A LEGION OF MISSHAPEN COGS: PSEUDOLAW IN CANADIAN CRIMINAL PROCEEDINGS AND AMICUS REQUIREMENTS

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This article is the first substantive investigation of Organized Pseudolegal Commercial Argument (OPCA) or pseudolaw concepts in Canadian criminal litigation. The 575 reported Canadian court and tribunal decisions that involve pseudolaw in criminal proceedings provide insight into how pseudolaw manifests within criminal proceedings, revealing: the frequency and proportions of criminal pseudolaw litigation, typical pseudolaw "get-out-of-jail-free" strategies, and the types of charges laid against oft self-represented pseudolaw accused and offenders.

Next, this article examines judicial responses to pseudolaw in criminal proceedings following the 2023 Supreme Court of Canada R. v. Kahsai *judgment that guides when and how courts must assist a self-represented accused or offender, particularly by appointment of an amicus curiae. Interestingly,* R. v. Kahsai *does not address Canadian OPCA "institutional disruptor" litigants. To the degree* R. v. Kahsai *can be applied, a court-appointed amicus curiae appears mandatory once pseudolaw strategies have manifested and are identified by the Crown or court itself.*

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I. INTRODUCTION

Common-law tradition courts are usually described as "adversarial." The best avenue to truth and the correct interpretation and expression of rights is supposedly achieved by a kind of legal duel or joust. In this courtroom confrontation, each combatant presents evidence, witnesses, and argument. Then, at the climax of the battle, the hitherto silent sphinx speaks, and declares who has triumphed. The Supreme Court of Canada has concluded that this adversarial process is critical to procedurally fair litigation, and, factually, is the very best way to reach the truth.[1]

At first exposure this sounds like a fierce confrontation, particularly since the Supreme Court has stressed the principle of "zealous advocacy" to the point that lawyers, particularly criminal defence counsel, have almost carte blanche to do as they please, and are rarely subject to any external control.[2] For example, the Supreme Court has recently ruled that criminal defence *Canadian Charter of Rights and Freedoms*[3] applications can only be struck not simply where that application is "frivolous" — has no hope of success — but is "manifestly frivolous."[4] Then there is the essentially unstudied phenomenon of self-represented defendants,[5] persons accused of criminal offences who appear in court without a

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1 See e.g. *R v GDB*, 2000 SCC 22 at para 25, citing *R v Joanisse* (1995), 102 CCC (3d) 35 at 57 (ONCA); *Groia v Law Society of Upper Canada*, 2018 SCC 27 at para 72 [*Groia*]. Bluntly, this claim is a little strange, since there are many sophisticated and apparently successful and functional nations that have adopted the civil law tradition where a judge is the "inquisitor" and "owns" court proceedings: Peter J van Koppen & Steven D Penrod, "Adversarial or Inquisitorial: Comparing Systems" in Peter J van Koppen & Steven D Penrod, eds, *Adversarial versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems* (New York: Springer Science & Business Media, 2003) 1 at 3. Despite what Canadian appellate courts claim, nations governed by these judge-driven legal systems also sustain functioning developed-world societies.

2 *Groia*, *supra* note 1 at paras 70–76.

3 *Canadian Charter of Rights and Freedoms*, s 2(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

4 *R v Haevischer*, 2023 SCC 11 (Justice Martin at paras 67–69 appears to define "frivolous" as hopeless litigation, and that "manifestly" means "immediately obvious"). Application of the "frivolous" versus "manifestly frivolous" thresholds will plausibly be a substantial challenge for trial judges, and predictably further limit trial judges efficiently striking out unmeritorious criminal proceeding applications in a summary manner.

5 David Berg, "An Inconvenient Right: An Overview of the Self-Represented Accused's Autonomy" (2015) 62:4 Crim LQ 503 at 505–508 (distinguishes between "unrepresented accused," who want lawyer representation, and "self-represented accused," who make the positive choice to proceed without a lawyer). These groups will be considered together in the current article since, for pseudolaw self-represented accused and offenders, less distinguishes these two categories. The *choice* to employ pseudolaw means lawyer representation is very unlikely.

lawyer.[6] The Supreme Court in *R. v. Pintea*[7] has granted self-represented litigants (SRLs)[8] unique additional rights beyond those of people who appear in court with a lawyer, and imposed additional obligations on judges who conduct proceedings with one or more SRLs. What that means in a practical sense is, however, underdeveloped.

Despite all that, Canadian court proceedings more often than not are perhaps surprisingly congenial, co-operative affairs, rather than aggressive, contentious processes. Most criminal trials, for example, are closer to a kind of stage process or dance than an adversarial clash of bloody serrated teeth and razor claws. That characteristic is extremely fortunate, because many trial courts operate on the narrow edge of their limited resources,[9] and if criminal litigation lawyers did not also strive to achieve structural and procedural efficiencies, systemic dysfunction would only be still greater yet.

But there are exceptions where court participants, usually SRLs, are essentially out of control.[10] That is always a challenge for any trial judge, but when one such disruptive actor is the accused in a criminal proceeding, then management of court proceedings becomes unusually difficult, given:

(1) the essentially absolute right of criminal accused and offenders to conduct their defence however they see fit;[11]

(2) the obligations imposed on trial judges in *Pintea* to assist the privileged special status self-represented accused and offenders;[12] and

(3) the inherent jurisdiction and *Charter*-based obligation on judges to take steps that benefit or support criminal accused and offenders to ensure "fair" trial proceedings.[13]

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6 One of the limited sources available is from the Department of Justice Canada that concluded no disadvantage was identified when comparing SRL versus represented accused, but, importantly, notes the multiple variables in play means this lack of linkage is not conclusive: Robert G Hann et al, *Court Site Study of Adult Unrepresented Accused in the Provincial Criminal Courts* (Ottawa: Department of Justice Canada, 2002), online: [perma.cc/5RUM-75VV]. What is known is that SRLs involved in criminal litigation are a significant population in Canadian appeal courts: Donald J Netolitzky, "The Long Unwind: British Columbia Court of Appeal Litigation Activity 1995–2022" (2024) 57:2 UBC L Rev 435 at 481 [Netolitzky, "Unwind"].

7 2017 SCC 23 at para 4 [*Pintea*]. See also Alex Bogach, Jeremy Opolsky & Paul-Erik Veel, "The Supreme Court of Canada's From-the-Bench Decisions" (2022) 106 SCLR (2d) 251 at 279–81 (for the ambiguity and challenges for trial courts that have resulted from this decision).

8 "Self-represented litigant" is the usual term used in Canadian jurisprudence and legal commentary. "Litigant in person" is the equivalent term in the UK, Australia, New Zealand, and the Republic of Ireland. US sources refer to SRLs as "pro se" litigants.

9 Donald J Netolitzky, "Over a Shadowed Threshold: Supreme Court of British Columbia Litigation Activity 1992–2022" (2024) 62:1 Alta L Rev 177 at 192–94.

10 See e.g. *Unrau v National Dental Examining Board*, 2019 ABQB 283 [*Unrau*] (for an overview of "abusive" litigants).

11 *R v Bharwani*, 2023 ONCA 203 at para 157, endorsed in *R v Kahsai*, 2023 SCC 20 at para 58 [*Kahsai*].

12 *Pintea*, *supra* note 7. While *Pintea* was a civil matter, multiple subsequent appellate decisions have concluded that judicial guidelines and the expanded rights of SRLs set out in *Pintea* also apply in criminal law proceedings: see e.g. *R v Morillo*, 2018 ONCA 582; *R v Leno*, 2021 BCCA 200; *R v Woolsey*, 2021 BCCA 253; *R c SBC*, 2022 ONCA 171, leave to appeal to SCC refused, 40342 (11 May 2023).

13 *Kahsai*, *supra* note 11 at para 35, citing *Charter*, *supra* note 3, ss 7, 11(d).

The recent Supreme Court decision in *Kahsai* comments on how a criminal proceeding trial judge should navigate one particular channel in these challenging waters.

Specifically, Justice Karakatsanis evaluates in what circumstances a court appointed amicus curiae lawyer (an amicus) — a "friend of the court" — should be deployed to ensure a criminal accused has a fair trial. Briefly, the scenario under appeal was that Mr. Kahsai, a self-represented accused facing murder charges, adopted a litigation style that Justice Karakatsanis indicated was "determined to derail" his jury trial.[14] Examples of Kahsai's atypical activities included:

(1) feigning mental illness for ulterior motives or strategic purposes;[15]

(2) refusing to follow court instructions, and being belligerent and disorderly;[16] and

(3) instead of a conventional defence, Kahsai advanced conspiracy theories about the FBI, the United States Army, and mind control.[17]

Kahsai was often physically excluded from the courtroom pursuant to section 650(2) of the *Criminal Code*,[18] with his microphone muted to prevent interference and disruptions while Kahsai observed the proceeding remotely.[19]

The Supreme Court approached this scenario as implicating two issues: (1) whether appointment of an amicus should occur when an accused makes an ineffective defence; and (2) the limits of an amicus' actions, particularly while operating in an adversarial manner to protect the interests of an unrepresented accused. In conducting this analysis, the Supreme Court examines two different scenarios where an accused or offender is unable to provide an effective defence that thus subverts a fair trial: (1) deliberate disruptors like Kahsai whose intention is to disrupt criminal proceedings; versus (2) persons with mental health or capacity characteristics that do not render the accused or offender not criminally responsible, but still could mean the accused or offender conducts their defence in an ineffective manner so that a "meaningful defence" does not occur.[20]

However, the Supreme Court in *Kahsai*:

(1) sets a "no meaningful defence" threshold for when an amicus should be appointed to assist a criminal accused or offender, but the timing and critical factors that trigger trial judge intervention are somewhat ill-defined;

(2) frames its analysis primarily from the perspective of "fairness" to mental health or the limitations of SRLs, but not so much for deliberate disruptors; and

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[14] *Kahsai*, *ibid* at para 5.
[15] *Ibid* at para 11.
[16] *Ibid* at paras 14, 18.
[17] *Ibid* at paras 14, 21.
[18] RSC 1985, c C-46, s 650(2).
[19] *Kahsai*, *supra* note 11 at para 15.
[20] *Ibid* at para 57.

(3) includes no mention at all of persons who employ Organized Pseudolegal Commercial Argument (OPCA),[21] a category of unorthodox quasi-legal concepts, in a criminal defence context.

The omission of any mention by the Supreme Court of OPCA concepts, and their appearance in Canadian criminal court proceedings, is problematic. The Supreme Court appears to conclude that the usual scenario where a trial judge will have to consider taking on a more active role in the defence — directly or via an amicus proxy — is where the accused is being affected by a mental health issue or attribute that leads to poor or ineffective litigation choices. The "deliberate disruptor" scenario receives much less discussion, and that makes sense, in a way, because comparatively few criminal accused are like Kahsai: "ad hoc deliberate disruptors" who invent their in-court anti-litigation strategies on the fly.

That fact means *Kahsai* neglects that Canadian courts, and generally courts worldwide, now face a separate and culturally, politically, and operationally distinct category of "deliberate disruptors." Pseudolaw litigants apply an arsenal of standardized pre-developed and very widely distributed pseudolaw courtroom strategies, which have been repeatedly encountered in Canadian courts for decades. Commercial pseudolaw promoters or "gurus" sell these techniques to their customers or followers. These litigants could be called "*institutional* deliberate disruptors." Unsurprisingly, no specific quantitative data is apparently available to evaluate the volumes of mental health or capacity accused and offenders, versus ad hoc deliberate disruptors, versus OPCA institutional deliberate disruptors.[22]

Nevertheless, available data does establish that the last category is not insubstantial. A 2023 study identified 198 reported Canadian court decisions where pseudolaw was deployed as a "get-out-of-jail-free" strategy to defeat criminal processes and prosecutions where the offence(s) did not relate to income tax subjects.[23] Those reported decisions are only a small fraction of overall OPCA litigation in Canada.[24] The result is that in *Kahsai* the Supreme Court appears to have focused on one probably minor variation on criminal self-represented accused who mount an ineffective defence — self-represented accused affected by mental health issues — and has not responded to or provided guidance for a much more commonplace litigation scenario: OPCA institutional deliberate disruptors.

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21 *Meads v Meads*, 2012 ABQB 571 [*Meads*].

22 No such data was presented by any of the parties and interveners in *Kahsai*, *supra* note 11. Instead, the appearance and implications of deliberate disruptors was basically not examined at all, outside Kahsai himself. Three of the intervenors (Empowerment Council, Independent Criminal Defence Advocacy Society, and Canadian Civil Liberties Association) to varying degrees focused on accused or offenders with mental health or limitations factors.

23 Donald J Netolitzky, "The Dead Sleep Quiet: History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada — Part II" (2023) 60:3 Alta L Rev 795 at 812 [Netolitzky, "History #2"]. When one includes tax prosecution get-out-of-jail-free reported judgments, the proportion of criminal law reported judgments more than doubles: Donald J Netolitzky, "A Rebellion of Furious Paper: Pseudolaw as a Revolutionary Legal System" (paper delivered at the CEFIR symposium "Sovereign Citizens in Canada," Montreal, 3 May 2018) at 6 [unpublished], online: [perma.cc/Y37D-YFYB] [Netolitzky, "Rebellion"].

24 Netolitzky, "History #2," *ibid* at 807–11.

This article addresses two topics. First, this publication documents the appearance and characteristics of pseudolaw in Canadian criminal processes, and:

(1) defines and describes pseudolaw;

(2) uses a collection of 575 reported judgments to evaluate how pseudolaw is deployed in Canadian criminal proceedings by criminal accused and offenders; and

(3) examines commonly encountered features of criminal proceedings where the accused or offender is a pseudolaw adherent.

Second, this article investigates the implications of *Kahsai*, and the potential mismatch that results from that decision's instructions concerning when a criminal trial judge should intervene and engage an amicus to conduct a parallel proceeding with an uncooperative accused or offender, as well as the inevitably hopeless and misdirected duel of laws engaged in by pseudolaw actors, specifically:

(1) where (if anywhere) pseudolaw adherents fit in the *Kahsai* framework; and

(2) how *Kahsai*'s instructions direct court responses to the OPCA institutional deliberate disruptor category.

