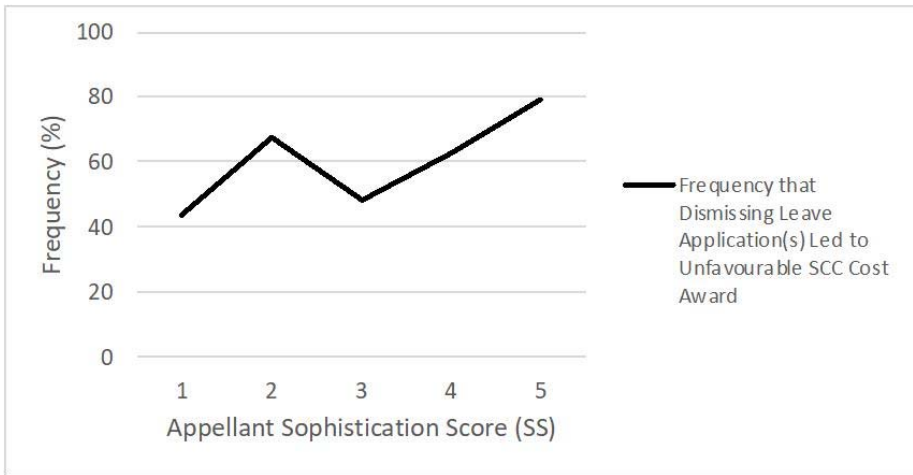


Figure 6: Frequency at which an unfavourable costs award was ordered when any individual leave to appeal application by a Study Group Appellant was dismissed distributed by Study Group Appellant Sophistication Score (SS) rating (N=289).

SS=1 Study Group Appellants were the least likely to receive unfavourable costs awards and did so at a much lower frequency than high SS Study Group Appellants.

The probability that a Study Group Appellant was subject to at least one cost award was significantly linked to litigation volume ($\chi^2(3, N=122)=14.0, p=0.00291$) but not SS ($\chi^2(4, N=118)=3.51, p=0.476$). Figure 7 illustrates the former relationship.

FIGURE 7:
COST AWARDS BY NUMBER OF LEAVE APPLICATIONS FILED

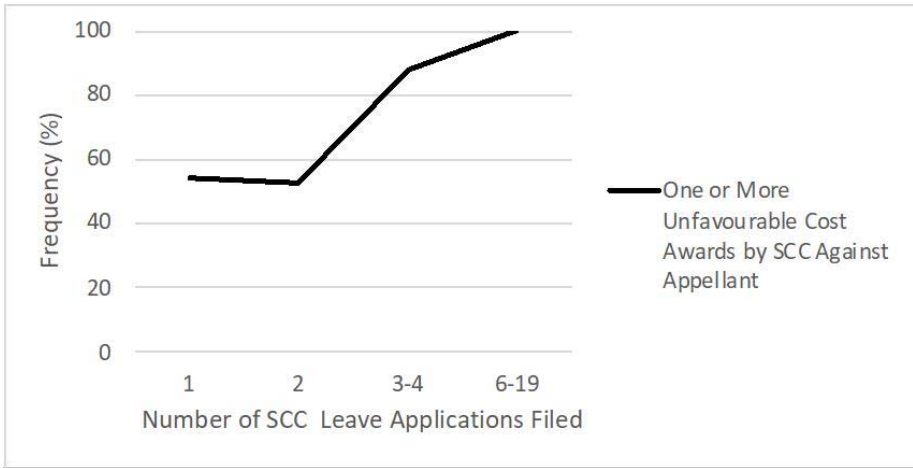


Figure 7: Frequency at which a Study Group Appellant had been the subject of one or more unfavourable cost awards distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

While the probability that any single unsuccessful Supreme Court leave to appeal application would lead to a cost award is not linked to litigation volume, the cumulative effect of repeated interactions with the Supreme Court meant almost all Study Group Appellants who had filed three to four leave applications had at least one unfavourable cost award. All Study Group Appellants who filed six or more leave to appeal applications were the recipient of at least one unfavourable cost award.

2. PROBLEMATIC LITIGATION CONDUCT BY STUDY GROUP APPELLANTS

The Study Group Appellants exhibit a number of attributes that suggest this population is disproportionately engaged in abusive litigation. 76.2% (n=94) of the Study Group Appellants were identified by lower courts or tribunals as having engaged in abusive litigation. There were 23.0% (n=28) subject to some form of court access restrictions. Neither characteristic exhibits a statistical association with SS: abusive litigation - $\chi^2(4, N=118)=5.83, p=0.212$; court access restrictions - $\chi^2(4, N=118)=1.41, p=0.842$. Both are associated with litigation volume: abusive litigation - $\chi^2(3, N=122)=22.2, p=0.000096$; court access restrictions - $\chi^2(3, N=122)=7.98, p=0.0465$.

Figure 8 illustrates the relationship between abusive lower court litigation and Supreme Court activity volume.

FIGURE 8:
STUDY GROUP APPELLANT LOWER COURT ABUSIVE LITIGATION
BY NUMBER OF LEAVE APPLICATIONS FILED

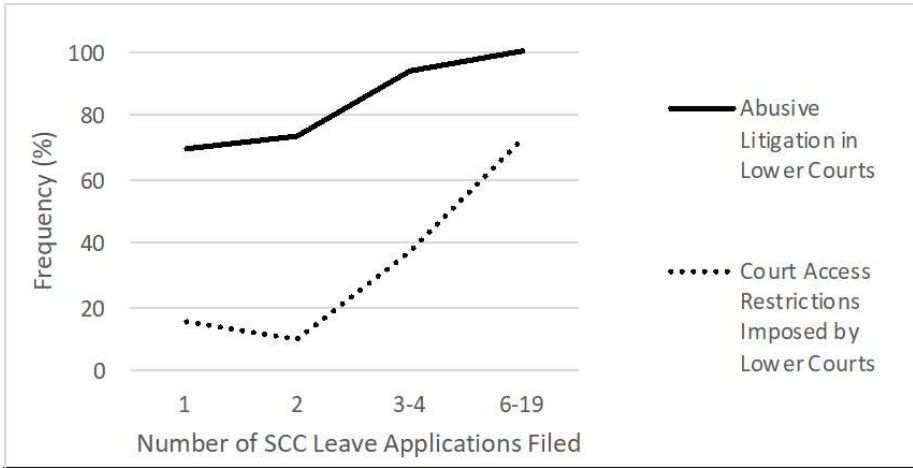


Figure 8: Frequency at which a Study Group Appellant was: (1) identified by a lower court or tribunal as having engaged in abusive litigation conduct, and (2) subject to a court access restriction order, distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

Both these attributes were substantially more common for Study Group Appellants who had filed three or more Supreme Court leave to appeal applications.

Review of the Study Group Applications and associated docket records determined that of the Study Group Appellants:

- 56% (N=118) had filed one or more leave applications in 2017 that exhibited problematic litigation indicia;
- 11.0% (N=118) advanced OPCA concepts or arguments; and
- 4.1% (N=122) had one or more Supreme Court dockets subject to a *SCC Rule 67* order.

Of these three characteristics, SS was only significantly linked ($\chi^2(4, N=118)=35.6, p=0.00000352$) to problematic litigation indicia in a Supreme Court leave application (OPCA litigation: $\chi^2(4, N=118)=3.82, p=0.430$; *SCC Rule 67*: cannot calculate χ^2). Similarly, litigation volume only exhibits a significant linkage ($\chi^2(3, N=122)=14.4, p=0.0024$) to the Supreme Court imposing *SCC Rule 67* orders (leave applications that exhibit problematic litigation indicia: $\chi^2(3, N=122)=0.278, p=0.964$; OPCA litigation: $\chi^2(3, N=122)=2.44, p=0.487$).

Figures 9 and 10 illustrate that problematic litigation characteristics in Supreme Court of Canada leave to appeal applications decreases as SS increases and that *SCC Rule 67* orders are more common for Study Group Appellants who have filed six or more leave to appeal applications.

**FIGURE 9:
PROBLEMATIC STUDY GROUP APPLICATION
FREQUENCY BY SOPHISTICATED SCORE**

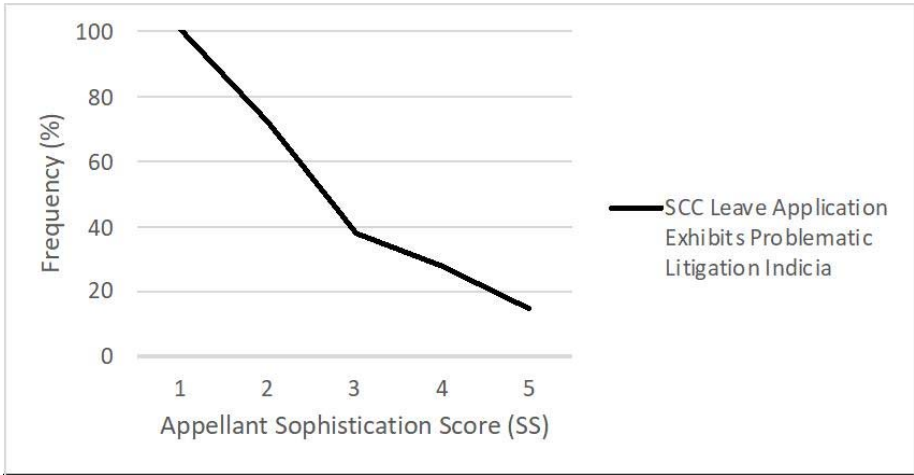


Figure 9: Frequency at which a Study Group Appellant filed one or more Study Group Applications that included characteristics of problematic litigation distributed by Study Group Appellant Sophistication Score (SS) rating (N=118).

**FIGURE 10:
SCC RULE 67 ORDERS BY NUMBER OF LEAVE APPLICATIONS FILED**

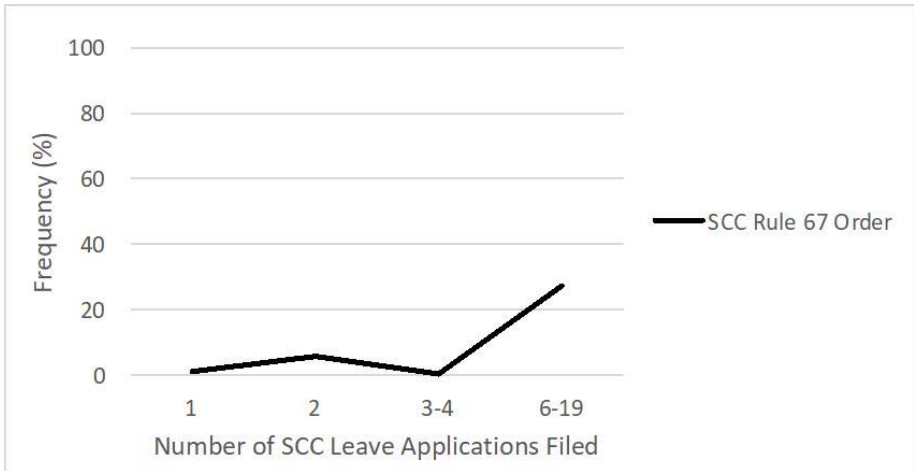
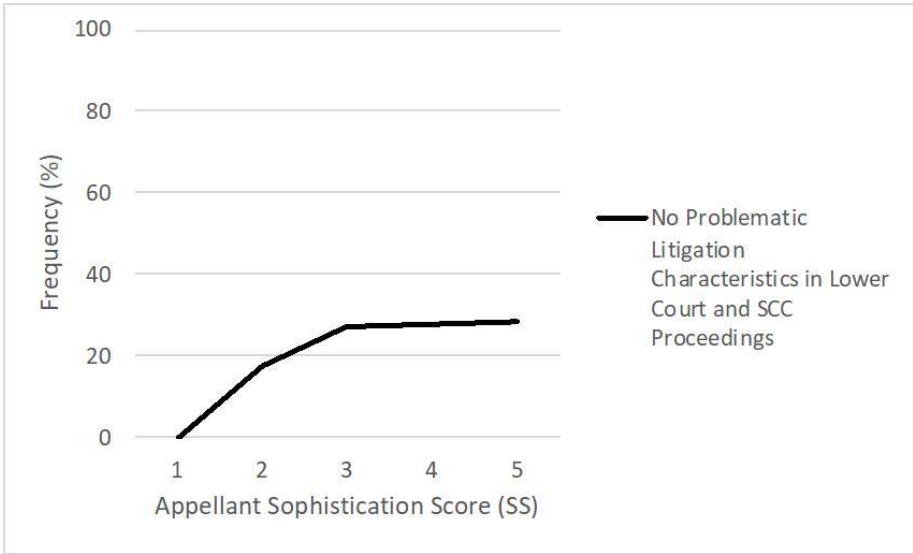


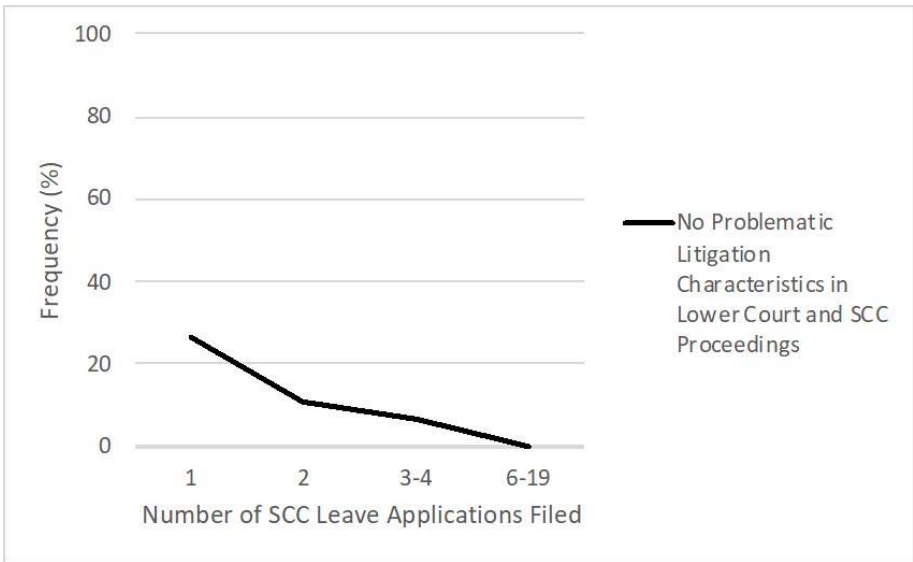
Figure 10: Frequency at which a Study Group Appellant was subject to one or more *SCC Rule 67* “vexatious litigation” orders, distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

Finally, Figures 11A and 11B combine the preceding information to illustrate the proportion of Study Group Appellants who exhibited none of the pre-Supreme Court and Supreme Court negative litigation characteristics.

**FIGURE 11A:
ABSENCE OF PROBLEMATIC LITIGATION ATTRIBUTES FOR
STUDY GROUP APPELLANTS BY SOPHISTICATION SCORE**



**FIGURE 11B:
ABSENCE OF PROBLEMATIC LITIGATION ATTRIBUTES FOR
STUDY GROUP APPELLANTS BY NUMBER OF LEAVE APPLICATIONS FILED**



Figures 11A and 11B: Frequency at which a Study Group Appellant had not engaged in any problematic litigation, distributed by Study Group Appellant Sophistication Score (SS) rating (Figure 11A, N=118) or by the number of leave to appeal applications filed by the Study Group Appellant (Figure 11B, N=122).

Relatively few Study Group Appellants did not exhibit some kind of problematic litigation attribute. All SS=1 Study Group Appellants by definition had filed problematic Supreme Court leave to appeal applications; however, higher SS made little difference to the frequency at which no problematic litigant conduct was identified. Study Group Appellants who filed multiple Supreme Court of Canada leave to appeal applications rarely exhibited no problematic litigation attributes.

3. STUDY GROUP APPELLANT MENTAL HEALTH

This investigation tracked three characteristics that directly relate to the mental health of the Study Group Appellants. The presence of these characteristics was identified via review of reported court and tribunal decisions, and the content of Study Group Applications.

1. The Study Group Appellant was or is subject to court-ordered steps based on the Study Group Appellant's mental health condition. This characteristic was uncommon: 6.56%, n=8.
2. A court or tribunal decision concluded that the Study Group Appellant's dispute actions or claims were the product of delusion. This characteristic was also uncommon: 7.38%, n=9.
3. The Study Group Appellant self-identified as mentally ill, being impaired by mental health issues, having a mental health condition, or having experienced brain or neurological injuries. This characteristic was more common than the two court finding categories: 12.3%, n=15.

None of these characteristics exhibits a significant association with SS:

- court ordered responses - $\chi^2(4, N=118)=3.38, p=0.496$;
- court identified delusion - $\chi^2(4, N=118)=3.08, p=0.544$; and
- appellant self-identified mental health factors - $\chi^2(4, N=118)=2.42, p=0.659$.

The same is true for litigation volume:

- court ordered responses - $\chi^2(3, N=122)=5.99, p=0.112$;
- court identified delusion - $\chi^2(3, N=122)=4.68, p=0.197$; and
- appellant self-identified mental health factors - $\chi^2(3, N=122)=0.808, p=0.847$.

4. QUERULOUS LITIGATION PATTERN

The final Study Group Appellant characteristic indirectly relates to mental health. Mental health professionals have identified an unusual pattern of dispute conduct associated with a specific psychiatric condition, querulous paranoia, where a person exhibits an expanding cascade of litigation and complaint activity that originates from an initial seed dispute.¹²⁵ Court, tribunal, and docket records were reviewed for this characteristic: the Querulous

¹²⁵ See Part I.B.2.a, above.

Litigation Pattern. The Querulous Litigation Pattern was identified in the litigation record of almost a quarter of the Study Group Appellants (23.0%, n=28). Incidence of the Querulous Litigation Pattern was not associated with SS ($\chi^2(4, N=118)=0.812, p=0.937$) but exhibits a strong link to litigation volume ($\chi^2(3, N=122)=24.8, p=0.0000173$). Figure 12 illustrates that the Querulous Litigation Pattern is much more common when a Study Group Appellant has repeatedly accessed the Supreme Court of Canada.