II. WHAT IS PSEUDOLAW?

To date, applications and patterns of pseudolaw in Canadian criminal litigation have not been the subject of a focused investigation. This article provides the first substantive overview of more than 30 years of relevant Canadian litigation and jurisprudence.

A. NOMENCLATURE

A preliminary nomenclature issue must be addressed prior to discussing the characteristics and nature of pseudolaw. Unfortunately, much academic and popular commentary references "sovereign citizen beliefs," and "sovereign citizen law," rather than "pseudolaw." In Canada, sometimes pseudolaw is globally identified as "Freeman-on-the-Land" or "Detaxer" concepts. These labels are misleading.

The sovereign citizen label is problematic because Sovereign Citizens are a discrete branch of the larger worldwide pseudolaw phenomenon. Sovereign Citizens are a community of right-wing, libertarian, and sometimes racist anti-authority activists operating almost exclusively in the US since the 1980s.[25] Sovereign Citizens believe that the US Federal Government's commonly accepted authority is a trick imposed by the US Fourteenth Amendment, which did not liberate enslaved people, but, instead, trapped all US residents in

[25] Donald J Netolitzky, "A Revolting Itch: Pseudolaw as a Social Adjuvant" (2021) 22:2 Politics, Religion & Ideology 164 at 164–66, 172 [Netolitzky, "Itch"]. For a survey of the expanding modern "American State Nationals" phenomenon, which strongly parallels historical Sovereign Citizen communities: Christine M Sarteschi, "Sovereign Citizens and QAnon: The Increasing Overlaps with a Focus on Child Protection Service (CPS) Cases" (2023) 6 Intl J Coercion Abuse & Manipulation.

a concealed contractual form of indenture.[26] Sovereign Citizens see themselves as the last true patriots, aiming to escape the shackles of the despotic US federal regime, and re-attain "state citizen" rights based on US foundational documents and the so-called "common law."[27]

So, obviously, Sovereign Citizen political beliefs and legal concepts are US-specific.[28] Unfortunately, the "Sovereign Citizen" or "SovCit" label is often applied as a generic term for all pseudolaw-using groups worldwide, though that can badly misrepresent and distort the concepts and objectives of non-Sovereign Citizen groups.[29] In Canada, pseudolaw ideas were often referenced in public and legal circles first as the Detaxer (2000s), then Freeman-on-the-Land (2010s) concepts. Again, these labels are problematic. While both these communities are now long dead,[30] pseudolaw continues to appear and reappear in Canadian courtrooms, because the same concepts and system of pseudolaw are used by many and diverse social, cultural, religious, and political populations.[31] Recently, Jan Rathje pointed out this same nomenclature issue also exists in Germany with misleading and overly broad use of the "Reichsbürger" label in that jurisdiction.[32]

Pseudolaw is one component of a duality.[33] Pseudolaw is a system of non-legal rules and principles embedded within a conspiratorial matrix that, operationally, is a separate dissident legal system. Pseudolaw's rules and narrative promise extraordinary law-based authority and immunity. Pseudolaw incubated in the US Sovereign Citizen movement up to the 2000s, then emerged and spread into many jurisdictions, worldwide.[34] Pseudolaw, a "memetic virus," then pairs in a parasitic manner with typically anti-authority marginal host populations.[35] So pseudolaw itself is politically agnostic, but predictably is adopted and applied by populations that seek to rebalance authority and power away from institutions and government, and toward individuals in a "rules-based" rather than violent manner.

In this article the terms "pseudolaw" and "OPCA" are used to identify this set of stereotypic ideas. Generally, persons who adopt pseudolaw are "pseudolaw adherents." When this article uses group or community names such as Sovereign Citizen, Freeman-on-the-

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[26] Reviewed in Chuck Erickson et al, *The Anti-Government Movement Guidebook* (Williamsburg, Va: National Center for State Courts, 1999); Susan P Koniak, "When Law Risks Madness" (1996) 8:1 Cardozo Stud L & Lit 65; Francis X Sullivan, "The 'Usurping Octopus of Jurisdictional/Authority': The Legal Theories of the Sovereign Citizen Movement" [1999] Wis L Rev 785; Angela P Harris, "Vultures in Eagles' Clothing: Conspiracy and Racial Fantasy in Populist Legal Thought" (2005) 10:2 Mich J Race & L 269.

[27] Netolitzky, "History #2," *supra* note 23 at 799. "Common law" is used in an unorthodox manner in pseudolaw communities to indicate a frozen historic form of law, or a variation on "natural law" (*Meads*, *supra* note 21 at paras 326–30).

[28] With limited exceptions, see e.g. *Meads*, *ibid* at paras 176–82.

[29] Netolitzky, "Itch," *supra* note 25; Netolitzky, "History #2," *supra* note 23 at 799–801.

[30] Netolitzky, "History #2," *supra* note 23.

[31] Donald J Netolitzky, "New Hosts for an Old Disease: History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada — Part III" (2023) 60:4 Alta L Rev 971 [Netolitzky, "History #3"].

[32] Jan Rathje, *From the Crisis to the Reich: Post-Pandemic Developments of "Reichsbürger" and Sovereignists in Germany* (Berlin: Center for Monitoring, Analysis and Strategy, 2023) at 10–12 (Rathje proposes a broader umbrella label: "conspiracy-ideological sovereignism").

[33] Netolitzky, "Itch," *supra* note 25.

[34] Donald J Netolitzky, "A Pathogen Astride the Minds of Men: The Epidemiological History of Pseudolaw" (paper delivered at the CEFIR symposium "Sovereign Citizens in Canada," Montreal, 3 May 2018) [unpublished], online: [perma.cc/UU86-QMT9] [Netolitzky, "Pathogen"].

[35] Netolitzky, "Itch," *supra* note 25.

Land, "Moor," or Detaxer,[36] that indicates a specific subtype of pseudolaw adherent, members of a group that are likely socially and politically aligned, and that sometimes have a formal organization. However, these subtypes are of limited relevance to understanding how pseudolaw is applied in Canadian criminal court proceedings because these diverse groups are using essentially the same toolset. Those mechanisms and supposed "rules of law" that pseudolaw adherents expect will operate to "get out of jail free" are the central focus for this investigation.

B. PSEUDOLAW IS A LEGAL SYSTEM

First, pseudolaw is "law," a system of rules and principles to structure interpersonal and state interactions. Though at first confusing to denizens of "normal" legal systems, pseudolaw is, functionally, a separate and unique legal system,[37] though one heavily grounded on a recognizable, though often archaic, foundation of United Kingdom or US-style common law.[38] Recently, Harry Hobbs, Stephen Young, and Joe McIntyre identified three key characteristics of pseudolaw: (1) co-opting the language and form of legal argument and reasoning; (2) advancing pseudolaw-specific variant "contra-narratives" drawn from an "alternative legal universe"; and (3) purporting to be the true law, while "conventional" law is wrong, defective, or inferior.[39]

Pseudolaw is a matrix of supposed legal principles enmeshed with a conspiratorial narrative that explains why individuals are subject to a false and misrepresented system of legal institutions and law, a kind of "tyranny-by-law."[40] In that sense, pseudolaw always has a story, though the exact form varies between individual pseudolaw populations and movements.[41] What is consistent is the notion that "real law" was somehow hidden away by bad actors. However, with special concealed knowledge, the superficial false law can be rejected, which transfers authority toward individuals and away from governments and institutions.[42] Pseudolaw promises to empower the marginal and disaffected. Pseudolaw exists in a "duel of laws"[43] between a concealed or masked "good law" and the visible but inferior and exploitative "bad law."

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[36] Netolitzky, "Pathogen," *supra* note 34; Netolitzky, "History #2," *supra* note 23 at 800–801; Donald J Netolitzky, "The Perfect Weed for this Spoiling Soil: The Ideology, Orientation, Organization, Cohesion, Social Control, and Deleterious Effects of Pseudolaw Social Constructs" (2023) 6 Intl J Coercion Abuse & Manipulation at I(D) [Netolitzky, "Weed"]; Christine M Sarteschi, "The Law Doesn't Apply to Me: The Spread of the Sovereign Citizen Movement Around the World" (19 April 2022), online (blog): [perma.cc/2UZ3-TA49] (for an overview of pseudolaw adherent populations, worldwide).

[37] Koniak, *supra* note 26; Netolitzky, "Rebellion," *supra* note 23 at 3–5; Netolitzky, "Itch," *supra* note 25 at 183–86.

[38] Netolitzky, "Rebellion," *ibid* at 7–8.

[39] Harry Hobbs, Stephen Young & Joe McIntyre, "The Internationalisation of Pseudolaw: The Growth of Sovereign Citizen Arguments in Australia and Aotearoa New Zealand" (2024) 47:1 UNSWLJ 309 at 313–15.

[40] Netolitzky, "Itch," *supra* note 25.

[41] Netolitzky, "Weed," *supra* note 36 at I(B).

[42] *Ibid* at I(B)–(C); Netolitzky, "Itch," *supra* note 25 at 170.

[43] Netolitzky, "History #3," *supra* note 31 at 1012.

Pseudolaw's core rules and concepts[44] are highly conserved. That means, for most purposes, pseudolaw purports to function in the same way in a wide and diverse range of specific contexts and purposes, ranging from depowering purportedly despotic governments, establishing communities outside of state authority, and "opting out" of and ignoring specific legislation, such as criminal prohibitions and income tax obligations.[45]

Pseudolaw and its concepts are uniformly rejected by courts worldwide.[46] However, pseudolaw's essentially total lack of success has not led to pseudolaw's extinction. Rather, since pseudolaw operates as a memetic virus — a "disease of ideas" — the fact that pseudolaw does not work is secondary to pseudolaw's capacity to attract new adherents.[47] Thus, pseudolaw persists and expands *by spreading*, *not by succeeding*.

The likelihood that pseudolaw will cease to be a factor in Canadian legal proceedings is essentially zero. While the probability that pseudolaw will expand more broadly into Canadian society is also very low,[48] pseudolaw is now resident in the "cultic milieu," an international intellectual trash heap collection of marginal and rejected ideas, as the law of the counterculture and resisters.[49] Given that pseudolaw now has this "informational safe harbour" outside of possible fact checking and correction processes, these toxic ideas will, in the future, continually spread into as of yet uninfected potential host populations.

Several core pseudolaw concepts[50] are particularly relevant for the purposes of this article. First, all pseudolaw schemes provide some explanation for why government authority and legislation are not binding, and, instead, state authority is in some sense defective or limited. In criminal proceedings, this usually manifests in two different ways: (1) a claim that no jurisdiction exists to try the accused or offender, or enforce criminal prohibitions; and (2)

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44 Surveyed in *Meads*, *supra* note 21; Caesar Kalinowski IV, "A Legal Response to the Sovereign Citizen Movement" (2019) 80:2 Mont L Rev 153; Donald J Netolitzky, "After the Hammer: Six Years of *Meads v. Meads*" (2019) 56:4 Alta L Rev 1167 at 1182–85 [Netolitzky, "Hammer"]; Hobbs, Young & McIntyre, *supra* note 39.

45 Netolitzky, "Itch," *supra* note 25 at 171–78.

46 Reviewed in Colin McRoberts, "Tinfoil Hats and Powdered Wigs: Thoughts on Pseudolaw" (2019) 58:3 Washburn L J 637; Kalinowski, *supra* note 44; Harris, *supra* note 26; Koniak, *supra* note 26; Sullivan, *supra* note 26; Netolitzky, "Rebellion," *supra* note 23; Netolitzky, "Itch," *supra* note 25; Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments as Magic and Ceremony" (2018) 55:4 Alta L Rev 1045 [Netolitzky, "Magic"]; Rathje, *supra* note 32; *Meads*, *supra* note 21; Florian Buchmayr, "Denying the Geopolitical Reality: The Case of the German 'Reich Citizens'," in Andreas Önnerfors & André Krouwel, eds, *Europe: Continent of Conspiracies: Conspiracy Theories in and About Europe* (London, UK: Routledge, 2021) 97; Robert R Sudy, "Freeman Delusion: The Organised Pseudolegal Commercial Argument in Australia," online: [perma.cc/66D4-XXL3]; Hobbs, Young & McIntyre, *supra* note 39; Stephen Young, Harry Hobbs & Joe McIntyre, "The Growth of Pseudolaw and Sovereign Citizens in Aotearoa New Zealand Courts" [2024] 47:1 UNSWLJ 309; Mark Edward DeForrest & James M Vaché, "Truth or Consequences Part Two: More Jurisprudential Errors of the Militant Far-Right" (1999) 35:3 Gonzaga L Rev 319; James M Vaché & Mark Edward DeForrest, "Truth or Consequences: Jurisprudential Errors of the Militant Far-Right" (1996) 32:3 Gonzaga L Rev 593.

47 Netolitzky, "Itch," *ibid* at 166–68, 187–88.

48 Netolitzky, "History #3," *supra* note 31 at 1009–11; Netolitzky, "Itch," *supra* note 25 at 180–83, 188. Interestingly, that intolerance of ideology-based anti-state belief even extends to Canadian prison inmates (Sandra M Bucerius, William Schultz & Kevin D Haggarty, "'That Shit Doesn't Fly': Subcultural Constraints on Prison Radicalization" (2023) 61:1 Criminology 157).

49 Netolitzky, "Itch," *ibid* at 185–86; Netolitzky, "History #3," *ibid* at 1005–06.

50 Netolitzky, "Rebellion," *supra* note 23; Netolitzky, "Itch," *ibid* at 168–70.

a claim that the application of criminal law is voluntary, and can be rejected by an accused or offender in the absence of a contract with the state, Crown prosecutors, or the court.