**FIGURE 12:
FREQUENCY OF THE QUERULOUS LITIGATION PATTERN
BY NUMBER OF LEAVE APPLICATIONS FILED**

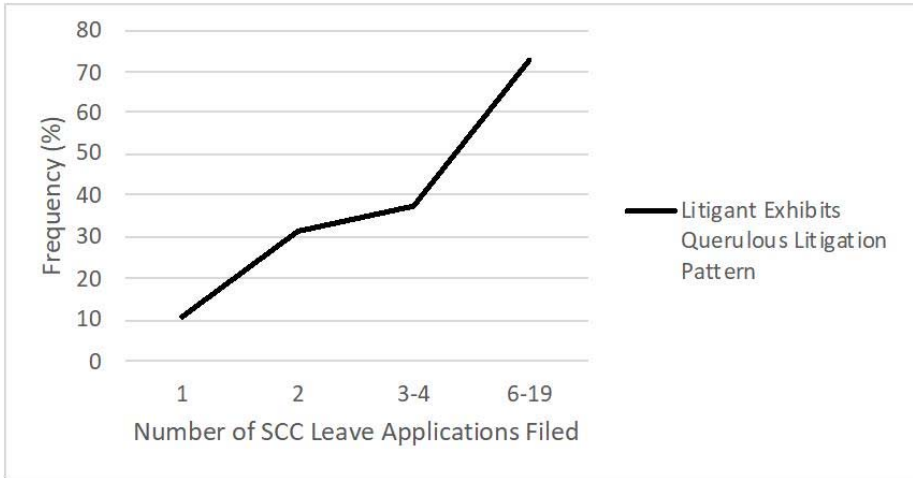


Figure 12: Frequency at which a Study Group Appellant exhibits the Querulous Litigation Pattern, distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

IV. DISCUSSION AND ANALYSIS

The Project's results demonstrate that a detailed profile of a SRL population may be developed using a document- and data-based methodology. These results will now be used to:

1. evaluate the nature and relevance of certain aspects of the 2017 SRL appellant population; and
2. examine to what degree, if any, this investigation suggests a different approach to SRL populations.

A. PRELIMINARY OBSERVATION: STUDY GROUP APPELLANTS ARE NOT LIKELY REPRESENTATIVE OF CANADIAN SRLS AS A WHOLE

A number of factors suggest that the Study Group Appellants' characteristics are different from those of the overall Canadian SRL population.

First, the Study Group Appellants have followed a comparatively unusual litigation trajectory. While tens of thousands of SRLs enter trial courts every year to pursue small claims litigation, dispute traffic and bylaw tickets, dissolve their marriages and divorce, and complete the probate of estates, only 122 in 2017 continued that litigation through two or more court tiers to reach the Supreme Court of Canada.

What motivated this small minority of SRLs to pursue their disputes to Canada's final court is hinted at by some of the data collected in this study. That is discussed below in more detail. Beyond that, it seems fair to conclude that the combination of the time and expense involved in intervening processes, and the rarity at which SRLs arrive at the Supreme Court, at least implies that the Study Group Appellants have different motivations or characteristics from the more common trial-level SRL.

Second, the litigation subjects that bring SRLs into trial and Supreme Court proceedings are plausibly different. For example, statistics of new action types in the Alberta Court of Queen's Bench between 2012 and 2017¹²⁶ show that 27.2% of civil proceedings were divorce or family actions, and 10.4% involved probate or administration of estates (N=67,619). However, these litigation categories were uncommon in Study Group Applications: 6.4%, and 2.4%, respectively (N=125).¹²⁷ To be fair, the Alberta Court of Queen's Bench statistics do not identify what fraction of those new actions were initiated (or conducted) by SRLs, so to a degree this exercise is "comparing apples to oranges." Nevertheless, the SRL narrative says Canadian SRLs are primarily family law litigants.¹²⁸ At the Supreme Court of Canada, that is not the case.

The very high frequency at which court access restrictions were imposed on persons in the Study Population is a third indication that the Study Group Appellants are not representative of Canadian SRLs in general. This observation is further developed in Part IV.B.3, below.

In conclusion, the results and relevance of this study are largely limited to describing the activities and characteristics of SRLs who are engaged as appellants at the Supreme Court. That said, the Study Group Appellants were necessarily also active in lower court and tribunal proceedings. In that sense, what has been learned about the Study Group Appellants may be relevant and useful to better understand and evaluate lower court proceedings by SRLs who previously engaged with the Supreme Court. This study's results may also have some general relevance to SRLs in appeal proceedings, which is discussed further in Part IV.C, below.

¹²⁶ Alberta Court of Queen's Bench, *The Court of Queen's Bench of Alberta Annual Report 2016 to 2017* (17 October 2017), online: <albertacourts.ca/docs/default-source/qb/2016-2017-annual-report-with-appendix-jan-19-2018.pdf?> [*ABQB 2016-2017 Report*].

¹²⁷ Netolitzky, "Applications," *supra* note 6 at 868–75.

¹²⁸ See e.g. Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants: Final Report" (May 2013) at 25–26, online: *NSRLP* <representinyourselfcanada.com/wp-content/uploads/2016/09/srreportfinal.pdf?> [Macfarlane, "Report"].

B. BROADER CHARACTERISTICS OF STUDY GROUP APPELLANTS

This investigation now examines four larger Study Group Appellant patterns:

1. many Study Group Appellants approach their disputes based on rights and not rules, and reject Canadian courts and law as illegitimate;
2. many Study Group Appellants are unusually active litigators;
3. Study Group Appellants are disproportionately problematic litigants; and
4. mental health has limited relevance to Study Group Appellant activity.

For the most part this discussion is only about SRLs at the Supreme Court of Canada. That is a limitation inherent to this study. When the following analysis says that “SRLs at the Supreme Court exhibit a characteristic,” that does not mean that represented candidate Supreme Court appellants *do not* share that same characteristic. They might. This study does not usually compare SRL and non-SRL Supreme Court participants, and so, in that sense, provides only half the picture. The opportunity to compare and contrast each side of that divide would be both interesting and useful, but gathering and presenting that volume of data was simply beyond the scope of the Project.

With that caveat, there probably are substantial differences between SRL and non-SRL Supreme Court litigation. The fact that over the past two decades SRLs almost never receive leave to appeal is a strong indication these two candidate appellant groups are in some ways dissimilar. A direct comparison of late applications by SRLs and represented litigants also identified significant differences.¹²⁹

1. STUDY GROUP SUPREME COURT LITIGATION IS RIGHTS-BASED AND REJECTS CANADIAN LAW AND COURTS AS ILLEGITIMATE

While this investigation is the first true population study of SRLs active at the Supreme Court, a recent article by Netolitzky and Warman described characteristics of another subset of Supreme Court of Canada appellants: persons who had a record of applying pseudolaw in their court proceedings.¹³⁰ Most of these individuals were SRLs.¹³¹

OPCA litigants stereotypically challenge the conventional social order and government authority, and often reject court jurisdiction. Many OPCA processes are highly ceremonial, and perhaps are better described as a kind of ritual or magic, rather than any form of (conventional) rational behaviour.

¹²⁹ Netolitzky, “Limitations,” *supra* note 1 at 177–81.

¹³⁰ Netolitzky & Warman, *supra* note 23 at 737–38. The methodology used to identify this population almost certainly guarantees the study population was incomplete.

¹³¹ *Ibid* at 752.

Netolitzky and Warman detected something unexpected. They concluded that despite the OPCA communities' dismal litigation record, a large majority of the OPCA Supreme Court candidate appellants presented their ideas and arguments "in a serious, careful, and conventional manner."¹³² These individuals "were at the Supreme Court of Canada to argue their ideas, rather than attempt to impose some kind of extraordinary unorthodox judicial or magical authority."¹³³ "Spell-casting" and sympathetic magic documents were all but absent.¹³⁴ None of the Supreme Court OPCA litigants raised judicial bias as the basis for their appeals.¹³⁵

The authors concluded this pattern meant OPCA litigants demonstrated real confidence in the court apparatus and judiciary; they would receive a fair hearing of the matters they brought to the high court of Canada on appeal.¹³⁶ These OPCA litigants accepted Canada's judicial system is (in some ways) valid, and tried to work inside it, by arguing their concepts of (pseudo)law. In doing so, this group of Supreme Court SRLs engaged the Supreme Court of Canada's law-making function.

In contrast, many Study Group Appellants reject the authority of Canadian courts and judges. Nearly half (48.7%, N=117) of all the Study Group Applications denounced Canadian dispute decision-makers as biased. 29.1% (N=117) of those applications went further and accused lower court judges of illegal or criminal activity.¹³⁷

The frequency of these allegations is startling. These data indicates that many Supreme Court of Canada SRLs were not merely dissatisfied with the result of their lower court decisions. The bias and criminality complaints indicate a deeper, more fundamental rejection of Canadian courts and processes as illegitimate. Study Group Appellants repudiate the Canadian court apparatus as a fair and valid mechanism to resolve social conflict. These SRLs do not accept that Canadian judges honour their professional obligations and oaths.

If the justice system is denounced, then what do these SRLs believe in? Their "rights." 71.8% (N=117) of Study Group Applications identified one or more "rights" that were breached or implicated in their appeal.¹³⁸ Rights were usually expressed via reference to the *Charter* (89.3%, N=84). However, the *Charter* was not usually argued, but invoked, and often invoked simply by name alone (26.7%, N=75).¹³⁹ Study Group Appellants frequently advance the *Charter* in instances where the *Charter* appears to have no possible application (46.5%, N=75).¹⁴⁰

Justice Morissette identifies a focus on "individual rights" such as "those found in charters and in human rights legislation" as a "fertile ground" for looping behaviour and mental health issues that are a driver of problematic litigation.¹⁴¹

¹³² *Ibid* at 749.

¹³³ *Ibid*.

¹³⁴ *Ibid* at 747–49.

¹³⁵ *Ibid* at 732–36.

¹³⁶ *Ibid* at 766.

¹³⁷ Netolitzky, "Applications," *supra* note 6 at 875–82.

¹³⁸ *Ibid*.

¹³⁹ *Ibid* at 868–82.

¹⁴⁰ *Ibid*.

¹⁴¹ Morissette, "Disorder," *supra* note 24 at 280–81.