A related pseudolaw argument is that the state has no authority to pursue criminal litigation unless some person is injured during the offence. This "no harm" principle was explicitly rejected by the Supreme Court (in a non-pseudolaw context) in *R. v. Malmo-Levine*.[51] However, pseudolaw adherents argue that this purported rule defeats regulatory limits, for example on drug production and trafficking, weapons prohibitions, and operating motor vehicles while impaired.

Another nearly universal pseudolaw principle is that silence means consent or agreement.[52] A common application of this rule is a "foisted unilateral agreement," a document that purportedly has a binding effect if not rebutted or responded to in a particular way. For example, a pseudolaw adherent who seeks to evade a foreclosure may send a bank a foisted unilateral agreement that requires the bank to provide proof within 30 days that the bank holds physical money, or even gold, as a basis for a loan. The foisted unilateral agreement states that, without that proof, the bank agrees by its silence or non-compliant response that there was no "lawful" money loaned, and the foreclosure and mortgage are therefore terminated. This same general strategy also emerges in criminal proceedings, where a foisted unilateral agreement imposes onerous or impossible demands on a court or the Crown, then, when not satisfied, purports to end the prosecution as a get-out-of-jail-free mechanism.

While other core pseudolaw motifs are recognizable as "law," the final relevant component, "Strawman Theory,"[53] is completely novel. Strawman Theory claims that what is usually thought of as a single entity instead has two separable halves: a "flesh and blood" human being, and an immaterial legal entity, often called "the Strawman," the "legal fiction," "the person," or a corporation or estate.[54] According to Strawman Theory, human beings are not born with a Strawman, but, rather, the Strawman is created by birth documentation as a concealed trickster contract and then attached to the human being as a kind of baleful legal doppelganger.[55] The Strawman is identified by a name in all capital letters, for example "FIRSTNAME LASTNAME," while the proper identifier for a human is a name in mixed case or all lower case, or a name with an atypical structure or punctuation, such as ":Firstname-Lastname:" or "Firstname of the Lastname Family."[56]

According to Strawman Theory, governments have no inherent authority over human beings but instead chain their authority via contracts from the government to the Strawman, then through the Strawman to the flesh and blood individual.[57] To escape state authority and

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51 2003 SCC 74.

52 *Meads*, *supra* note 21 at paras 447–528; Netolitzky, "Rebellion," *supra* note 23 at 11–13.

53 Reviewed in Kalinowski, *supra* note 44 at 158–64; *Meads*, *supra* note 21 at paras 417–46; Netolitzky, "Magic," *supra* note 46 at 1069–78; *Pomerleau v Canada (Revenue Agency)*, 2017 ABQB 123 at paras 67–96 [*Pomerleau*]; Hobbs, Young & McIntyre, *supra* note 39 at 325–28.

54 Kalinowski, *ibid*; *Meads*, *ibid*; Netolitzky, "Magic," *ibid*; *Pomerleau*, *ibid*; Hobbs, Young & McIntyre, *ibid*.

55 Kalinowski, *ibid*; Netolitzky, "Magic," *ibid*; *Pomerleau*, *ibid*; Hobbs, Young & McIntyre, *ibid*.

56 Kalinowski, *ibid*; *Meads*, *supra* note 21 at 418; *Pomerleau*, *ibid*; Hobbs, Young & McIntyre, *ibid*.

57 Kalinowski, *ibid* at 159–60; Netolitzky, "Magic," *supra* note 46 at 1069–70; Hobbs, Young & McIntyre, *ibid* at 325.

law, one needs to sever the contract-based Strawman to human linkage or denounce and reject the Strawman's obligations as not one's own.

There is no "real world" legal antecedent or parallel to the Strawman. Any superficial resemblance to personal corporations is misleading, since the Strawman does not "protect" its human, but instead purportedly *causes* legal liability. Strawman Theory is purely a pseudolaw construct. Strawman Theory is also second-order pseudolaw, since Strawman Theory is constructed atop false claims concerning government, state authority, and contract law. One aspect that makes Strawman Theory particularly strange is that if Strawman Theory truly worked in the common law tradition and allowed one to shed their "legal personality," then that step would not result in extraordinary freedom, but, instead, the human would be property: a slave.[58] Fortunately, this rejection of legal status is not possible under modern law.

Strawman Theory is practically universal in pseudolaw communities and is probably accurately characterized as the defining concept that unifies pseudolaw worldwide.[59] However, the basis for Strawman Theory is essentially non-existent. Strawman Theory's foundation is little more than: (1) an observation that certain business, government, court, and official documents use names in all capital letters; and (2) an ungrounded belief that a name in all capital letters has some deeper significance. While any distinction based on name letter case is universally rejected by conventional authorities,[60] pseudolaw actors have constructed what is essentially a legal exorcism ritual on this illusory foundation.[61]

In Canada, pseudolaw and groups that use these not-law theories are neither unknown nor obscure. Canadian jurisprudence that responds to pseudolaw is second to none,[62] and this topic has been the subject of substantial academic commentary and analysis. When compared to other jurisdictions that have a high incidence of pseudolaw, probably only Germany has a comparable collection of public information and analysis that characterizes its local pseudolaw ecosystem.[63] Academic commentary is only starting in New Zealand and Australia.[64] In the US, jurisprudence only rarely tackles pseudolaw on a substantive legal basis,[65] but the extensive volume and duration of pseudolaw activities in that jurisdiction mean practically all local pseudolaw motifs have been identified and in some manner rejected, often by appellate courts.

Thus, a broad understanding and appreciation of pseudolaw in Canada is "knowable" to lawyers and appellate courts. Despite that, pseudolaw and its users are entirely absent from

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[58] Kalinowski, *ibid* at 158–64; *Pomerleau*, *ibid* at paras 88–95; Glen Cash, "A Kind of Magic: the Origins and Culture of 'Pseudolaw'" (paper delivered at the Queensland Magistrates' State Conference, 26 May 2022) [2022] Queensland Judicial Scholarship 16 at 12–13.

[59] Netolitzky, "Itch," *supra* note 25.

[60] *Meads*, *supra* note 21 at paras 323–24; Hobbs, Young & McIntyre, *supra* note 39 at 325–28; Kalinowski, *supra* note 44 at 175–76.

[61] Netolitzky, "Magic," *supra* note 46 at 1075–78.

[62] Canadian pseudolaw jurisprudence is broadly cited internationally: see e.g. Netolitzky, "Hammer," *supra* note 44 at 1186–87.

[63] Rathje, *supra* note 32; Buchmayr, *supra* note 46 (English-language examples of the extensive and detailed investigations of pseudolaw populations and concepts in Germany and Austria).

[64] See e.g. Hobbs, Young & McIntyre, *supra* note 39; Young, Hobbs & McIntrye, *supra* note 46. The most expansive and detailed pseudolaw reference resource for these jurisdictions is the impressive "Freeman Delusion" archive operated by former pseudolaw adherent Robert Study (*supra* note 46).

[65] McRoberts, *supra* note 46 at 664–69. At this point, Kalinowski, *supra* note 44, appears to be the most broadly referenced US resource.

Kahsai. Almost the same is true for the materials submitted to the Supreme Court for that appeal. None of the interveners make any apparent reference to OPCA litigation and litigants. The only mention of pseudolaw is in the Respondent Alberta's written argument, where OPCA arguments that reject jurisdiction are identified as an example of an "unwise" litigation choice that self-represented accused and offenders are permitted to advance as part of their full answer and defence.[66] As will now become apparent, there is no obvious explanation for this omission.

III. PSEUDOLAW IN CANADIAN CRIMINAL PROCEEDINGS

That pseudolaw is employed in criminal law contexts in Canada is known,[67] but at exactly what frequency is unclear. Limited data sources generally impede our understanding of the incidence and kinds of pseudolaw litigation. Canada, in this sense, is different from the US, where open electronic publication of court docket records and documents via services such as Public Access to Court Electronic Records [68] has facilitated more transparent and reliable quantification of pseudolaw phenomena.[69] That is not to say that US litigation activity and type resources are entirely complete and reliable,[70] just that US data is much more accessible than in Canada.

At present, reported court and tribunal written decisions are the best available resource to evaluate attempts to engage pseudolaw in Canada. 1,463 Canadian court and tribunal decisions that involve or relate to pseudolaw proceedings have been identified.[71] Figure 1 illustrates the year-to-year distribution of these identified decisions between 1995 and 2023:

66 *Kahsai*, *supra* note 11 (Factum of the Respondent at para 66) [*Kahsai*, Alberta Factum].

67 See e.g. Netolitzky, "History #2," *supra* note 23 at 812.

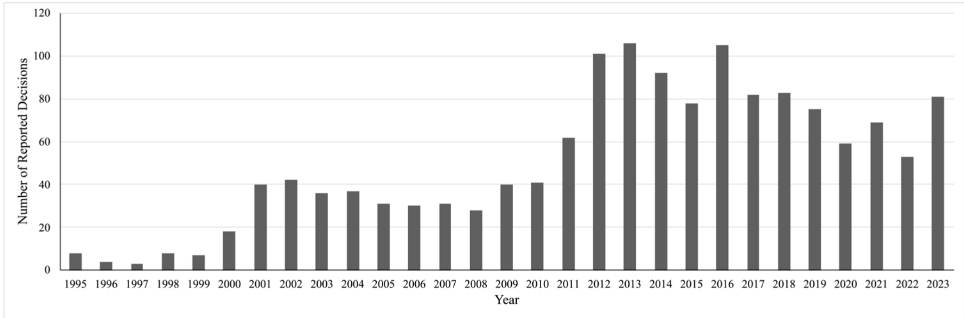
68 Administrative Office of the United States Courts, "Public Access to Court Electronic Records," online: [perma.cc/JN9G-T4WA].

69 See e.g. Brian S Slater, *Sovereign Citizen Movement: An Empirical Study on the Rise in Activity, Explanations of Growth, and Policy Prescriptions* (MA Thesis, Naval Postgraduate School, 2016) [unpublished], online (pdf): [perma.cc/J9F6-7QC2].

70 See e.g. Merritt E McAlister, "Bottom Rung Appeals" (2023) 91:4 Fordham L Rev 1355.

71 This dataset ends 31 December 2023. For the methodology to identify these reported decisions and the limitations of this dataset: Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments in Canadian Inter-Partner Family Law Court Disputes" (2017) 54:4 Alta L Rev 955 at 964–65 [Netolitzky, "Family"]; Donald J Netolitzky, "Lawyers and Court Representation of Organized Pseudolegal Commercial Argument [OPCA] Litigants in Canada" (2018) 51:2 UBC L Rev 419 at 429–30 [Netolitzky, "Lawyers"]; Netolitzky, "History #2," *supra* note 23 at 809–10.

FIGURE 1:
REPORTED CANADIAN PSEUDOLAW COURT AND TRIBUNAL DECISIONS PER YEAR 1995–2023



Reported Canadian court and tribunal decisions issued between 1995 and 2023 where litigation related to the decision involved pseudolaw strategies, pseudolaw motifs, or is known to have a pseudolaw aspect or character. N = 1,453.

The most common dispute subjects in Canadian pseudolaw-related reported decisions are summarized in Table 1:

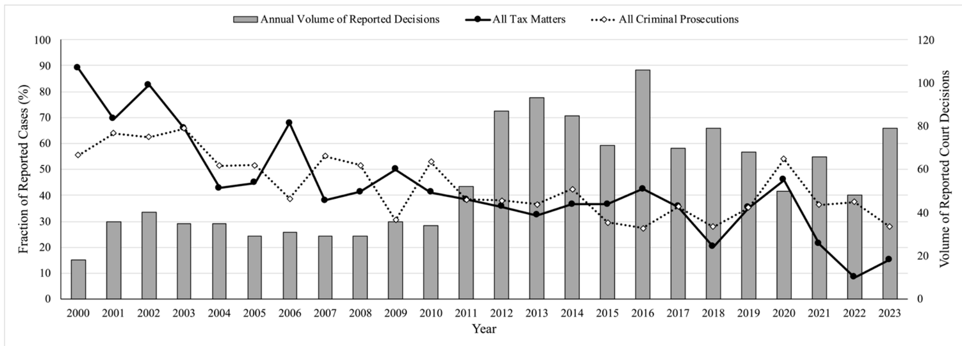
TABLE 1:
MOST FREQUENT APPLICATIONS OF PSEUDOLAW CONCEPTS IN REPORTED CANADIAN COURT DECISIONS

Litigation subject	n	Frequency in reported pseudolaw court decisions
Criminal prosecution of tax-related offences	289	21.5%
Criminal prosecution of non-tax related offences	242	18%
Pseudolaw-based attacks	241	17.9%
Non-criminal tax-related litigation	236	17.5%
Debt elimination / "money for nothing"	169	12.6%
Family law subject disputes	93	6.9%
Other	77	5.7%

Frequency of dispute categories in reported Canadian court decisions that involved pseudolaw strategies, pseudolaw motifs, or are known to have a pseudolaw aspect or character. N = 1,347.

Merging the two criminal proceeding categories shows that nearly 40 percent of identified Canadian pseudolaw court decisions occurred in a criminal litigation context. Similarly, tax-related non-criminal litigation — largely Tax Court of Canada proceedings and appeals — is also a major fraction of Canadian pseudolaw proceedings. Figure 2 tracks the proportions of criminal and tax-related pseudolaw judgments from 2000 to 2023:

FIGURE 2:
PROPORTION OF INCOME TAX AND CRIMINAL PROSECUTION REPORTED COURT AND TRIBUNAL DECISIONS PER YEAR, 2000–2023



Annual proportions of reported pseudolaw court and tribunal decisions that result from income and other tax litigation (n = 502), and criminal prosecutions (n = 521). The left Y-axis and lines indicate the proportion of "All Tax Matters" and "All Criminal Prosecutions." These two categories overlap, in that criminal prosecutions of tax offences are included in both the "All Tax Matters" and "All Criminal Prosecutions" categories. The right Y-axis and vertical bars indicate the annual number of reported pseudolaw court and tribunal decisions in that year (N = 1,412).