The comparative rarity at which the Study Group Applications identify *any* valid Canadian legal authorities also indicates a focus on “rights” and a rejection of “law.” Of those applications which provided the basic pleadings to permit a meaningful response (SS=3-5), less than half (40.6%, n=26) cited *any* relevant jurisprudence or other legal texts (SS=4-5).¹⁴² That is despite these SRLs having traversed at least two prior court proceedings, where the SRL would have almost certainly received court decisions and opposing party materials that illustrate the actual sources of the law applied by Canadian judges.

If so many Study Group Appellants reject Canada’s laws, court system, and its judges, then why are they appealing their disputes to the Supreme Court of Canada? The most reliable way to answer that question would be to interview these people. Nevertheless, their applications do at least hint at a relevant factor. Many of these people are upset. The Project did not attempt to measure the emotional character of the Study Group Applications, but the manner in which the Study Group Appellants expressed themselves provides a window into their state of mind.

The following excerpts retain the formatting of the originals.

MACRAE 37378

There has been a shift in law enforcement towards “guilty until proven innocent” involving false allegations against men. **It is clear that fathers and their children have NO Charter Rights and NO Human Rights.** Fathers are subject to illegal imprisonment and their children are being abducted and abused for months or years, while these matters move slowly through the courts.¹⁴³

LE BOUTHILLIER 37350

The Court of Appeal also leaves me without treatments recommended by my doctors since 2008, and without compensation for my wages and for all the hell they made me live. It is criminal to let animals suffer while I, these supposed professionals let me suffer from ATM since June 2008, a dislocation in the jaws since 2010 and since 2012, an infection in a badly made crown by Hemi Thériault.

They only do this to me because I am a woman who represents herself alone, and they only want to punish me because I have taken my case in hand and that I denounce all the hell they have subjected me since 2004. A big question arises: What are the benefits of doing this to victims, and taking advantage of insurance?¹⁴⁴

HOK 37624

And while I have been **forced into deliberate-destitution** - by having been collusively *forced out* of my elite perio/dental-hygiene career (a career that I had thoroughly loved; and that I had pioneered perio-hygiene subgingival-treatment for the general-practicing dentists way back in the fall of 1979); AND by banking-embezzlements; et al - I have the fundamental RIGHT to have access to justice, along with procedural fairness as well; et al. The governing concepts are that of “*equality before and of the law*”, and *the Rule of*

¹⁴² Netolitzky, “Applications,” *supra* note 6 at 875–82.

¹⁴³ MacRae 37378 at para 7.

¹⁴⁴ Le Bouthillier 37350 at 13.

Law; etc./et al. “**Access to Justice** is therefore a democratic safeguard guaranteed by various Charter prerogatives in line with *principles of Fundamental Justice* which *the courts cannot deny* for reasons involving *budgetary concerns*.” And so - while I have been deliberately forced into destitution et al [right facing arrow with two heads] I have A RIGHT to have access to ethically competent proceedings / JUSTICE et al!!! BUT know that instead, our mighty governments blatantly want me totally CRUSHED-DOWN / DESTROYED et al. However — exactly *WHO* is in the wrong; *WHO* is at fault et al??? Exactly *WHEN* did it ever become ethically correct to FALSELY DENY the innocent victim (me) their GUARANTEED basis fundamental RIGHTS et al [right facing arrow with two heads] deliberately and corruptly done by the use of *unethically false court-proceeding judgments / findings* et al? And so - this application of mine (to the *Supreme Court of Canada’s Registry* for “leave to appeal” (appeal of that erroneously misleading+ alleged “decision” of madam-judge/ Veldhuis) is in regards to yet another falsely misleading / damaging / obstructing of justice (et al) FALSE DISMISSAL of absolutely meritorious me [right facing arrow with serpentine shaft] committed by the high-and-mighty court-systems’ bigotry-judges+. ¹⁴⁵

HIAMEY 37519

I wanted to push my studies and do a doctorate, but the respondents snatched away the means to do it - by robbing me of my time, my job and my salaries.

I have never been able to go on vacation like the other teachers. Because of the respondents I complain about.

I could not get married and have the children I wanted as I expected. My friend, my fiancée left me because of the problems which I complain the respondents created.

I no longer know how to be able to go to pay homage to my dear parents. I can’t even afford the transportation.

I could not go to Africa to the funeral when my mother died. I’m not in the process of going there to meditate on her grave.

For lack of moneys to pay for the care of my father, I learned that he became blind.

I do not sleep anymore. I am traumatized by all the problems that the respondents have created for me. For a while, I have felt the need to go to a psychologist. I am afraid that this trauma will follow me for life. But, I can’t afford it. ¹⁴⁶

PARSONS 37610

Whatever righteous movement this court had in *R v. BEAULAC* seems to have evaporated by the time we appeared at your court; it seems the cancer has anastomosed, but that was to be expected. Those appointed to the Supreme Court of Canada come from the very societies that have been violating these regulatory statutes. When the BC Law Society and the judges of BC sent their very clear message to this court, this SUPREME COURT OF CANADA backed away from the precipice and turned a BLINDEYE to the criminal conspiracies of the BC Law Society and the judges of BC. Any ruling in favour of Eric Claude L’Espinay

¹⁴⁵ Hok 37624 at para 2.

¹⁴⁶ Hiamey 37519 at 55–56.

would have condemned the criminal organization pretending to be the law in British Columbia and would have lead to chaos. Again; do not pardon my language; the judges and the law societies of BC sent a very clear message to the Supreme Court of Canada and the people of Canada;

“GO FUCK YOURSELVES”

we have never made any records or transcripts and we never will and there’s nothing you can do about it. This was the ultimate display of brinksmanship by the criminals pretending to be “THE LAW” in British Columbia. They sent the very clear message to the Supreme Court of Canada that you don’t dare condemn us for our criminal acts and criminal conspiracies because you will cause the implosion of the criminal justice system in British Columbia. The Supreme Court of Canada Backed down from them.¹⁴⁷

DM 37392

The patriarch of the family is a child survivor of the holocaust. He has already ONCE in his lifetime watched a German Nazi government machinery destroy his entire extended family in the 1940s, AND where he is now? Yet AGAIN, watching a government machine destroy the family he cocreated. ONLY, this time, it is a 21st century Canada, Alberta government new Nazi-type machinery doing the wittingly systemic, systematic destroying of his family. He is watching his younger son being ‘crucified’ with false allegations, and the grandchildren this son co-created, ‘arrested and incarcerated into government custody’ by government child welfare and protection civil servants, as a corporate-ass cover-up to protect the poor decision making, and lack of sound judgement by the Executive Manager/Director of this government entity for this area. This person **IGNORED** the warning that the birth mother’s biological father is a documented sexual predator, and the children would be “at risk’ for maltreatment by him. See document “A Story of Corruption Affecting Many Alberta Families.”¹⁴⁸

To be fair, these quoted passages were selected to illustrate the emotion expressed within some Study Group Applications. Highly emotive language was not universal. Some Study Group Applications describe and discuss allegations and facts in a clinical, detached manner.

The broad rejection of Canada’s law and legal apparatus is plausibly linked to the capacity of Study Group Appellants to operate inside those systems. The rights-based perspective is much reduced within the SS=5 subpopulation.¹⁴⁹ Similarly, complaints about court and tribunal decision-makers are less common in high SS versus low SS applications.¹⁵⁰ This correlation is particularly noticeable for allegations that judges have engaged in criminal or illegal activity. 62.5% (N=24) of SS=1 Study Group Applications made that allegation. No SS=5 application (N=8) exhibited this characteristic.

One hypothesis that would explain this pattern is that when SRLs are unsuccessful, then their understanding of the role of judges and the rules-based operation of the courts influences how an SRL interpret failures. Justice Robertson of the New Brunswick Court of Appeal linked automatic allegations of decision-maker bias to a lack of familiarity with, or knowledge of, law and legal processes.¹⁵¹ SRLs who do not really understand how law works

¹⁴⁷ Parsons 37610 at para 15.

¹⁴⁸ DM 37392 at para 8.

¹⁴⁹ Netolitzky, “Applications,” *supra* note 6 at 875–82.

¹⁵⁰ *Ibid.*

¹⁵¹ *Murray v The New Brunswick Police Commission*, 2012 CanLII 34210 (NBCA) at para 10; see also *Zed v White*, 2019 NBCA 86 at paras 27–28.

are the ones who blame the system, rather than accept a negative outcome as having a reasoned basis. Put another way, if the result feels unjust, then “my rights” were wronged. This rights-based, rather than rules-based perspective, and rejection of Canadian courts and judges as illegitimate, are two of the few broad patterns identified among Study Group Appellants.

These conclusions turn some of the usual assumptions about SRLs on their heads. The traditional view is that OPCA litigants seek to break legal processes,¹⁵² but that does not usually apply to OPCA litigation at the Supreme Court of Canada. However, the opposite is true for many conventional SRLs. Pseudolaw litigants commonly approach the Supreme Court in a law-making context, and seek to discuss and develop the substance of Canada’s law. However, conventional Supreme Court of Canada SRL appeals are driven by emotion, and a rejection of Canadian law and courts. These SRLs point to a higher authority — their “rights” — and demand to be heard.

2. MANY STUDY GROUP APPELLANTS ARE UNUSUALLY ACTIVE SUPREME COURT LITIGATORS

Most Study Group Appellants only initiated one proceeding at the Supreme Court, but a substantial number, 37.7% (N=122), have filed two or more Supreme Court of Canada leave to appeal applications.¹⁵³

The long “tail” of high activity Study Group Appellants in Figure 1 shows a surprising number of Study Group Appellants have repeatedly engaged the Supreme Court. Statistics and profiles of litigant activities in Canada are, at best, scarce. That leaves open the question of just where the Study Group Appellants fall in the overall landscape of Supreme Court litigant activity, as a whole.

Table 2 attempts to put some context on Study Group Appellant court activity and compares the number of times the thirteen most active Study Group Appellants appeared as appellants and respondents at the Supreme Court of Canada in relation to Supreme Court appellant and respondent docket appearances of Canada’s largest thirteen companies,¹⁵⁴ as ranked by Fortune Magazine.

¹⁵² *Meads*, *supra* note 60 at para 69.

¹⁵³ See Figure 1, Part III.B, above.

¹⁵⁴ See “Global 500,” online: <fortune.com/global500/2019/search/?hqcountry=Canada>. These rankings are for 2019.

TABLE 2:
SUPREME COURT OF CANADA LITIGATION BY HIGH ACTIVITY STUDY GROUP
APPELLANTS AND CANADA'S THIRTEEN LARGEST CORPORATIONS

Study Group Appellants			Canada's Thirteen Largest Corporations		
Name	Appellant	Respondent	Name	Appellant	Respondent
Gilles Patenaude	19	0	Brookfield Asset Management	0	2
Valery Fabrikant	18	0	Alimentation Couche-Tard	2	0
Ade Olumide	17	0	Royal Bank of Canada	40	135
John C. Turmel	16	0	Toronto-Dominion Bank	25	87
Katherine Lin	14	0	Magna International	0	2
Robert Lavigne	13	0	George Weston Limited	0	1
Raynald Grenier	11	0	Power Corporation of Canada	0	0
Elizabeth Bernard	9	0	Enbridge	2	7
Martin Green	8	0	Bank of Nova Scotia	20	74
Paul Abi-Mansour	7	0	Suncor Energy	1	4
Gandhi Jean-Pierre	6	0	Manulife	2	5
Hachmi Hammami	4	0	Onex Corporation	1	1
Lubov Volnyansky	4	0	Bank of Montreal	47	98

Table 2: Number of Supreme Court appellant and respondent appearances by the thirteen Study Group Appellants who had filed the most leave to appeal applications, and the thirteen largest Canadian corporations, as identified by Fortune Magazine for 2019. The Study Group Appellants are ranked by number of Supreme Court of Canada leave to appeal applications. Canada's thirteen largest corporations are ranked in order of corporation size.

The high activity Study Group Appellants listed in Table 2 filed more Supreme Court appeals than any of Canada's thirteen largest corporations, except for Canada's four largest banks.

From 1875 onward, venerable Canadian institutions such as the Hudson's Bay Company and the Canadian Pacific Railway have filed six and 89 appeals with the Supreme Court, respectively. Since its creation in 1981, Canada Post is named as a Supreme Court appellant or candidate appellant 16 times.

That one individual, such as Ade Olumide, in somewhat over three and a half years has filed nearly as many Supreme Court appeals as Canada's third largest bank did over 137 years¹⁵⁵ illustrates that the high activity Study Group Appellants identified in this investigation are a different and unique class of appeal court participant. Not even very large corporations whose business activities mean the corporation is regularly involved in substantial litigation approach the intensity of appeal court activity exhibited by this group of SRLs.

That observation naturally leads to a further question: does Study Group Appellant litigation have a reasonable basis?

¹⁵⁵ The first Supreme Court of Canada proceeding involving the Bank of Nova Scotia appears to be *Smith v Bank of Nova Scotia* (1883), 8 SCR 558.

3. STUDY GROUP APPELLANTS ARE DISPROPORTIONATELY PROBLEMATIC LITIGANTS

Preliminary data collected at the start of the Project raised the possibility that the Study Group Appellants may exhibit a disproportionately high incidence of problematic litigation characteristics. If so, that might confirm Justice Morissette's Distillation Effect hypothesis:¹⁵⁶ problematic litigants are over-represented in appellate courts because many problematic SRLs persistently pursue appeals and re-litigate otherwise settled issues. Persistent litigation and re-litigation is also one of the defining characteristics of querulous paranoia.¹⁵⁷

Certain observations suggest the Distillation Effect hypothesis is correct:

1. the observed high frequency (61.2%, N=121)¹⁵⁸ at which Study Group Applications exhibit problematic characteristics;
2. the large portion (23.1%, N=121)¹⁵⁹ of Study Group Applications that fail the Rule in *kisikawpimootewin*¹⁶⁰ criterion and are no basis for a meaningful legal response; and
3. the high frequency at which lower courts and tribunals concluded Study Group Appellants:
 - (a) engaged in abusive litigation (76.2%, n=94), and
 - (b) ought to be subject to prospective court access restrictions (23.0%, n=28).

First, the rates at which judicial and tribunal decision-makers found Study Group Appellants were engaged in abusive litigation and were made subject to court access restrictions are potentially distorted by the data collection methods employed in this study. Information for these two data categories was obtained from three sources:

1. reported court and tribunal decisions;
2. the detailed Federal Court and Federal Court of Appeal online court docket records; and
3. indexes of persons subject to court access restrictions, which were only available for the Alberta¹⁶¹ and Quebec Courts.¹⁶²

The oral tradition that English common law court decisions are delivered by speaking directly to litigants means that many court-ordered directions and the reasons for those directions are never captured in a written, publicly accessible, reported form. Even courts,

¹⁵⁶ Morissette, "Disorder," *supra* note 24 at 285, 306, n 26; Netolitzky, "Comment," *supra* note 40 at 257.

¹⁵⁷ See Part I.B.2.a, above.

¹⁵⁸ Netolitzky, "Applications," *supra* note 6 at 868–82.

¹⁵⁹ *Ibid* at 875–82.

¹⁶⁰ *kisikawpimootewin v Her Majesty the Queen in Right of Canada*, 2004 FC 1426.

¹⁶¹ *Supra* note 85.

¹⁶² *Supra* note 86.

such as the Federal Courts,¹⁶³ that systematically gather documentary orders into a single resource, do not make those records publicly available. In contrast, the US PACER apparatus provides electronic access to complete court docket and document records for all Federal US courts.¹⁶⁴

Thus, while Canadian case law databases contain very large numbers of “reported” court and tribunal decisions, those published records capture only a fraction of overall court decision-making activity. For example, the Alberta Court of Queen’s Bench reported that in 2016 it engaged in 75,266 litigation steps that would have resulted in a civil matter court order.¹⁶⁵ In that year, the CanLII legal information database recorded the Alberta Court of Queen’s Bench issued 724 reported decisions.¹⁶⁶ At least 136 of those 724 reported decisions relate to criminal matters. That means at most 0.78% (n=585) of all 2016 Alberta Court of Queen’s Bench civil litigation decision-making processes resulted in a reported court decision.

Unpublished and essentially inaccessible court decisions may have concluded that Study Group Appellants engaged in abusive litigation or were subject to court access restrictions. That means with very high certainty that some Study Group Appellants have “false negative” records for these characteristics. The abusive litigation and court access restriction frequencies reported in this study very likely understate the true rates at which these characteristics actually appear in the Study Group Appellant population.

The extent to which two of the four problematic litigation characteristics identified in this study are “distilled” in the Supreme Court of Canada can be evaluated to some degree. 23.1% of Study Group Applications are problematic on their face due to their failure to provide legally relevant information and allegations (SS=1). In 2014, Ontario enacted Rule 2.1,¹⁶⁷ a document-based “show cause” procedure intended to capture and dismiss pleadings that are deficient to this degree. A recent detailed review of how Ontario courts have applied Rule 2.1 by Gerard Kennedy of the University of Manitoba concluded this procedure was used on average 63 times per year between 2014-2017.¹⁶⁸ The Alberta Court of Queen’s Bench in 2018 issued Civil Practice Note No. 7 (CPN7),¹⁶⁹ which has the same function as Rule 2.1,

¹⁶³ All Federal Court and Federal Court of Appeal decisions and orders are formalized and entered in the “J. & O. Book” (“Judgment and Order Book”). The Federal Court Judgment and Order Book now has nearly 1500 volumes, while the Federal Court of Appeal version has somewhat over 300 volumes. These resources are not published electronically, though individual records may be obtained from Federal Court Registries.

¹⁶⁴ *Public Access to Court Electronic Records*, online: <www.pacer.gov>.

¹⁶⁵ *ABQB 2016-2017 Report*, *supra* note 126 at Appendix 2, total of “Civil Trials Heard,” “Divorce Judgments Granted,” “Solicitor Client Taxations Heard,” “Justice Civil Matters Heard,” “Masters Chambers Matters Heard,” “Bankruptcy Matters Heard,” and “Civil Appeals Heard” categories.

¹⁶⁶ See “Search Results,” online: <www.canlii.org/en/ab/abqb/#search/type=decision&ccId=abqb&id=2016&origType=decision&origCId=abqb>.

¹⁶⁷ *Ontario Rules*, *supra* note 87, s 2.1.

¹⁶⁸ Gerard J Kennedy, “Rule 2.1 of Ontario’s *Rules of Civil Procedure*: Responding to Vexatious Litigation While Advancing Access to Justice?” (2018) 35:1 Windsor YB Access Just 243 at 258.

¹⁶⁹ Court of Queen’s Bench of Alberta, “Court of Queen’s Bench of Alberta Civil Practice Note No. 7” (21 June 2018), online: <

and operates in an analogous manner.¹⁷⁰ In its first year of operation, CPN7 was applied 23 times to terminate 38 lawsuits.