The decrease in tax-related matters is the result of the extinction of the Detaxer pseudolaw movement, the sole focus of which was pseudolaw schemes that purportedly negated income tax and, occasionally, GST obligations.[72] Between 2000 and 2010 the Detaxers were the predominate pseudolaw movement in Canada. The Detaxers' final variations collapsed *circa* 2008 to 2012, but criminal proceedings originating from that period have continued as much as a decade later, and a substantial but remnant proportion of Detaxer Tax Court of Canada appeal litigation continues to the present.[73]

Subsequent pseudolaw movements in Canada have deployed defensive get-out-of-jail-free strategies to purportedly ignore or defeat Canadian legal prohibitions. With the Freemen-on-the-Land (2000–2015) a major focus was drug-related criminal activities.[74]

Examination of known pseudolaw-related court decisions identified 575 reported court and tribunal decisions that include a criminal law aspect: these are the Pseudolaw Criminal Decision Dataset (PCDD). PCDD are proceedings:

(1) where the accused or offender employed pseudolaw in some manner during trial or appeal criminal proceedings, usually as a purported get-out-of-jail-free strategy;

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[72] Netolitzky, "History #2," *ibid* at 814–17.

[73] See e.g. *Urbanowski Estate v The King*, 2024 TCC 6 (discusses how the Tax Court of Canada groups litigation and conducts test case appeals to address the large volume of legally and factually similar proceedings encountered by that Court).

[74] Netolitzky, "History #2," *supra* note 23 at 818–20.

(2) that were intended to pre-empt or subvert criminal processes, for example a pseudolaw-based court action that purported to terminate criminal proceedings;[75] or

(3) that were attempts to initiate criminal proceedings on a pseudolaw basis under the *Criminal Code* sections 504 and 507.1private information processes,[76] and judicial reviews and appeals of the rejection of those private informations.

The PCDD decisions were then further evaluated to identify:

(1) which decisions resulted from litigation where the pseudolaw litigant(s) were:

(a) represented by counsel;

(b) self-represented; or

(c) represented by a non-lawyer;[77]

(2) the underlying criminal offence charge(s) that led to the proceeding; and

(3) which stereotypic pseudolaw motifs were deployed in the proceeding, if any.

Of the 575 PCDD reported judgments, 76.2 percent (n = 438) involved either a self-represented accused or offender or a non-lawyer representative. Instances where a lawyer represented the accused or offender were much less common (n = 137).

For the purposes of this investigation, seven stereotypic pseudolaw motifs were tracked:

- *Strawman Theory*: the pseudolaw accused or offender purported to have two aspects, one flesh and blood and the other some kind of non-corporeal legal entity Strawman, with characteristic and stereotypic name structures. The pseudolaw accused or offender usually argued they were not the actual party to the criminal litigation. That, instead, was their Strawman.

- *Rejected jurisdiction or no jurisdiction*: the pseudolaw accused or offender denied that either or both the Court and lawmakers had jurisdiction to impose criminal limits and sanctions. These two categories were grouped because, in certain instances, identifying what kind of defective jurisdiction was alleged could not be determined.

- *Penalty paid*: the pseudolaw accused or offender claimed to have terminated or "settled" a court proceeding by a payment. These claims typically frame the criminal proceeding as a kind of contract. The purported payments were most often

[75] See e.g. *Anderson v Ossowski*, 2021 ABQB 382, action struck 2021 ABQB 428, elevated costs imposed 2021 ABQB 456 [*Ossowski*].
[76] *Criminal Code*, *supra* note 18.
[77] No paralegals or other formally recognized or certified non-lawyers were identified.

sourced from an imaginary "birth bond" bank, estate, or trust account linked to or owned by the Strawman, so no actual penalty payment occurred.

- *Imposed fines or counterattack*: the pseudolaw accused or offender took steps to attack Crown prosecutors, other government actors, law enforcement, witnesses, or court personnel and decision makers. Most instances of this category are either: (1) attempts to enforce "fee schedules" that unilaterally impose fines on targets; (2) unorthodox proceedings intended to pre-empt or negate criminal prosecutions and that attack opposing governments, courts, and lawyers; or (3) groundless criminal private informations.

- *Law is contract or voluntary*: the pseudolaw accused or offender claimed that compliance with criminal prohibitions is voluntary or only required where a state-to-pseudolaw adherent contract exists to authorize the criminal prohibition by "joinder."

- *No injured party*: the pseudolaw accused or offender demanded the Crown prosecutors identify a "flesh and blood" individual who was injured by the allegedly illegal conduct. This argument is stereotypically used to reject regulatory offences and limits such as firearms regulations and prohibitions, driving while intoxicated where no injury occurred, and licencing and safety legislation.

- *Absconded or did not attend*: the pseudolaw accused or offender did not attend criminal proceedings or absconded from criminal proceedings, usually after rejecting court or legislative jurisdiction.

76.5 percent (n = 335) of PCDD decisions where no defence lawyer was involved included one or more of these seven pseudolaw motifs. The frequency of pseudolaw criminal law motifs for represented pseudolaw accused and offenders is threefold lower (25.5 percent, n = 35).

Table 2 lists the frequency with which pseudolaw accused or offenders employed these seven pseudolaw strategies, separating litigants represented and not represented by defence counsel:

**TABLE 2:
FREQUENCY OF STEREOTYPIC CRIMINAL MATTER PSEUDOLAW STRATEGIES AND RESPONSES IN PCDD DECISIONS**

Pseudolaw strategy	All proceedings			No lawyer			Lawyer		
	n	% all	% pseudolaw	n	% all	% pseudolaw	n	% all	% pseudolaw
Strawman Theory	211	36.7	57	191	43.6	57	20	14.6	57.1
Rejected/no jurisdiction	315	54.8	85.1	283	64.6	84.5	32	23.4	91.4
Penalties paid	43	7.5	11.6	39	8.9	11.6	4	2.9	11.4
Fines/counterattack	56	9.7	15.1	51	11.6	15.2	5	3.7	14.3
Law is voluntary/contract	68	11.8	18.4	64	14.6	19.1	4	2.9	11.4
No injured party	14	2.4	3.8	14	3.2	4.2	0	0	0
Absconded	34	5.9	9.2	29	6.7	8.7	5	3.7	14.3

Frequency that seven identified pseudolaw motifs appear in PCDD decisions. "No lawyer" includes decisions where the pseudolaw accused or offender either self-represented or was represented by a non-lawyer. "% all" is the frequency that a pseudolaw motif was found in all reported decisions in the category: "All proceedings" N = 575; "No lawyer" N = 438; "Lawyer" N = 137. "% pseudolaw" is the frequency that a pseudolaw motif was found in reported decisions where one or more pseudolaw motifs were identified: "All proceedings" N = 370; "No lawyer" N = 335; "Lawyer" N = 35.

The frequencies in Table 2 are almost certainly an underestimation because judgments may not include all pseudolaw strategies deployed by a litigant or describe a strategy in an identifiable or classifiable manner. For example, a judgment may indicate that an accused or offender submitted many irregular documents, and acted in an atypical manner in court, but provide little else. However, if a judgment reports the accused or offender demanded use of an unusual name structure, that almost certainly implicates Strawman Theory, but that may have been only one of many pseudolaw get-out-of-jail-free schemes deployed by the accused or offender.

The two most common pseudolaw motifs are: (1) rejection or denial of jurisdiction; and (2) Strawman Theory. Interestingly, the frequency profiles of pseudolaw strategies by represented and unrepresented criminal accused or offenders is practically identical.

In Canada, there was a period where some pseudolaw arguments initially existed in a "Grey Zone," where pseudolaw arguments had been deployed in court but not yet explicitly and conclusively rejected by Canadian jurisprudence.[78] These were, at best, improbable arguments that, for example, related to income tax return formalities, the *mens rea* of tax evasion, the *Magna Carta* having supraconstitutional status, whether Canada had ceased to exist in 1931 as a consequence of the *Statute of Westminster*,[79] and early variations on Strawman Theory. Grey Zone period arguments in the PCDD run from 1979 to 2011 and are nearly two-thirds (65.7 percent, n = 23) of the PCDD where both: (1) a lawyer represented the pseudolaw accused or offender; and (2) pseudolaw concepts were deployed. Over half of these Grey Zone representation scenarios (52.2 percent, n = 12) involve a single lawyer: criminal defence lawyer Douglas Hewson Christie Jr. Though Christie is most known for his

[78] Netolitzky, "Lawyers," *supra* note 71 at 448–59 (for a review of the Grey Zone period and its associated litigation and pseudolaw concepts).

[79] (*UK*), 22 Geo V, c 4. Though this claim may seem bizarre, this theory was invented and advanced by elected members of the House of Commons in the 1930s to 1940s: Donald J Netolitzky, "The History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada" (2016) 53:3 Alta L Rev 609 at 615–16 [Netolitzky, "History #1"]; Netolitzky, "History #3," *supra* note 31 at 976–77.

representation of persons who engaged in neo-Nazi, racist, and anti-Semitic speech and activities,[80] Christie was also a critical player in the Canadian pseudolaw ecosystem prior to his death in 2013.[81]

Post-Grey Zone instances where a lawyer was involved in a criminal proceeding and pseudolaw emerged are usually scenarios where the accused or offender and the lawyer made separate arguments,[82] or the pseudolaw scheme was a variation of a rejected Grey Zone concept. The six post-Grey Zone period PCDD judgments where a lawyer fully embraced and advanced identified and rejected abusive pseudolaw were argued by two Ontario defence counsel, Glenn Patrick Bogue (also known as Spirit Warrior) and Antonio "Tony" Franco De Bartolo, examples of the uncommon "rogue lawyer" category.[83] Both of these lawyers had their Law Society of Ontario accreditation suspended after Bogue[84] and De Bartolo[85] engaged in pseudolaw arguments.

Review of the PCDD decisions usually (98.4 percent, n = 566) permitted identification of criminal charge(s) advanced against the pseudolaw accused or offender. Table 3 reports the criminal charges pursued in PCDD decisions to varying degrees of detail:

80 See e.g. *R v Finta*, 1994 CanLII 129 (SCC); *R v Keegstra*, 1990 CanLII 24 (SCC); *R v Keegstra*, 1995 CanLII 91 (SCC); *Canada (Human Rights Commission) v Canadian Liberty Net*, 1998 CanLII 818 (SCC); *R v Zundel*, 1992 CanLII 75 (SCC).
81 Netolitzky, "Lawyers," *supra* note 71 at 428, 452–59.
82 See e.g. *R v Seagull*, 2013 BCSC 1811 at paras 4–8, aff'd 2015 BCCA 164.
83 Netolitzky, "Lawyers," *supra* note 71 at 460–85.
84 *Ibid* at 472–82.
85 De Bartolo was sharply critiqued in *R v Ciciarelli*, 2019 ONSC 6719 at paras 8–10 for arguing known and rejected pseudolaw motifs. However, De Bartolo was not suspended for his abusive deployment of pseudolaw arguments, but instead in October 2023 in response to alleged fraud, theft, misuse of funds, and money laundering: *Law Society of Ontario v De Bartolo*, 2023 ONLSTH 134.

TABLE 3:
PROPORTION OF OFFENCES CHARGED IN PSEUDOLAW CRIMINAL REPORTED COURT AND TRIBUNAL JUDGMENTS

Offence Charged			n	%
Court and Dispute Processes			**12**	**1.64**
	Breach probation		2	0.27
	Contempt		6	0.82
	Failure to appear		2	0.27
	Fitness for trial		2	0.27
Drug Offences			**43**	**5.87**
	Production		2	0.27
	Smuggling		10	1.37
		Cigarettes	1	0.14
		Cocaine	6	0.82
		Methamphetamine	2	0.27
	Trafficking		34	4.64
Income Tax Offences			**285**	**38.9**
	Evasion		140	19.1
	Failure to file		106	14.5
	Failure to provide info/report		8	1.1
	False returns/statements		42	5.73
	Illegal refunds		3	0.41
	Obstruction audit		2	0.27
	Prepare false returns		2	0.27
Private Information / Attempted Prosecution			**29**	**3.4**
Property, Theft & Fraud Offences			**142**	**19.4**
	False IDs		1	0.14
	Forgery		1	0.14
	Fraud		115	15.7
		Counselling	51	7
		Credit card	1	0.14
		Over $5,000	21	2.87
	Theft		16	2.2
		Over $5,000	6	0.82
		Utilities diversion	2	0.27
Regulatory Offences			**27**	**3.69**
	Animal welfare & wildlife offences		3	0.41
	Bylaw		3	0.41
	Curfew & quarantine		6	0.82
	Fisheries		2	0.27
	Insolvency, failure to disclose		1	0.14
	Professional regulation, unlicenced legal practice		2	0.27
	Securities violations		10	1.37
Sexual Offences			**19**	**2.6**
	Invitation to sexual touching under 18		8	1.1
	Sexual assault		6	0.82
		With a weapon	2	0.27
	Sexual exploitation		4	0.55
	Sexual interference		8	1.1
“Travelling”			**60**	**8.19**
	Dangerous driving		6	0.82
	Dangerous driving while fleeing law enforcement		5	0.68

Offence Charged			n			%		
	Driving while impaired			4			0.55	
Violent Offences			**28**			**3.82**		
	Assault			17			2.32	
		Aggravated			2			0.27
		Bodily Harm			1			0.14
		On law enforcement			7			0.96
	Kidnapping			1			0.14	
	Murder			8			1.1	
		Attempted			6			0.82
		Murder			3			0.41
	Robbery			2			0.27	
		Armed bank robbery			1			0.14
Weapons Offences			**37**			**5.05**		
	Explosives			1			0.14	
	Firearms			36			4.91	
		Possession			14			1.91
		Prohibited			17			2.32
		Seizure			1			0.14
		Smuggling			2			0.27
		Storage			1			0.14
Other Offences			**41**			**5.6**		
	Disturbance/mischief			10			1.37	
	Harassment			1			0.14	
	Hate speech			5			0.68	
	Intimidation justice system participant			6			0.82	
	Obstruction			13			1.78	
	Personation peace officer			1			0.14	
	Threats			5			0.68	
		Death			4			0.55
		Death to police			2			0.27
Unknown			**9**			**1.22**		

Number and frequency of charged offences in PCDD decisions: N = 732. Offences are grouped by type and specific details. Where a PCDD decision identifies more than one charged offence type, each different offence was entered. Multiple offences of the same type in a PCDD decision were entered as a single instance. The "Private Information / Attempted Prosecution" category are instances where a pseudolaw adherent attempted to initiate either a *Criminal Code* sections 504 and 507.1 private information proceeding, or an irregular and unorthodox criminal proceeding. "Travelling" collects proceedings where the pseudolaw accused or offender was subject to regulatory or criminal charges related to motor vehicle operation or regulation, such as driving while impaired, displaying a valid licence plate, and possessing required motor vehicle insurance.