Unreported and therefore unidentified decisions may mean that the frequency at which Kennedy reports Rule 2.1 was applied in 2014–2017 is an underestimate; however, the CPN7 numbers do represent all applications of that procedure because of the Alberta Court of Queen’s Bench’s policy of publishing all decisions that impose litigation management steps on abusive litigants and litigation.¹⁷¹ The frequencies at which Rule 2.1 and CPN7 each have been applied are almost certainly only a portion of the instances where actions were struck out for failing to meet the Rule in *kisikawpimootewin* minimum pleadings threshold. Other equally defective matters were very likely dismissed with oral reasons after court hearings of “striking out” applications.¹⁷²

That said, if the observed high incidence of SS=1 SRL applications at the Supreme Court of Canada was also occurring in trial courts, then the annual frequency at which the *Ontario Rule 2.1* and Alberta CPN7 procedures ought to have been applied should range in the hundreds, and perhaps thousands.¹⁷³ No evidence supports a finding that such deeply flawed SRL pleadings appear at these high frequencies in trial-level courts.

The identified high incidence of court access restrictions imposed against Study Group Appellants is an even stronger basis to conclude the Distillation Effect hypothesis is correct. Court access restriction orders imposed by lower courts were identified for one in four (23.0%, N=122) Study Group Appellants. As previously explained, that understates the true rate. The court access restriction characteristic greatly increases as Study Group Appellants engage in additional Supreme Court litigation: doubling after three or more leave to appeal applications (51.9%, N=27) and tripling after six or more leave to appeal applications (72.7%, N=11).

These Study Group values are an extremely high incidence of a rare form of court litigation management. Quebec courts reportedly have taken that step 310 times between 1993 and July 2019.¹⁷⁴ In the same period, the Alberta Court of Queen’s Bench issued somewhat over 250 analogous court access restriction orders.¹⁷⁵ If the abusive nature of SRL appellants at the Supreme Court of Canada and at trial was comparable, then the Alberta and Quebec court access restriction registries should have thousands of entries. They do not.

¹⁷⁰ *Unrau #1*, *supra* note 88; *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 347.

¹⁷¹ *Unrau #2*, *supra* note 29 at paras 964–65.

¹⁷² See e.g. *Ontario Rules*, *supra* note 87, s 25.11; *Alberta Rules of Court*, Alta Reg 124/2010, s 3.68 [*Alberta Rules*].

¹⁷³ Between 2012–2017, the Alberta Court of Queen’s Bench reports 59,191 new civil actions per year. Presuming that 20% of these were SRL actions, a conservative estimate, the SS=1 frequency observed at the Supreme Court of Canada would mean the Alberta Court of Queen’s Bench should each year receive 2,735 SRL pleadings that are grossly defective and no basis for a meaningful response.

¹⁷⁴ Morissette, “Disorder,” *supra* note 24 at 303, 311.

¹⁷⁵ *Supra* note 85.

Eleven Study Group Appellants challenged decisions of Alberta Courts.¹⁷⁶ Seven of those individuals are subject to court access restrictions imposed by courts of that jurisdiction.¹⁷⁷

Given these observations there is little question the Supreme Court SRL candidate appellant population includes a disproportionate number of problematic litigants. However, these characteristics are not uniformly distributed within that SRL group.

Pre-Supreme Court abusive litigation characteristics are not linked to Supreme Court of Canada leave to appeal application sophistication but are strongly linked to the frequency at which Study Group Appellants repeatedly re-litigate at the Supreme Court.¹⁷⁸ Problematic conduct and applications at the Supreme Court were strongly associated with less sophisticated Study Group Applications, but showed little variation between Study Group Appellants who engaged in one versus many attempts to access the Supreme Court.¹⁷⁹

Combined, these observations imply that the more sophisticated Study Group Appellants learned from their prior court activities and only rarely filed leave to appeal applications which included problematic litigation characteristics. However, those Study Group Appellants who repeatedly attempted to access the Supreme Court never improved their litigation conduct. Instead, as this group of SRLs continued their problematic dispute-related conduct, lower courts were increasingly likely to identify repeat Supreme Court SRLs as engaged in abusive litigation and then imposed court access restrictions.¹⁸⁰

Put another way, the primary identified characteristic of non-problematic Supreme Court SRLs is the degree to which these SRLs are able to meaningfully understand and respond to Canadian legal concepts and processes via their written filings (SS=4-5). Repeated litigation is the primary identified characteristic of problematic Supreme Court SRLs.

4. STUDY GROUP APPELLANTS AND MENTAL HEALTH

Some legal academics claim established members of the legal community, such as judges and lawyers, unfairly link self-representation to mental health issues.¹⁸¹ Countering this perspective is that the psychiatric profession has long recognized that sometimes mental health issues are an underlying cause of, or a trigger for, litigation, particularly abusive litigation.¹⁸² Judges have, on a case-by-case basis, concluded the same.¹⁸³ Empirical investigation of SRLs in non-Canadian jurisdictions suggests that the SRL subpopulation

¹⁷⁶ Brian Patrick Belway, Alexander S. Clark, Robin James Goertz, Shirley A. Hok, Fang Hu, Jim Lysons, Allen M. R. MacRae, Amira Summer MacRae, DM, MM, Paul Oommen.

¹⁷⁷ Brian Patrick Belway, Alexander S. Clark, Shirley A. Hok, Allen M. R. MacRae, Amira Summer MacRae, DM, MM.

¹⁷⁸ See Figure 8 above.

¹⁷⁹ See Figure 9 above.

¹⁸⁰ *Supra* note 178.

¹⁸¹ Julie Macfarlane & Megan Campbell, "Wrong Diagnosis, Wrong Strategy: Why More Restrictions on Self-Represented Litigants Won't Work and Aren't Justified" (4 June 2019), online (blog): <www.slw.ca/2019/06/04/wrong-diagnosis-wrong-strategy-why-more-restrictions-on-self-represented-litigants-wont-work-and-arent-justified/>. See also Macfarlane, "Report," *supra* note 128 at 32; Jonnette Watson Hamilton, "Three Leaves to Appeal the Claimed Jurisdiction of Court of Queen's Bench Over Vexatious Litigants" (9 July 2019), online (blog): <ablawg.ca/2019/07/09/three-leaves-to-appeal-the-claimed-jurisdiction-of-court-of-queens-bench-over-vexatious-litigants/>.

¹⁸² See Part I.B.2.a, above.

¹⁸³ See e.g. the survey in *Unrau #2*, *supra* note 29 at paras 117–75.

who genuinely do face mental health issues may receive a disproportionate degree of attention from justice system participants.¹⁸⁴

This study used four characteristics to evaluate the degree to which mental health issues are present in the Study Group Appellant population. Two characteristics flow from court findings that the Study Group Appellant: 1) was made subject to a court order on the basis of mental health issues, and 2) litigated because of distorted or delusional thinking processes.

The incidence of both of these characteristics was low: mental health orders - 6.6% (n=8), delusional thinking - 7.4% (n=9). As with the incidence of abusive litigation characteristics, these values very likely understate the true incidence of these characteristics due to “false negatives” where relevant findings were made but only in unreported court and tribunal decisions. That said, no data supports that these characteristics are commonplace or typical for the Study Group Appellants or SRLs at the Supreme Court as a whole.

The third mental health characteristic was the Study Group Appellant self-identified as having a mental health condition, or brain or neurological injury. 12.3% (N=122) of the Study Group Appellants self-identified as having this characteristic.

The previous three characteristics directly implicate mental health. The last characteristic, a Querulous Litigation Pattern, is a pattern of dispute conduct that mental health professionals link to the querulous paranoia psychiatric disorder. A Querulous Litigation Pattern therefore implies that a Study Group Appellant is affected by querulous paranoia.

Nearly a quarter (23.0%, n=28) of the Study Group Appellant population exhibit a Querulous Litigation Pattern. This mental health characteristic was strongly associated with repeated Study Group Appellant activity at the Supreme Court.¹⁸⁵ Nearly three-quarters (72.7%, n=8) of the SRLs who had filed six or more Supreme Court of Canada leave applications exhibited a Querulous Litigation Pattern. That observation is not really a surprise, since persistent litigation and re-litigation are characteristics of a Querulous Litigation Pattern and also are a part of the querulous paranoia pathology described by mental health experts.

The Querulous Litigation Pattern was identified by review of reported court and tribunal decisions. The observed frequency of this characteristic in the Study Group Appellants is also plausibly an underestimate. However, the “false negative” issue is likely much less of a factor for the Querulous Litigation Pattern characteristic because persons affected by querulous paranoia have a large litigation footprint. That increases the probability that their problematic activity would be documented in a reported court or tribunal decision.

In 61.5% of the Study Group Appellants, none exhibited these four characteristics.

¹⁸⁴ John M Greacen, “An Administrator’s Perspective: The Impact of Self-Represented Litigants on Trial Courts – Testing our Stereotypes against Real Data” (2002) 41:3 *Judges’ J* 32 at 35; UK, Department for Constitutional Affairs, *Litigants in Person: Unrepresented Litigants in First Instance Proceedings* (DCA Research Series 2/05) by Richard Moorhead & Mark Sefton (London: Department for Constitutional Affairs, 2005) at 79–82, 88–91, online: <orca.cf.ac.uk/2956/1/1221.pdf>.

¹⁸⁵ See Figure 12 above.

In conclusion, while a significant portion of Study Group Appellants were linked to one or more mental health factors, mental health issues do not appear to be a predominate feature of Supreme Court SRL activity. The sole exception is that querulous paranoia probably contributes to why some SRLs repeatedly attempt to access the Supreme Court, over and over.