The charges total in Table 3 is greater than the number of PCDD decisions as certain pseudolaw criminal accused or offenders faced multiple different charge types that each were counted. Offences have been clustered and grouped to illustrate larger patterns. The Table 3 data does not reflect convictions but only charges laid.

Table 3 illustrates that, in Canada, most pseudolaw accused and offenders are charged with four broad offences categories that can be classified as non-violent, and, in certain instances, not particularly serious:

- income tax offences (38.9 percent, n = 285)

- property, theft, and fraud (19.4 percent, n = 142)
- "travelling" proceedings where the pseudolaw accused or offender was subject to regulatory or criminal charges related to motor vehicle operation or regulation, such as driving while impaired, displaying a valid licence plate, and possessing required motor vehicle insurance (8.19 percent, n = 60)
- drug offences (5.87 percent, n = 43)

These values are somewhat misleading. First, a large proportion of the property, theft, and fraud charges are for counselling fraud (35.9 percent, n = 51), and these are almost exclusively charges against Detaxer anti-tax pseudolaw scheme promoters. The travelling category frequency is almost certainly too low, as the majority (63.3 percent, n = 38) of the PCDD travelling decisions are appeals from lower court proceedings. Travelling is a particularly commonplace illegal activity by pseudolaw adherents and is broadly recognized as one of the most frequent contexts in which law enforcement interact with pseudolaw adherents.[86] Few travelling offence scenarios lead to a reported decision.[87]

Table 3 also illustrates that a significant proportion of PCDD pseudolaw accused and offenders were involved in very serious and violent offences, including murder, attempted murder, and child sex offences. Other jurisdictions report that their local pseudolaw populations are also involved in very dangerous and violent illegal activities.[88] One particularly worrisome issue is whether more violent and aggressive US pseudolaw groups may spread or spill over into Canada.[89]

Canadian trial judges will predictably, in the future, face accused or offenders who deploy pseudolaw. Pseudolaw is an ongoing phenomenon and emerges in court proceedings in substantial frequencies (Figures 1 and 2). Criminal litigation is a major part of pseudolaw litigation (Figure 2). Pseudolaw adherents in criminal proceedings at high frequency deploy a predictable set of get-out-of-jail-free strategies (Table 2).

While pseudolaw accused or offenders are charged with a wide variety of offences,[90] most sentences at least implicate a potential loss of liberty, while some very serious offences will result in incarceration if the accused is found guilty. In short, the stringent requirements for

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[86] Christine M Sarteschi, *Sovereign Citizens: A Psychological and Criminological Analysis* (Cham: Springer Nature Switzerland, 2020) at 12–29 [Sarteschi, *Sovereign Citizens*]; Netolitzky, "History #3," *supra* note 31 at 1012; Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments [OPCA] in Canada; an Attack on the Legal System" (2016) 10 JPPL 137 at 174–75 [Netolitzky, "Attack"].

[87] Netolitzky, "Attack," *ibid* at 175, n 206.

[88] See e.g. Rathje, *supra* note 32; Christine M Sarteschi, "Sovereign Citizens: A Narrative Review with Implications of Violence Towards Law Enforcement" (2021) 60 Aggression & Violent Behavior 101509; Florian Hartleb, *Lone Wolves: The New Terrorism of Right-Wing Single Actors* (Cham: Springer Nature Switzerland, 2020); Jan Rathje, "Driven by Conspiracies: The Justification of Violence Among 'Reichsbürger' and Other Conspiracy-Ideological Sovereignists in Contemporary Germany" (2022) 16:6 Perspectives on Terrorism 49.

[89] This issue is not theoretical, as for example "Queen of Canada" Romana Didulo has attempted to recruit US "duck hunter" killers: Netolitzky, "History #3," *supra* note 31 at 983.

[90] Table 3, above.

criminal process and fairness that flow from *Charter* sections 7 to 11 will be implicated for most of these proceedings.

To be explicit, the data presented here should not be misconstrued as *measuring* pseudolaw related to criminal litigation in Canada, or the volume and type of criminal activity by Canadian pseudolaw adherents. Instead, the preceding information provides only an overview of the interplay of pseudolaw, criminal activity, and criminal law proceedings. Numerous factors mean the methodology applied in this study is unlikely to generate *representative quantitative* data.

First, the dataset used to generate these values is based on reported court decisions. With limited exceptions, that information source provides a weak basis to quantify anything which involves Canadian courts. The fraction of trial-level decisions that result in a written reported decision is low — in some measured examples, under 1 percent.[91] Complicating this further is that there is good reason to expect that certain categories of judicial decision-making will be under-represented in these written reported decisions. Canadian trial judges are trained to, where possible, issue oral judgments that are rarely transcribed and published.[92] For example, "slam dunk" analyses are better suited to oral judgments.[93] Since OPCA strategies are hopeless, in Canada these arguments lend themselves to summary oral disposition, particularly since broadly accepted "anti-pseudolaw" authorities like *Meads*[94] are available.

As previously noted, certain criminal prosecution scenarios are underrepresented because, comparatively, these are not legally important. For example, travelling prosecutions are almost certainly underrepresented.

A further issue is that serious criminal activity does not always lead to a criminal prosecution. One such example is that in 2015, Norman Walter Raddatz, a Sovereign Citizen, killed one Edmonton Police Service officer and wounded a second. Raddatz subsequently killed himself.[95] This incident is very important to evaluating illegal and violent activity by Canadian pseudolaw adherents, but, for obvious reasons, did not lead to criminal proceedings.

A further complication is that the data presented here does not always establish whether a particular pseudolaw accused was convicted. At best, this report is useful to identify *what kinds of charges* are laid against pseudolaw adherents. However, for the purpose of understanding criminal trials where pseudolaw emerges, knowing what charges were involved is sufficient.

Another ongoing issue is that pseudolaw litigation is not easily identified by conventional legal research methodologies.[96] For example, of the 310 post-*Meads* criminal OPCA-related

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[91] See e.g. Donald J Netolitzky, "The Grim Parade: Supreme Court of Canada Self-Represented Appellants in 2017" (2021) 59:1 Alta L Rev 117 at 158–59.

[92] The Federal Courts being the notable exception with effectively complete records and reasons in their Judgment and Order Books, known as J & O Books.

[93] Netolitzky, "History #2," *supra* note 23 at 810.

[94] *Meads*, *supra* note 21.

[95] Netolitzky, "Attack," *supra* note 86 at 165.

[96] Reviewed in Netolitzky, "Family," *supra* note 71 at 964–65; Netolitzky, "Lawyers," *supra* note 71 at 429.

judgments identified in this review, only 34.5 percent (n = 107) cited the leading Canadian authority *Meads* decision. Complicating matters even further, academic commentators in this subject area sometimes disagree on whether pseudolaw concepts were implicated or involved in a criminal incident. For example, Barbara Perry, David Hofmann, and Ryan Scrivens appear to classify the 2014 New Brunswick mass police shooting committed by Justin Bourque as an instance of violence by a pseudolaw adherent.[97] The author has investigated Bourque and identified broad anti-authority and Militia-type beliefs, but no hint of pseudolaw concepts or language.[98] Misclassification of non-pseudolaw violence was also identified in the US[99] and Australia.[100]

All these limitations aside, the preceding survey does provide some information that is helpful for policy purposes. What can be concluded with high confidence from this data is:

(1) pseudolaw emerges in Canadian criminal litigation at a substantial frequency, and has done so for several decades;

(2) pseudolaw is a potential factor in a diverse array of criminal offence proceedings, including prosecution of very serious violent and sexual offences;

(3) many persons who adopt pseudolaw in criminal proceedings are self-represented or not represented by lawyers; and

(4) a high proportion of self-represented pseudolaw adherent accused and offenders employ a collection of stereotypic pseudolaw arguments and procedural tactics to disrupt criminal proceedings as a get-out-of-jail-free card, but that phenomenon is uncommon where the accused or offender is represented by a lawyer.

More broadly, many instances of pseudolaw-based but hopeless criminal defences are documented in Canada and have occurred with significant frequency for decades. Nothing suggests that will change.

IV. PSEUDOLAW CRIMINAL COURT PROCEEDINGS

Despite pseudolaw and its concepts having a broad spectrum of peculiar aspects and practices, Canadian pseudolaw court proceedings usually follow certain predictable patterns. That is particularly true for a pseudolaw criminal defence, which often is a stylized, formulaic

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97 Barbara Perry, David C Hofmann & Ryan Scrivens, "Broadening Our Understanding of Anti-Authority Movements in Canada" (2017) Canadian Network for Research on Terrorism Security and Society, Working Paper No 17-02 at 41, 49 [Perry, Hofmann & Scrivens, "Broadening"]; Barbara Perry, David Hofman & Ryan Scrivens, "Anti-Authority and Militia Movements in Canada" (2019) 1:3 J Intelligence Conflict & Warfare 1 at 11–12 [Perry, Hofmann & Scrivens, "Anti-Authority"].

98 See e.g. Interview of Justin Bourque by the Royal Canadian Mounted Police (6 June 2014), online (pdf): [perma.cc/6J7T-4UQB] (post-offence interview in which Bourque openly discussed his motivations, which disclosed militia-type perspectives, but no pseudolaw-related beliefs, or a purportedly *legal* justification for his violence).

99 Michelle M Mallek, *Uncommon Law: Understanding and Quantifying the Sovereign Citizen Movement* (MA Thesis, Naval Postgraduate School, 2016) [unpublished] at 51–60, 63–68, online (pdf): [perma.cc/3F8E-BSV6].

100 Mike Burgess, "Director-General's Annual Threat Assessment" (address delivered to the Australian Security Intelligence Organization, 21 February 2023), online: [perma.cc/C6NB-CG2Z].

affair. There are two reasons for that. First, core pseudolaw strategies and motifs are highly conserved. Second, pseudolaw adherents often are literally following a script they have been taught; some actually read these scripts during proceedings.[101]

In a broad sense, when facing criminal charges, pseudolaw adherents will attempt to employ pseudolaw's not-law principles to force the prosecution to terminate, or to frustrate the proceeding. To achieve these objectives pseudolaw accused and offenders employ an organized, systematic, methodologically and theoretically consistent toolset.

What follows is a survey of commonplace pseudolaw motifs and tactics encountered during various stages of a typical criminal prosecution. Fortunately, criminal proceedings where pseudolaw manifests rarely feature all these disruptive litigation strategies. What follows is a kind of "worst-case" example. This overview will focus on trial-related events, rather than interaction between pseudolaw adherents and law enforcement, which has its own stereotypic complex of pseudolaw behaviours and tactics.[102]

A. PRELIMINARY ISSUES

Two preliminary issues should be addressed prior to discussing how pseudolaw manifests in criminal court proceedings: (1) the interplay of mental health issues and pseudolaw; and (2) self-selection by pseudolaw adherents.

1. PSEUDOLAW AND MENTAL HEALTH

Stereotypic behaviour and language used by pseudolaw accused and offenders readily suggest that these individuals' thoughts are in some manner delusional or distorted due to mental illness. However, mental health professionals uniformly reject that possibility and instead conclude that the atypical and sometimes objectively bizarre conduct and speech of those who employ pseudolaw reflects marginal and extremist political belief, rather than psychiatric disorder.[103] These experts repeatedly caution that misdiagnosis is a very real risk where a mental health professional is unfamiliar with stereotypic pseudolaw concepts and language.

The exact same concern applies for legal actors and judges. Those unfamiliar with pseudolaw concepts and terminology may initially find these ideas and strategies inexplicable, particularly given how aspects of pseudolaw are a "funhouse mirror" of familiar concepts and language. Despite that first impression, many pseudolaw adherents are extremely wedded and attached to the idea of law, such that Hobbs, Young & McIntyre observe how pseudolaw adherents "possess an almost endearing commitment to legality and the rule of law," and appear to engage courts expecting their ideas to be considered and then

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[101] See e.g. *R v Hardy*, 2023 BCPC 65 at para 9 [*Hardy*].

[102] Reviewed in Sarteschi, *Sovereign Citizens*, *supra* note 86 at 9–28.

[103] 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 Am Academy Psychiatry & L 338; George F Parker, "Sovereign Citizens and Competency to Stand Trial" (2018) 46:2 J Am Academy Psychiatry & L 167; Cheryl M Paradis, Elizabeth Owen & Gene McCullough, "Evaluations of Urban Sovereign Citizens' Competency to Stand Trial" (2018) 46:2 J Am Academy Psychiatry & L 158.

triumph, as law.[104] Similarly, identified OPCA candidate appellants at the Supreme Court have attempted to engage its law-making processes, rather than assert special pseudolaw authority.[105] Though in some ways counterintuitive, pseudolaw litigants are often among the most legally sophisticated SRLs encountered in Canadian courts. The issue is, of course, sometimes that "knowledge of law" is simply a spurious fiction, and to those trained in "conventional" law it sounds like gibberish.

2. MERCENARY PSEUDOLAW ADHERENTS SELF-SELECT OUT

Pseudolaw adherents can be roughly divided into two types:[106]

(1) those who adopt pseudolaw anticipating a benefit and who are intellectually and politically neutral to or disinterested in pseudolaw's broader narrative; versus

(2) persons who are invested in the conspiratorial and false-history narrative of pseudolaw, as well as the promised extraordinary authority and immunities of pseudolaw.

These categories can be called "mercenaries" and "true believers," respectively. When confronted by the fact pseudolaw does not succeed in court, mercenary pseudolaw users predictably abandon pseudolaw, adopt conventional legal approaches, and often "lawyer up."[107] This pattern applies equally in criminal litigation,[108] and social sciences investigators have described how pseudolaw beliefs are received negatively by inmates and guards alike in Canada.[109] Coupled with Canada's strong and detailed jurisprudence that rejects pseudolaw, mercenary pseudolaw criminal accused will very likely soon become aware that pseudolaw get-out-of-jail-free strategies offer no advantages.

The volume of mercenary pseudolaw criminal accused and offenders is impossible to evaluate since mercenaries usually transform into "conventional" criminal litigants. That also means that the analysis that follows primarily illustrates how pseudolaw true believers operate in Canadian criminal courts, as they continue to deploy get-out-of-jail-free concepts as their prosecutions and trials progress.

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[104] Hobbs, Young & McIntyre, *supra* note 39 at 314.

[105] Donald J Netolitzky & Richard Warman, "Enjoy the Silence: Pseudolaw at the Supreme Court of Canada" (2020) 57:3 Alta L Rev 715 at 749.

[106] Netolitzky, "Lawyers," *supra* note 71. For more complex pseudolaw litigant category schemes see generally Netolitzky, "Attack," *supra* note 86; John McCoy, David Jones & Zoe Hastings, *Building Awareness, Seeking Solutions: Extremism & Hate Motivated Violence in Alberta* (Organization for the Prevention of Violence, 2019), online (pdf): [perma.cc/D2X6-VBM3]; Perry, Hofmann & Scrivens, "Broadening," *supra* note 97; Perry, Hofmann & Scrivens, "Anti-Authority," *supra* note 97.

[107] Netolitzky, "Lawyers," *supra* note 71 at 430–34; Donald J Netolitzky "A Ride With My Best Friend: Recruitment into the Fiscal Arbitrators Tax Denial Pseudolaw Movement" (2023) 6 Intl J Coercion Abuse & Manipulation.

[108] See e.g. *R v Biever*, 2015 ABQB 301 at para 31.

[109] Bucerius, Schultz & Haggarty, *supra* note 48; William J Schultz, Sandra M Bucerius & Kevin D Haggerty, "The Floating Signifier of "Radicalization": Correctional Officer's Perceptions of Prison Radicalization" (2021) 48:6 Crim Justice & Behaviour 828.

B. GENERAL COURTROOM BEHAVIOUR

Pseudolaw accused and offenders follow scripted behaviour when they appear in court. These patterns are largely directed to reject or subvert court authority. A common motif is that the accused or offender will immediately announce they are "making a special appearance."[110] That is US legal language to identify that a person appears before a court or tribunal but only to challenge and reject the authority of that institution.

Challenges to a criminal court's authority are very commonplace (see Table 2) and take numerous forms. One common variation is where, as a preliminary step, the judge, lawyers, or court staff must produce their "oath" on demand.[111] Failure to do so purportedly establishes that the court has no authority, and the accused or offender must be released. Similarly, judges may receive demands for their "bond" information,[112] which is a fictitious insurance-like fund that the accused or offender will then demand is paid to them.

The status and legitimacy of Crown and defence counsel are also frequently questioned, typically by claims that lawyers worldwide belong to a concealed conspiratorial super-organization that informs and controls lawyer activities, the "B.A.R.," "BAR," "British Accreditation Registry," or "British Accredited Registry."[113] Pseudolaw adherents typically refuse to accept assistance from duty counsel or legal aid lawyers as legitimate representatives, as these lawyers' allegiance supposedly is to the BAR, rather than the pseudolaw accused or offender and the true (pseudo)law. Sometimes pseudolaw accused or offenders demand counsel, but only "their kind" of representative, one who is expert in the suppressed "good law," with labels such as "common law," "natural law," and equity.[114] They may attempt to bring pseudolaw promoters or so-called experts into proceedings as their litigation representative.[115] Courts across Canada broadly reject that.[116]

If not detained, the accused or offender may refuse to enter the body of the courtroom and instead remain in the gallery. That purportedly means the accused or offender is not in the Court's jurisdiction, which is physically limited by the space beyond the courtroom bar. This belief in a physical limit to court and judicial authority may be framed in unusual ways, such as that the courtroom is a physical ship, and the prisoner's box or "dock" has a nautical or maritime character. This explains the peculiar declaration in *R. v. Merrill* by an accused who rejected court authority: "I'm not on the ship."[117]

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110 See e.g. *R v Swallow*, 2014 NSPC 65 at para 5; *R v Wywrot*, 2012 CarswellOnt 17410 at paras 1–2 (CJ) [*Wywrot*]; *R v Millar*, 2017 BCSC 402 at para 6; *Hardy*, *supra* note 101 at paras 36, 38.

111 *Meads*, *supra* note 21 at paras 243, 287–90. See e.g. *R v Merrill*, 2020 BCPC 150 at para 10; *R v Ainsworth*, 2015 ONCJ 98 at paras 3–6; *R v Rhodes*, 2015 BCSC 2437 at para 12.

112 *Meads*, *ibid* at paras 243, 481, 697. Unsurprisingly, the greed-driven Freemen-on-the-Land taught seizure of these "bonds" is a positive reason to engage in criminal activity (Netolitzky, "Attack," *supra* note 86 at 153–54).

113 Dan MacGuill, "Does the 'Bar' in 'Bar Exam' Denote a Secret Lawyer' Conspiracy?," *Snopes* (23 January 2018), online: [perma.cc/V277-8FNW]; McRoberts, *supra* note 46 at 656; Netolitzky, "Lawyers," *supra* note 71 at 486; Netolitzky, "Hammer," *supra* note 44 at 1193–94; *R v Smith*, 2024 ONSC 1136 at para 14 [*Smith*].

114 See e.g. *R v Millar*, 2016 BCSC 1887 at paras 72, 77; *Smith*, *ibid* at paras 13–15.

115 See e.g. *R v Dick*, 2002 BCCA 27 [*Dick*]; *World Energy GH2 Inc v Ryan*, 2023 NLSC 109; *Manulife Bank of Canada v Thomas*, 2023 ABKB 564; *Smith*, *supra* note 113.

116 Netolitzky, "Lawyers," *supra* note 71 at 484–85.

117 *R v Merrill*, 2020 BCPC 150 at para 16.

Pseudolaw adherents are globally unco-operative with court personnel and procedure. That resistant and disruptive behaviour does not always simply reflect the usual rejection of "conventional law" typical of pseudolaw adherents, but also the pseudolaw "joinder" concept: that all state and court authority is solely grounded in contract.[118] Pseudolaw adherents view contract in an extremely broad manner, where an "invisible contract"[119] may result from mundane steps, such as adhering to court formalities. For example, when a court clerk instructs "all rise" (the offer), standing up then creates joinder (offer accepted). This overbroad imagining of contracts can lead to objectively bizarre conduct and statements from pseudolaw adherents, such as a litigant announcing: "I sit of my own volition."[120]

This pattern of coded language and behaviour emerges in many ways. A common motif in Freeman-on-the-Land-sourced pseudolaw is that certain words have an unexpected, concealed meaning. For example, Canadian and UK Freemen-on-the-Land taught that the word "understand" instead means "to stand under," so that agreeing to the question "do you understand?" is secretly a trick to affirm and impose court authority: "Do you stand under my authority?"[121] This belief can lead to apparently inexplicable "I do not understand" responses,[122] or modified language, such as quoted in *Hardy*, where the accused responded, then corrected himself: "I do understand that, Your Honour, but I do believe — or I comprehend what you're saying."[123]

As demonstrated in Table 2, Strawman Theory is one of the most commonplace pseudolaw get-out-of-jail-free motifs encountered in criminal proceedings. Typically, the accused or offender will challenge identity, and claim that they, the flesh and blood human, are not the defendant, who instead is the invisible or noncorporeal Strawman doppelganger. This refusal to identify will often seem strange to those who are unfamiliar with Strawman Theory.[124] The accused or offender will point to the all-capital letter name in a charging document and claim that is someone or something else. Often, questioning is required to uncover name letter case is the basis for that complaint. Sometimes the accused or offender will produce documentation, such as a birth certificate or driver's licence, and say that is the defendant, not them.[125]

A related identification strategy is to reject the date of birth on charging documents. A pseudolaw litigant may say they cannot verify their birthdate. They were not present and able to recall the event, so the date of birth is "hearsay."[126]

Another pattern is that pseudolaw accused or offenders seek to witness or record a proceeding. That takes several forms. One is that the pseudolaw accused or offender without

[118] Kalinowski, *supra* note 44 at 161–62; Netolitzky, "Lawyers," *supra* note 71 at 441. See e.g. *Hardy*, *supra* note 101 at paras 35, 79.
[119] This broadly accepted concept originates from the Sovereign Citizen text: George Mercier, *Invisible Contracts* (self-published, 1984).
[120] *Gauthier v Starr*, 2016 ABQB 213 at para 15 [*Gauthier*].
[121] Netolitzky, "Attack," *supra* note 86 at 149. Followers of the so-called "Queen of Canada" Romana Didulo (Netolitzky, "History #3," *supra* note 31 at 981–85) use "innerstand" in an analogous manner.
[122] *R v Lawson*, 2019 BCCA 109 at para 4.
[123] *Hardy*, *supra* note 101 at para 79.
[124] Illustrated in multiple instances in *Hardy*, *ibid* at paras 41–46, 48.
[125] See e.g. *Hardy*, *ibid* at paras 61, 63, 65, 75–76.
[126] See e.g. *Wywrot*, *supra* note 110 at paras 2, 4; *R v Viau*, 2022 ONSC 5825 at para 6 [*Viau*].

authority clandestinely or openly records the court proceedings,[127] or demands to record activities elsewhere in a courthouse.[128] Collaborators in the gallery may conduct those recordings, which inevitably end up on YouTube or similar services.

Pseudolaw adherents put special emphasis and meaning on allied individuals observing and witnessing court proceedings, and use "insider" communications forums to announce the time and location of court hearings, asking like-minded others to attend. The motivation for this behaviour is unclear, though one possible explanation is a belief that government and court actors will hesitate to ignore the true (pseudo)law when confronted by a gallery full of witnesses. Alternatively, the intention may simply be intimidation.

While large, allied groups attending court hearings appears comparatively rare in Canada, group appearances can be disruptive and aggravate already high-tension scenarios. For example, gallery members have interfered with proceedings, triggered grandstanding by accused or offenders,[129] and even attempted "arrests" of judges and lawyers.[130] As anthropologist Vanessa McCuaig has observed, pseudolaw accused and offenders conduct themselves in a performative manner, rather than primarily as litigants.[131]

C. ACTIVE PROCESSES

Pseudolaw accused and offenders frequently initiate conventional and irregular active steps during criminal proceedings. These steps can be divided into two broad categories: (1) those intended to terminate the prosecution; and (2) information gathering. These interactions primarily occur between the Crown and accused or offender, and may, therefore, be invisible to the court.

Pseudolaw provides a range of mechanisms that purportedly will terminate a criminal proceeding. Many follow the "Three/Five Letters" format,[132] a common pseudolaw strategy where a target receives a series of "foisted unilateral agreement" documents that starts with a "Conditional Acceptance," then a "Dishonour Notice." These documents state that unless the recipient takes certain steps, or provides certain information, that silence means agreement or consent. Subsequent documents then "seal the deal," sometimes concluding with a "Notary Judgment," where a notary public purportedly acts as a super-judge and terminates litigation with a final, unappealable decision.[133] Typical criminal context Three/Five Letters demands are:

(1) to purportedly terminate the prosecution by a foisted unilateral agreement;[134]

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[127] See e.g. *Gauthier*, *supra* note 120 at paras 18–19.
[128] See e.g. *R v Onigbinde-Bey*, 2017 ONCJ 418.
[129] See e.g. *R v Shirley*, 2023 ONCJ 87 at paras 94–96.
[130] See e.g. *R v Main*, 2000 ABQB 56 at paras 5–8.
[131] Vanessa McCuaig, *The Uncanny Doubling of Sovereign and Citizen: Anti-State Narrativity in Alberta* (MA Anthropology Thesis, McGill University, 2019) at 75–78 [unpublished], online (pdf): [perma.cc/2GFL-Z3AU].
[132] Reviewed in *Rothweiler v Payette*, 2018 ABQB 288; *Bank of Montreal v Rogozinsky*, 2014 ABQB 771.
[133] See Donald J Netolitzky, "Humdrum Becomes a Headache: Lawyers Notarizing Organized Pseudolegal Commercial Argument Documents" (2019) 49:3 Adv Q 278.
[134] See e.g. *R v PMM*, 2019 BCPC 170; *R v PMM*, 2019 BCPC 276.

(2) to purportedly "settle" and terminate the prosecution as a commercial or contract process by a payment from a fictitious source;[135] and

(3) a demand that the Crown produce an "injured party," or else there is no valid prosecution.[136]

Another pattern is that the pseudolaw accused or offender initiates a kind of "counter-action," a purported legal proceeding that pre-empts or nullifies the criminal prosecution. In the last decade, the most commonly encountered counter-action type is highly unorthodox proceedings conducted according to the pseudolegal theories of US Sovereign Citizen guru Carl (Karl) Lentz. Lentz teaches that a pseudolaw adherent can effectively seize control of public court facilities, and then use these as "private" courts, to conduct proceedings where the pseudolaw adherent is the "Prosecutor" of "Wrongdoers" who are deemed guilty by default. Lentzian vigilante court processes are known to target Crown prosecutors and law enforcement to terminate criminal proceedings.[137]

Counter-action processes usually do not immediately involve the trial court but instead operate in the background early during criminal litigation. Courts typically become aware of these legally meaningless processes when the pseudolaw accused or offender claims the counter-action ended the prosecution, and demands the judge rules accordingly.