C. IMPLICATIONS FOR SRL LITIGATION MANAGEMENT

Netolitzky, “Applications,” concluded that most Study Group Applications were unlikely to result in a full appeal hearing because of the applications’ content and allegations.¹⁸⁶ Many Study Group Applications exhibit problematic litigation indicia.¹⁸⁷ This part of the Project has established that a substantial fraction of the Study Group Appellants are abusive litigants. Many Study Group Appellants reject the authority of Canadian judges and courts. They seek to enforce their “rights.”

These results run contrary to the usual narrative of the SRL as a non-problematic court actor whose litigation activities perhaps may not be lawyer-like but are, at a minimum, worthy of attention and response. Instead, the Distillation Effect appears to exist, and the Supreme Court encounters an unusually high incidence of unmeritorious and problematic SRL litigation.

The next question is what to do about that.

1. TRIAL VERSUS APPEAL COURTS

First, the results of this investigation have little *direct* relevance to the overall management of *trial court* SRL activities. There is good reason to anticipate that abusive litigation may be different in the trial and appeal contexts. Trial courts encounter a different variety or range of abusive litigation. Not all abusive litigants engage in appeals, let alone persistent appeals. Flurry litigants start a large number of lawsuits but then lapse into inactivity and do not pursue these matters further.¹⁸⁸ OPCA litigants are more commonly encountered in trial proceedings, at least in the recent past, since members of the dominant Freeman-on-the-Land movement rarely conduct appeals, and when they do, their efforts are typically inept.¹⁸⁹ Litigants who abuse court processes for profit or advantage are unlikely to conduct appeals. Trial courts therefore may encounter a wider *variety* of abusive litigant types.

The Distillation Effect affects the frequency at which abusive litigation appears in appellate courts. Appellate SRLs have an increased probability of being engaged in abusive litigation. This conclusion means that authorities who have suggested that abusive SRL litigation is chiefly a trial-level phenomenon were probably incorrect, at least when it comes to the *concentration* of abusive litigation.¹⁹⁰ The high observed frequency at which Study Group Appellants were subject to court access restrictions and exhibited the Querulous

¹⁸⁶ Netolitzky, “Applications,” *supra* note 6 at 890–95.

¹⁸⁷ *Ibid* at 868–75.

¹⁸⁸ *Unrau #2*, *supra* note 29 at paras 248–50.

¹⁸⁹ Netolitzky & Warman, *supra* note 23 at 749–52, Figure 1 at 730.

¹⁹⁰ That includes the author: Netolitzky, “Hammer,” *supra* note 60 at 1206.

Litigation Pattern is remarkable, particularly since these attributes indicate broad-based litigation misconduct.

If abusive SRL litigants are over-represented in appellate proceedings, then appellate function courts and tribunals would especially benefit from more robust litigation management. But how might that be achieved?

2. THE SUPREME COURT OF CANADA

The Supreme Court of Canada is unusual in Canada in that its processes are “default closed.” The Supreme Court is therefore a “hard target.” The Supreme Court long ago instituted a mandatory leave procedure to intercept and screen out frivolous cases.¹⁹¹ Does the existing Supreme Court of Canada litigation management apparatus adequately respond to current SRL activities at the Supreme Court? Presuming that the 2017 Study Group was not in some way highly anomalous, the best answer is “maybe.” Which way that “maybe” resolves brings into play issues of economics, court staffing, judicial complement, “where the buck stops,” and legal philosophy.

SRLs seeking to access the Supreme Court cause a substantial volume of predictably unmeritorious litigation. SRLs at the Supreme Court are very rarely successful at obtaining leave due to the focus of their appeals and the substance of their applications. 20–30% of the Court’s total input workload is very unlikely to be of any relevance to or benefit for law-making, compared to the 10% success rate of represented candidate appellants. SRLs who repeatedly attempt to access the Supreme Court are substantially, if not predominately, problematic litigants. The odds are remote their applications may prove useful in developing Canadian law.

Supreme Court resources — registry staff time, staff lawyers’ workload, and the limited work capacity of the Supreme Court justices themselves — are expended without any tangible benefit. The high incidence of problematic SRL litigation at the Supreme Court also means that responding parties are put through unnecessary effort and expense to respond to these almost certainly futile applications, but that is a limited policy factor, since with the current leave to appeal procedure the unnecessary and problematic litigation load imposed by Supreme Court SRLs falls chiefly on the Court itself.

“Where the buck stops” is therefore relevant. If Supreme Court justices are heavily involved in vetting SRL leave to appeal applications, and that activity takes up a substantial portion of their time, then working through the many incoherent and irregular filings detected by the Project is a complete waste of a highly specialized, limited, and expensive resource. Having Supreme Court justices sift through years of SRL leave applications, like Diogenes with his lamp, seeking out the one honest appeal issue, runs contrary to the spirit of the “culture shift” identified in *Hryniak v. Mauldin*.¹⁹² The Supreme Court of Canada in *Trial*

¹⁹¹ Madam Justice Bertha Wilson, “Leave to Appeal to the Supreme Court of Canada” (1983) 4:1 Adv Q 1 at 2–3.

¹⁹² *Hryniak v Mauldin*, 2014 SCC 7 at para 2.

Lawyers Association of British Columbia v. British Columbia (Attorney General) stressed the culture shift is particularly relevant to matters that involve SRLs.¹⁹³

However, if “the buck stops” when unmeritorious and hopeless applications reach the desks of Supreme Court staff lawyers, and the subsequent judicial oversight is just that, an oversight process, then arguably the Supreme Court can absorb the waste that accompanies SRL leave to appeal applications, because that waste does not affect the true function of the Supreme Court as the critical law-making organ in the overall body of the Canadian legal apparatus.

Since we are unlikely to ever have a genuine opportunity to peer into these inner workings of Canada’s high court, further exploration of these alternative scenarios is unproductive.

What we do know is that SRLs are adding to the workload of certain parts of the Supreme Court apparatus, particularly court Registry staff and staff lawyers. As government components go, these are comparatively cheap. Managing SRL litigation, particularly abusive SRL litigation, is more a question of time and patience, than any particular skill or knowledge. Screening SRL leave to appeal applications for potential meritorious issues is chiefly a matter of sifting, rather than exercising any special legal expertise.

But providing these resources does mean cost, and that leads to a conflict of ideology and efficiency. SRL litigation at the Supreme Court is not an efficient allocation of state resources. Both the extremely low incidence of successful SRL leave to appeal applications, and the broadly problematic and irrelevant content of the Study Group Applications, demonstrates very little useful comes from permitting unrepresented candidate appellants the absolute right to seek access to Canada’s final court. In a critical sense, the current state of affairs prioritizes what is effectively a symbolic right of access to the proverbial final “day in court” over economic and legal utility.

Whether that choice is correct in the present context is outside the scope of this investigation. That question is one of policy, or philosophy, rather than practicality.

3. OTHER APPELLATE COURTS

Though somewhat counter-intuitive, this investigation has broader implications for the tiers of Canadian appeal courts that feed litigation upward to the Supreme Court, than for the Supreme Court itself. The Distillation Effect predicts these intermediate appeal bodies are also experiencing an over-representation of abusive litigants. However, unlike the Supreme Court which is “defaulted closed,” these institutions “default open.” That fact suggests this category of decision-making institutions is vulnerable, faces disproportionate stress and is possibly inadequately equipped with litigation management tools to address that.

A wide number and variety of institutions operate in an intermediate appeal role. Each is subject to potentially different legislative and common law rules. As a consequence, this

¹⁹³ *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59 at para 110.

study will not propose exact responses on a court-by-court basis but instead identifies some “generic” steps that may be justified by the amplified stress the Distillation Effect inflicts on these institutions.

First, some appeal courts, such as the Federal Court of Appeal, may only impose court access restrictions where government authorizes or initiates that process.¹⁹⁴ This constraint is a mistake and excludes the justice system participants who are best positioned to identify problem litigants, evaluate their misconduct, and impose appropriate litigation management steps. Intervention then often comes too late.¹⁹⁵ All courts, but especially appeal courts, should have the authority to initiate abusive litigation management processes.

Second, legislation and court rules may impose a mandatory leave requirement for certain appeal categories. Since the right of appeal is not absolute, certain matters could also be excluded from appeal.¹⁹⁶ Abusive litigation hotspots may be appropriate targets for restricted rights to appeal.

Third, trial-level courts should have the authority to gatekeep access to higher appeal bodies.¹⁹⁷ That may interdict otherwise inevitable but unmeritorious and abusive appeals, particularly where a Querulous Litigation Pattern has emerged. A rule that a court access restriction order imposed by a trial court on its own processes also automatically operates in the subsequent superior appeal court(s) also has the same result.¹⁹⁸

V. CONCLUSION

Many gaps exist in our understanding of how legal processes operate in Canada, not how they are designed, *but how they work*. Developing policies that affect a critical component of the modern Canadian state on the basis of anecdote and common wisdom is problematic. Our poor understanding of the SRL phenomenon is only one of many examples where the justice apparatus is all but flying blind.

The traditional legal academic approach to issues is to read reported court decisions and then draw conclusions from that. This process is fine, for example, when comparing how two different and novel solutions to a legal issue fit within the broader existing structure of Canadian legal rules and principles.