The second category of commonplace active processes are unorthodox demands for disclosure. These fall within three themes. First, pseudolaw litigants sometimes demand "official," "certified," or "original" copies of legislation and constitutional documents as part of the Crown's disclosure obligations. The idea here is that unless the Crown can produce legislation in the form required, then the substance of the law cannot be established and enforced, or some formal defect invalidates legislation. This "show me the law" strategy originated in the 2000s Detaxer period, where pseudolaw accused and offenders would demand an up-to-date *Income Tax Act*.[138] This scheme became obsolete with the advent of CanLII as a source for official, current legislation.[139]

A second disclosure category is for confidential prosecution materials, such as legal research and opinions,[140] profiling data and reports on pseudolaw groups and concepts,[141] and Crown witnesses' and government officials' contact information to conduct "inquiries."[142] A related third category are demands that the Crown must answer esoteric requests in its disclosure that do not relate to the core of the prosecution, such as the definition

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135 See e.g. *R v Ayyazi*, 2022 ABQB 412; *Steinkey v Canada*, 2017 FC 124.

136 See e.g. *R v Abadie*, 2016 SKQB 101 at paras 12, 15, aff'd 2016 SKCA 72; *R v Nagle*, 2024 ONCJ 131 at para 10 [*Nagle*]; *Hardy*, *supra* note 101 at para 31.

137 See e.g. *Ossowski*, *supra* note 75.

138 See e.g. *R v Bruno*, 2001 BCSC 1828 at para 7; *R v Fehr*, 2002 SKPC 8 at paras 4–6; *R v Maleki*, 2006 ONCJ 401. See also *R v Peddle*, 2003 ABCA 168 at para 4; *R v Meikle*, 2008 BCPC 265 at para 5 [*Meikle* 2008].

139 Netolitzky, "Lawyers," *supra* note 71 at 451–52. See e.g. Alberta Court of Appeal, "Finding & Providing Authorities: Civil Rule 14.25(1)(h) Criminal Rule 16.17(1)(h)," online [perma.cc/T8YZ-8BGV] (illustrates that the Court of Appeal of Alberta accepts CanLII links to identify officially accepted authorities in court submissions).

140 See e.g. *R v Anderson*, 2014 BCSC 2002 at para 119; *R v Millar*, 2002 BCSC 958 at paras 68–72.

141 See e.g. *R v Dick*, 2001 BCPC 182; *R v Leis*, 2004 SKQB 157 at paras 1, 8 [*Leis*].

142 See e.g. *R v Lindsay*, 2007 BCPC 335.

of money[143] or a person,[144] proof that Canada exists and of court jurisdiction,[145] and Letters Patent for Governor Generals and Queen Elizabeth II's Coronation Oath.[146] Courts have rejected these demands as a combination of fishing expeditions and irrelevant.

A key consequence of these "active process" steps and associated waves of unorthodox paperwork is that the Crown will often be aware at an early point well prior to trial that a self-represented accused or offender has adopted pseudolaw strategies. Historically, the Crown does not have any positive obligation to involve the court where the Crown becomes aware of pseudolaw activity in a criminal proceeding, for example by these "active processes." However, as discussed below, *Kahsai* may have changed that.

D. CRIMINAL PROCEEDING INITIAL STEPS

A second reason why the Crown and court will very likely soon become aware of an accused's plan to deploy pseudolaw is that pseudolaw defence schemes usually lead to unorthodox demands in early criminal process hearings. In addition to the general courtroom strategies previously reviewed, many pseudolaw accused will refuse to plead guilty or not guilty,[147] either because they argue the court has no jurisdiction, they are not involved as the charges are against their Strawman, or because to enter a plea would create joinder by accepting an invisible contract. In this scenario, *Criminal Code* section 606(2)[148] would result in a plea of not guilty.

Many pseudolaw accused will elect for a jury proceeding, probably due to their broad distrust of conventional authorities, and a false perception that members of the public will be sympathetic to their claims. Such jury demands also occur where Canadian legislation does not provide for or permit that procedure.[149] Rather than pointing to section 11(f) of the *Charter*, the more common pattern is that demands for a jury will be grounded on the "common law"[150] or the *Magna Carta*.[151] Similarly, pseudolaw accused may reject preliminary hearings[152] and instead demand a grand jury of their peers.

E. AT TRIAL WITNESS ACTIVITIES

Pseudolaw accused and offenders frequently during the trial proper will continue earlier described tactics, such as invisible contracts, refusenik activity, interjections that they are not the accused — that is their Strawman, objections that joinder has not been established, and so on. Crown witnesses will often be subject to irrelevant cross-examination on pseudolaw subjects, such as oaths of office, and why a witness believes Canada is not a corporation.[153]

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143 *R v Kennay*, [2001] BCJ No 2929 (PC).
144 *R v Cassista*, 2013 ONCJ 305 at para 26.
145 *R v Martin*, 2012 NSPC 73 at para 4 [*Martin*]; *Hardy*, *supra* note 101 at para 35.
146 *Meikle* 2008, *supra* note 138 at para 5.
147 See e.g. *Nagle*, *supra* note 136.
148 *Criminal Code*, *supra* note 18.
149 See e.g. *R v Fearn*, 2014 ABPC 56 at para 7; *R v Hurley*, 2017 ONCJ 263 at para 4; *Hardy*, *supra* note 101 at paras 50, 56, 60–66, 73–83, 99.
150 See e.g. *R v Dick*, 2001 BCPC 245 at paras 59–62; *R v Lindsay*, 2003 MBQB 194 at para 2, aff'd 2004 MBCA 147; *R v Meikle*, 2003 BCPC 162 at paras 29–33 [*Meikle* 2003].
151 See e.g. *R v Boytinck*, [1978] BCJ No 686 (QL) (SC); *Meikle* 2003, *ibid* at 34–35.
152 *Criminal Code*, *supra* note 18, Part XVIII.
153 See e.g. McCuiag, *supra* note 131 at 90–99.

These questions seek to confirm the narratives underlying pseudolaw schemes, and presume authorities such as police, lawyers, and judges are aware of the "true" law.

Attempts to expose the dark, oppressive, or false law also may emerge during the defence's case where pseudolaw accused and offenders attempt to summon irrelevant witnesses, particularly politicians and government officials,[154] so as to expose pseudolaw's double-law conspiratorial narrative, though sometimes these demands are difficult to understand, such as subpoenas for motor vehicle magazines and Reader's Digest,[155] businesses (Bow Flex, Franklin Mint, and Bradford Exchange),[156] and foreign officials.[157] Forged subpoenas are known.[158]

F. APPEALS

In Canada, appeals of criminal proceedings that involve pseudolaw are comparatively uncommon. Most appellate activity related to Detaxer litigation, which was more technical and issue focused. In the last decade, pseudolaw criminal appeals are less common and typically unsophisticated.

The usual pseudolaw litigation motifs do appear in appellate proceedings but are much less frequent because: (1) typically, the pseudolaw litigant is an offender attempting to overturn a conviction or sentence; or (2) the pseudolaw offender has "lawyered up." In that context, the pseudolaw offender is unlikely to take steps to deny court jurisdiction or frustrate litigation, since the offender is seeking the court's assistance. That pattern is particularly notable at the Supreme Court of Canada.[159]

G. CONCLUSION

In short, unorthodox activities, arguments, and defences that emerge in Canadian criminal pseudolaw proceedings are often predictable. The same is true in other jurisdictions, such as Australia[160] and the US,[161] where much the same patterns have been reported. That is no surprise. These groups share their scripts internationally and draw from a common information source: the cultic milieu.

That said, trial courts and Crown prosecutors may encounter very unusual, theatrical ceremony-like activities.[162] Magic-type behaviour is perhaps the only way to explain certain conduct, such as an individual claiming to be the "Sovereign of Orion" arriving at the

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[154] See e.g. *R v Leis*, 2004 SKQB 403 at para 11; *R v Lindsay*, 2003 MBQB 194 paras 1, 3, aff'd 2004 MBCA 147; *Meikle* 2008, *supra* note 138 at para 5.

[155] *Leis*, *supra* note 141 at para 20.

[156] *Ibid* at para 11.

[157] *Ibid*.

[158] See e.g. *Anderson (Re)*, 2022 ABQB 35 at paras 8–12.

[159] Netolitzky & Warman, *supra* note 105 at 746–49, 766.

[160] Judicial Commission of New South Wales, "Equality before the Law Bench Book: Self Represented Parties" at 10.5–51, online: [perma.cc/3KG5-NAVU]; Damien Carrick, "'Sovereign Citizens' in the Courts," *ABC Radio National* (2 May 2023), online: [perma.cc/WTN6-X496].

[161] Sarteschi, *Sovereign Citizens*, *supra* note 86; Erickson et al, *supra* note 26.

[162] See generally *Meads*, *supra* note 21 at paras 77–78. See e.g. McCuaig, *supra* note 131 at 81–101.

courthouse with a flag that represented "the administration of my home" attached to a five-foot flagpole.[163]

Similarly, the author has personally witnessed a Moorish Law adherent litigant who engaged in a dramatic ceremony at the beginning and end of his appearances. This individual, ":Chief : Nanya-Shaabu: El: of the At-sik-hata Nation of Yamassee Moors,"[164] would refuse to enter the body of the courtroom until the court was in session, then he stood, unfurled a flag in front of him, holding that flag like a shield or barrier between him and the judge to obstruct line-of-sight, and announced: "This is flag of the At-sikhata Nation of Yamassee Moors, a Nation recognized by the United Nations." Nanya-Shaabu: El then shuffled to the defence counsel table, all the while holding the flag as a barrier between himself and the judge. Once at the table, he draped the flag over the table, and announced this was now his embassy, and, presumably, outside court authority. At the end of the proceeding, this process reversed.

The net waste of court resources by pseudolaw accused and offenders has rarely been detailed, which makes the decision of Judge Patterson in *Hardy* interesting and important.[165] This decision details 19 appearances over 703 days, where Mr. Hardy deployed stereotypical pseudolaw criminal process strategies, and ultimately was found in criminal contempt of court and sentenced to incarceration for a year.[166] That was in response to an obstruction of a peace officer charge that itself resulted in a probation sentence.[167] Worse, sometimes pseudolaw strategies create the seed for a subsequent and successful appeal.[168]

With this background in how Canadian pseudolaw accused and offenders operate in court, and conduct their proceedings, we can now evaluate how these problematic litigants fit into the schema that Canadian appeal courts currently require for a "fair" criminal prosecution where the accused or offender is not represented by a lawyer.

V. FACTORS THAT DRIVE POTENTIAL JUDICIAL INTERVENTION DURING CRIMINAL ACCUSED PROCEEDINGS

Kahsai is the latest Supreme Court commentary on how and when a legal obligation exists for courts to take steps that assist a self-represented accused or offender, and as such, provides a useful overview of Canadian law on this point. Generally, *Kahsai* reaffirms and continues the interventionist policy approach set by Canadian appellate courts that imposes obligations on judges and Crown prosecutors to take additional steps to assist accused persons in the interest of "trial fairness."[169] That includes:

- trial judges recommending the accused obtain legal advice and representation;

163 *R v Grant*, 2019 ONSC 3616.
164 *Meads*, *supra* note 21 at paras 189–93.
165 *Hardy*, *supra* note 101.
166 *Ibid* at 166–67.
167 *R v Hardy*, 2023 BCPC 122; *R v Hardy*, 2023 BCPC 123.
168 See e.g. *R v Hardy*, 2007 BCCA 523; *Viau*, *supra* note 126.
169 *Kahsai*, *supra* note 11 at paras 54–55.

- trial judges explaining procedures and processes;
- trial judges identifying "material issues";[170]
- trial judges "fram[ing] questions to elicit relevant evidence for the defence";[171]
- trial judges raising *Charter* issues on their own motion;
- Crown prosecutors alerting the court where relevant facts were not presented;
- Crown prosecutors having a positive obligation "to present only legally admissible evidence";[172] and
- Crown prosecutors having a global obligation "to enable the court to assist an unrepresented accused and facilitate a proceeding that upholds their fundamental rights."[173]

Unexpectedly, *Kahsai* makes no mention of *Pintea*[174] where the Supreme Court "endorsed" the Canadian Judicial Council's 2006 *Statement of Principles on Self-Represented Litigants and Accused Persons*.[175] While most of the requirements in that document generally overlap with the *Kahsai* items above, the *Statement* also instructs:

- SRLs "should not be denied relief on the basis of a minor … deficiency";[176]
- SRLs are not subject to procedural and evidentiary rules that "unjustly hinder" their legal interests;[177] and
- judges have a positive obligation to assist by identifying litigation options, providing information, and explaining "relevant law."[178]

Thus, *Pintea* provides self-represented accused and offenders special privileged procedural and evidentiary status.

Kahsai then expands to specifically evaluate judicial obligations to appoint an amicus curiae who acts in support of a self-represented accused.[179] Justice Karakatsanis in *Kahsai*

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170 *Ibid* at 54.
171 *Ibid*.
172 *Ibid* at 56.
173 *Ibid*.
174 *Pintea*, *supra* note 7 at para 4.
175 Canadian Judicial Council, "Statement of Principles on Self-Represented Litigants and Accused Persons" (September 2006), online (pd): [perma.cc/5RXY-RJEB].
176 *Ibid* at 4.
177 *Ibid* at 7.
178 *Ibid*.
179 Berg, *supra* note 5 (Part 4 generally rejects this step as intruding into accused or offender autonomy and inappropriately expanding the amicus function). The Supreme Court in *Kahsai* instead has partially adopted the approach in Patrick J LeSage & Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures* (Toronto: Ontario Ministry of the Attorney General, 2008) at 155–63, online: [perma.cc/3YB2-3XMB], but did not adopt the LeSage & Code recommendation to authorize court appointment of full defence counsel.

focuses on whether criminal proceedings are "fair," grounding amicus curiae appointments in criminal proceedings to Canadian courts' inherent jurisdiction and *Charter* obligations to ensure trial fairness,[180] but limited by a countervailing requirement to not usurp or intrude into the right of an accused to advance a full defence *of their choice*, either self-represented or via defence counsel.[181] Obviously, these two principles may not align.