One such example is the ongoing debate as to whether the sentencing starting point concept is a compatible with Canadian criminal law.¹⁹⁹ However, this case law-centric approach provides little help to evaluate whether sentencing starting points have a meaningful positive or negative effect on rehabilitation and future re-offense. Whether starting point methodology works, *in a social sense*, involves a different kind of data. Arguably, that is not within the domain called law but instead falls into the bailiwick of

¹⁹⁴ *Federal Courts Act*, RSC 1985, c F-7, s 40.

¹⁹⁵ *Olumide*, *supra* note 35 at para 44.

¹⁹⁶ See e.g. *Alberta Rules*, *supra* note 172, ss 14.5(3–4).

¹⁹⁷ See e.g. *Judicature Act*, RSA 2000, c J-2, s 23.1(6).

¹⁹⁸ See e.g. *Alberta Rules*, *supra* note 172, s 14.5(1)(j).

¹⁹⁹ *R v Friesen*, 2020 SCC 9 at paras 40–41.

criminologists and other social scientists. Nevertheless, one would hope that law would be validated via its actual social impact and not merely approached as a kind of thought experiment.

This study is a minor but incremental component of a transition from ideas to data, and in that sense, the Project is important in two different ways. This investigation:

1. demonstrates a different and superior methodology to investigate court and litigant activity is practical, and
2. provides a detailed and quantitative profile of a Canadian litigant population.

These items are linked. Methodology resulted in effective data collection.

A. METHODOLOGY

The Project provides a detailed profile of how a SRL population operated in a Canadian court, the character of the population's disputes, and how the court responded.

The methodology applied in the Project is nothing more than what population investigators in biology, medicine, and the social sciences have been doing for over a century. In fact, application of this approach to a court-centered context was easy. Most science and social science investigators do not have the luxury of an existing public documentary record on which to base their inquiries.

The techniques employed are unremarkable. A complete population was investigated. That eliminated potential sampling error and bias issues. Data were collected from publicly available documentary sources and state records. In total, 122 SRLs and 125 leave to appeal applications were profiled. Some data, such as dates, the number and names of litigation participants, were recorded exactly. Other variables, such as Sophistication Score, used simple scoring indices. The main challenge to recording data was that some Study Group Appellant materials were essentially gibberish.

There were no real logistical obstacles to this study. Data collection and document review required less than three months for a single researcher. The total cost to obtain documents from the Supreme Court of Canada Registry was \$906.

The circumstances and environment that permitted this project are not unique. An investigation of this type could easily be conducted in any other Canadian appeal court, particularly whenever that court makes records of its proceedings available online. The Federal Court of Appeal would be an ideal candidate for a parallel investigation.

Trial courts would be trickier since their proceedings follow a less structured or predictable path. At least four Canadian trial courts provide detailed public information that

could be surveyed using an approach similar to that followed with the 2017 Supreme Court of Canada SRLs.²⁰⁰

The state of record-keeping in some courts would likely require a more paper-based approach and going through physical files. That is not an impossible task, and presumptive access to those records is guaranteed by law.²⁰¹

The Project is a successful “technology demonstrator.” It illustrates that document-based investigation of court processes, populations, and outcomes is possible and a better alternative to the typical approaches employed to date by legal academic researchers. Good policy requires good data. Data-focused inquiry is the path forward to that objective.

B. OBSERVATIONS

The parable of the blind men and the elephant is a metaphor that helps explain our incomplete and conflicting understanding of SRLs and their activities.²⁰² The author makes no claim to be anything but a very nearsighted man who can provide a reliable and detailed description of one part of a potentially — and plausibly — far more complicated anatomy.

The picture that emerges is not a terribly attractive one. The Study Group Appellants are a grim parade of persons whose court activities provide negligible individual or social benefit to anyone, including themselves. Most Study Group Appellants had little to no prospect of success due to a combination of their lack of ability to express the substance of their proposed appeal, the SRL asking the Supreme Court of Canada to operate outside its function and because most of these candidate appellants were not interested in law-making, but rather exercise and enforcement of their “rights.” Although there were noteworthy exceptions, their filings were weak documents that exhibit little appreciation of the principles and rules of Canadian law and what a Supreme Court of Canada appeal actually involves.

The high observed frequency of abusive litigation characteristics strongly supports Justice Morissette’s Distillation Effect model, and that is a worrisome discovery. Abusive litigants and litigation are always an issue for any court, but for some courts — appellate courts — that weight is concentrated and disproportionate. The extent to which some SRLs repeatedly access Canadian appeal court processes is troubling.

Is SRL participation at the Supreme Court then warranted, given the extremely low rate at which that Court grants leave, and since the Project has concluded that leave was denied on a functional and principled basis? SRL Supreme Court appeals involve substantial cost and very little benefit, including to the SRL candidate appellants themselves. This question is really one of legal philosophy, rather than economics. Benjamin Lévy and Justice

²⁰⁰ The British Columbia Provincial Court (criminal matters) (online: <justice.gov.bc.ca/cso/index.do>), Federal Court (online: <www.fct-cf.gc.ca/en/court-files-and-decisions/court-files>), Manitoba Court of Queen’s Bench (online: *Court Registry System* <web43.gov.mb.ca/registry>), and Tax Court of Canada (online: <www.tcc-cci.gc.ca/en/pages/find-a-court-file>) have online docket record systems. Others may also exist.

²⁰¹ *Vickery v Nova Scotia Supreme Court (Prothonotary)*, [1991] 1 SCR 671.

²⁰² Netolitzky, “Applications,” *supra* note 6 at 845.

Morissette observe certain jurisdictions do not really experience abusive litigation, but their governments have placed litigation control in the hands of judges, not parties.²⁰³

The more important question is, given what is now known about SRL activity at the Supreme Court, whether adequate safeguards and processes are in place to ameliorate and mitigate the unnecessary and abusive stresses that flow from these persons' misuse of Canadian courts. For the Supreme Court, the answer is maybe, at least at present. Lower tier appeal bodies are not so lucky. They are the locus for immediate action. The Distillation Effect means abusive litigation is very likely imposing disproportionate stress on these comparatively "soft targets." Parliament and the legislatures should provide enhanced tools to protect these courts and tribunals.

Two commonplace themes that often appear when the SRL phenomenon is discussed are that SRLs are unsuccessful because they are unrepresented and that SRLs would benefit from better informational resources. Due to the nature of this investigation, any comment on these points is restricted to only SRLs at the Supreme Court. In that limited context, the Project calls both themes into question.

First, nothing suggests that SRLs require assistance to navigate Supreme Court procedures as candidate appellants. All Study Group Applications completed the leave to appeal application process, including when appeals were made outside the limitations period timeline. A large majority of Study Group Appellants used the appropriate forms. Most entered at least some useful information to guide the Court's response. Whatever else, the Supreme Court of Canada Registry cannot be faulted, given its obvious efforts to facilitate access to that Court for as many persons as possible.

Second, "a better spin" probably would have made little or no difference to many Study Group Applications. Could many Study Group Applications have been better drafted? For the SS=1-2 population, yes. That half of the 2017 SRL candidate appeals fail as pleadings.

However, there are other barriers. For example, an issue of fact remains an issue of fact, no matter whether an argument is drafted by a SRL or a lawyer. Some litigation is hopeless. Re-litigation remains re-litigation. An application made where the Supreme Court has no jurisdiction will inevitably fail. Supreme Court of Canada leave to appeal applications by targets of government mind control conspiracies,²⁰⁴ or by the Empress of Rome,²⁰⁵ would not likely benefit from the candidate appellant having a better understanding of the law or if a lawyer was at the candidate appellant's side.

Many SRL candidate appeals were about asserting rights, not law-making. Whether a lawyer could assist in that context is questionable. Then there is the broad repudiation of Canadian courts and their decision-makers. Could a lawyer help with an application constructed off that foundation? Where the SRL candidate appellant has concluded judges are criminals because they ruled against the SRL?

²⁰³ Lévy, "Study #1," *supra* note 46; Lévy, "Study #2," *supra* note 32; Morissette, "Disorder," *supra* note 24 at 286-91.

²⁰⁴ Chowdhury 37677; Tilahun 37448.

²⁰⁵ Ranieri 37796; Ranieri 37830.

One could answer that, if these persons had a lawyer, then that lawyer's advice would be this avenue is not one that offers a real prospect of success. With that knowledge, the (non-) SRLs would move forward in their lives. That might sometimes happen, but the rights wronged and emotional character of the Study Group Applications suggests otherwise. Lawyers can help people work inside the system. They cannot, however, assist those who reject the system.

None of this is intended as a criticism of who these SRLs are. They are people who bring their skills, knowledge, beliefs, experience, and emotions into a byzantine apparatus, that was not designed but that grew in a piecemeal manner, with parts grafted from all manner of foreign sources, occasionally shepherded by Parliament and the legislatures and now roughly chained down by the *Charter*. Of course SRLs have difficulty. Lawyers struggle with this conglomerate. Judges do too.

Given that, the sophisticated Supreme Court SRL appellants, though few in number, are all that much more remarkable. Most SRLs just do not fit in this system, but a small group conducted their appeals in a technically impressive manner. That could not guarantee success, but nonetheless, their achievement is noteworthy. We would benefit from knowing more about what made this group different. If there must be a way to make SRLs fit the system (rather than the system fit SRLs), then these few may be our guide to that.

This study of SRLs is a puzzle piece. It fits within a greater picture. The next task is to add more pieces to the SRL puzzle. Will we ultimately see a snake? A tree? A wall? A fan? A spear? A rope? Or an elephant? Only more data will answer that.

And that is where we need to go. If SRLs are so important and if the "access to justice crisis" (whatever that is) is real, then it is time to collect more data and build up the picture, piece by piece by piece. With good data, good policy is possible.