Kahsai summarizes limits to a legitimate defence, which is particularly important in the OPCA criminal defence context:

> However, *the right of the accused to control their own defence is not absolute*…. It is still subject to the ordinary rules of law and does not confer the accused with special privileges. *For example, an accused can only advance defences available at law and elicit evidence that complies with the rules of evidence.* A defendant's conduct is also subject to the direction of the court in managing its process; *the right to represent oneself does not give "licence to paralyze the trial process by subjecting an endless stream of witnesses to interminable examination on irrelevant matters"*…. Similarly, a defendant's choice of representation is always subject to counsel's duty of professional integrity. Where counsel feels unable to continue without breaching their oath, they must seek to withdraw, despite any resistance from the accused…. Thus, the conduct of a defence operates within the legal and ethical framework of the justice system, alongside other rules and principles of fundamental justice.[182]

Notably, a trigger for when an amicus is "especially crucial" is when "the accused is unrepresented … because they insist on representing themselves."[183] Even in those circumstances, SRL litigation choices are still the sole domain of the defendant: "[T]he trial judge should seek to give effect to the asserted key litigation decisions of the accused while also keeping in mind what is required to avoid a miscarriage of justice."[184] Failure to achieve that end objective makes a trial unfair.

The trigger for potential court intervention to ensure trial fairness is imbalance, the lack of expert information from a lawyer, "risking a trial in which *no meaningful defence* is advanced."[185]

The scenarios where Justice Karakatsanis frames court intervention as particularly important are telling:

- where self-represented accused litigation choices seem irrational or unwise;
- particularly "complex cases involving self-represented accused with mental, behavioural, and/or cognitive challenges"; and
- where self-represented accused are "experiencing serious mental, behavioural, or cognitive challenges."[186]

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180 *Kahsai*, *supra* note 11 at paras 35–37.
181 *Ibid* at paras 38–43, 45–47.
182 *Ibid* at para 44 [citations omitted, emphasis added].
183 *Ibid* at para 45.
184 *Ibid* at para 47. See also *ibid* at para 49.
185 *Ibid* at para 53 [emphasis added].
186 *Ibid* at para 58. See also *ibid* at para 61.

The Supreme Court, thus, is focusing on persons whose innate characteristics are driving an incompetent and ineffective defence to criminal proceedings. Factually, none of these three categories are in play with OPCA accused and offenders. As previously discussed, mental health is not an issue with pseudolaw accused and offenders, though that a judge might suspect otherwise is entirely understandable. Second, while pseudolaw arguments may appear "irrational or unwise" to persons who operate in the conventional legal system,[187] deploying pseudolaw makes perfect sense as a get-out-of-jail-free defence to those who have embrace pseudolaw's not-law system and its associated conspiratorial duel of laws narrative. Furthermore, OPCA litigants are usually deeply committed to legal ideas and processes and are often among the most legally sophisticated SRLs encountered in Canada.

Now turning to examples of instances where an amicus curia was correctly appointed, Justice Karakatsanis summarizes and cites court judgments where the relevant factors that led to an amicus being correctly appointed were broader:

- no or little participation in trial proceedings or psychiatric evaluations;[188]
- in-court actions that actively disrupt conduct of criminal proceedings;[189]
- repeatedly retaining and dismissing counsel to cause delay in criminal proceedings;[190]
- where the self-represented accused rejected Canadian law and claimed to only be subject to religious law;[191]
- where the self-represented accused attempted to conduct their own defence, but were incompetent due to trial and evidentiary complexity;[192] and
- where the self-represented accused was unable to conduct a meaningful defence because of "mental, behavioural, and cognitive" characteristics.[193]

Interestingly, of these examples identified by the Supreme Court in *Kahsai*, only one trial proceeding involved an individual explicitly identified as having lack of capacity issues that were the result of neurological injuries and mental health characteristics.[194]

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187 *Ibid* at para 58.

188 *R v Borutski*, 2017 ONSC 7748; *R v Mastronardi*, 2015 BCCA 338 [*Mastronardi*]; *R v CML*, 2016 ONSC 5332 [*CML*]; *R v Walker*, 2019 ONCA 765 [*Walker*]. Notably, in *Mastronardi* the accused vigorously participated, but specifically to resist the amicus (paras 28–30).

189 *R v Chemama*, 2016 ONCA 579 (notably subsequently declared vexatious in *Chemama c R*, 2019 QCCA 835); *Mastronardi*, *ibid*; *CML*, *ibid*; *Kahsai*, *supra* note 11 at paras 74–75; *Walker*, *ibid*.

190 *Mastronardi*, *ibid*; *R v Imona-Russel*, 2019 ONCA 252.

191 *R v Jaser*, 2014 ONSC 2277 [*Jaser*]; *CML*, *ibid*.

192 *R v Ryan (D)*, 2012 NLCA 9.

193 *Walker*, *supra* note 188 at para 72.

194 *Ibid*. Notably, Berg, *supra* note 5 at Part 3 states mental health issues are "obvious to anyone who has been present at even a small number of trials of self-represented persons." That is not, however, supported by any population study evidence. *CML*, *supra* note 188 at para 68 instead identifies this as an uncommon scenario.

As is apparent from this review, *Kahsai* would appear to impose obligations on judges and Crown prosecutors to give special preferred status and treatment to criminal accused and offenders who adopt OPCA strategies. Two of the six special characteristics and scenarios identified in *Kahsai* that warrant intervention to assure trial fairness are hallmarks of pseudolaw criminal defence litigation:

(1) in-court actions intended to disrupt conduct of proceedings; and

(2) the accused or offender rejects application of Canadian law and jurisdiction.

Arguably, commonplace pseudolaw strategies also implicate the intentional delay of criminal proceedings and non-participation in criminal proceedings factors. Similarly, OPCA criminal accused and offenders are often essentially engaged in an entirely separate legal(ish) process, such as "settling" a criminal proceeding via payment.

So, in combination, *Kahsai* implicates three key considerations:

(1) arguments such as the well-characterized and previously rejected OPCA get-out-of-jail-free schemes, that according to Canadian jurisprudence are unknown to law, are not a part of a valid defence and may presumably be struck out or dismissed;[195]

(2) while an amicus cannot "contradict any defences or theories raised by the accused,"[196] that prohibition would not apply to OPCA theories that are unknown to law;

(3) if OPCA claims are only what a pseudolaw accused or offender is arguing as the full answer and defence, then trial fairness requires that an amicus should be deployed, as the conduct of the pseudolaw SRL accused or offender is:

(a) irrational or unwise (as viewed from a "conventional law" perspective);[197]

(b) rejecting the application of Canadian law;[198] or

(c) non-participation in the court proceeding.[199]

Thus, the specific instructions from *Kahsai* concerning when an amicus should be deployed, and the more general principles on when the court and Crown are required to act to ensure trial fairness and avoid imbalance, both appear to capture many criminal accused and offenders who employ pseudolaw.

Yet, *Kahsai* says nothing about this litigation and litigant category. Furthermore, the implications of a fair proceeding requirement in the context of OPCA proceedings were also all but ignored in the materials submitted by the parties and intervenors. As previously

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195 *Kahsai*, *supra* note 11 at paras 41, 44.
196 *Ibid* at para 45.
197 *Ibid* at para 58.
198 *Jaser*, *supra* note 191; *CML*, *supra* note 188. *Kahsai*, *ibid* at para 60 (says this is no "competent defence").
199 *Kahsai*, *ibid* at paras 60, 73.

discussed, the sole mention of pseudolaw is in the Respondent Alberta's factum, which identifies OPCA criminal defence arguments as one example of an "unwise" choice of defence strategy that is permitted within the accused's right to conduct their own defence.[200] However, that misframes how OPCA concepts are literally "unknown to law," and therefore fall outside what Justice Karakatsanis identified as a valid full answer and defence.[201]

And is this truly an "imbalance"? A pseudolaw accused or offender is not an SRL without knowledge or skills, making strange choices or no choices at all, but an intentional, informed disruptor. Of course, the pseudolaw accused or offender will not acknowledge what they are arguing is "not law," but instead the opposite — it is the court and Crown that has it wrong. So, a more accurate way to characterize this situation is the accused or offender has informed themselves about "law," and chosen badly.[202] This is less a "non-defence" than a mistake of law.

In short, *Kahsai* essentially ignores a major category of highly disruptive and problematic self-represented criminal accused and offender activities and arguments. What complicates matters further is that these strategies are not being invented and deployed on an ad hoc basis, but instead are part of a calculated large-scale schema of alternative not-law pseudolaw *designed* and *intended* to break and frustrate legal proceedings, used by individuals and populations who frequently are motivated by political and ideological orientations and perspectives that reject Canada, Canadian governments, Canadian civil society, and Canadian law. OPCA litigation is often "revolution by lawsuit."[203] Other times, pseudolaw affiliation is nothing but an excuse to engage in criminal activity.[204]

Trial judges with first-hand experience with pseudolaw actors identify this distinction, as was explicitly set out in *Meads*.[205] These are enemies of the law, Commonwealth government tradition, and legal institutions. In a recent example, Judge Patterson observed in contempt proceedings against a pseudolaw accused: "I have not ordered a psychiatric assessment for Hardy, finding him intelligent, albeit an anti-government ideologist. He understands the difference between right and wrong. He has merely selected wrong over right."[206]

These people are not "playing the game badly." They are maneuvering to break the game and impose their own rules. How does that fit in the context of trial fairness and imbalance between the state and the accused?

The Supreme Court provides no guidance at all on this question.

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200 *Kahsai*, Alberta Factum, *supra* note 66.

201 *Kahsai*, *supra* note 11 at para 44.

202 *Nagle*, *supra* note 136 (an example that applies that approach). However, in *Smith*, *supra* note 113, the opposite conclusion was reached; pseudolaw schemes are not a special category, but a variation on common but hopeless SRL arguments.

203 Netolitzky, "History #3," *supra* note 31 at 1009–14.

204 In particular, the Freeman-on-the-Land movement was largely organized around criminal activity: Netolitzky, "Lawyers," *supra* note 71 at 434–41; Netolitzky, "History #2," *supra* note 23 at 818–20; *Unrau*, *supra* note 10.

205 *Meads*, *supra* note 21 at paras 71–72.

206 *Hardy*, *supra* note 101 at para 20.

VI. ONTARIO COURT OF APPEAL REJECTION OF PSEUDOLAW/OPCA TERMINOLOGY

A further complicating factor for trial criminal court judges responding to pseudolaw accused and offenders is that the Ontario Court of Appeal in *Royal Bank of Canada v. Francoeur*[207] appears to have rejected that persons who use OPCA or pseudolaw concepts represent a special category of litigants. In a very brief decision that rejects Strawman Theory arguments, the Court also states:

> The individuals who engage in this conduct have been referred to in some previous decisions as Organized Pseudolegal Commercial Argument litigants — a label that apparently emanated from the decision in *Meads*…. While they use different techniques, and operate under different names, the central theme is the same.
>
> *We do not see it as helpful or appropriate to label individual litigants in this manner.* It is sufficient to recognize that there is a common technique employed by these individuals by which they attempt to avoid their legal responsibilities. They attempt to do so by creating a fictional characterization of the facts and, through this deception, suggest that they do not bear legal responsibility for their actions. It is a technique that consistently fails, and which accomplishes little, other than to take up court time, increase costs, and delay the inevitable result.[208]

Bluntly, this conclusion is unfortunate and appears to indicate that the Ontario Court of Appeal is unaware of or disinterested in the unique litigation characteristics, history, and social context in which pseudolaw manifests worldwide. The apparent consequence of *Francoeur* is that in Ontario, a trial level judge in a criminal matter *is prohibited* from distinguishing between ad hoc and OPCA institutional disruptor criminal accused and offenders when engaged in litigation management, including the *Kahsai* instructions on when an amicus should be appointed to assist a self-represented accused or offender.

Francoeur's additional problematic implications for litigant management responses, threat evaluation, punitive litigations steps, and sentencing of pseudolaw litigants, gurus, and adherents is beyond the scope of this article. Hopefully, other Canadian appeal courts will inform themselves of the broader context in which pseudolaw operates before concluding pseudolaw affiliation and deployment is irrelevant, except for being legally wrong. As Associate Chief Justice Rooke, as he was then, observed in *R. v. Ayyazi*,[209] the bottom line is that persons who use pseudolaw are a unique potential risk type because when they use violence — and there is no question they do — they perceive that violence is not just justified, *but legal*, a "licence to kill." That alone makes these people a genuine risk that a court should consider before classifying pseudolaw use and group affiliation as of no importance or relevance.

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[207] 2023 ONCA 837 [*Francoeur*].
[208] *Ibid* at paras 3–4 [citations omitted, emphasis added].
[209] 2022 ABKB 836 at paras 40–55 [*Ayyazi*].

VII. FUNCTIONAL APPLICATION OF *KAHSAI* IN PSEUDOLAW CRIMINAL DEFENCE SCENARIOS

Kahsai likely broadens the circumstances in which persons with inherent mental health or cognitive issues should receive court-directed assistance. Here, an amicus makes sense, if the court can predict a person will have limitations generating a useful response, that then creates imbalance.[210]

But the Supreme Court does not really explain why accused and offenders who intentionally disrupt criminal processes should receive an amicus or other special treatment, beyond that doing otherwise just is not fair. No grounds are identified for why a conscious choice of that type should result in special state-expensed advantages. While an ad hoc disruptor might be a sympathetic figure in certain ways — the proverbial "fool for a client" — why would a pseudolaw institutional disruptor adherent, who has made an at least significantly informed choice, receive the same treatment? Particularly in a jurisdiction like Canada, where publicly accessible no-cost case law and academic commentary comprehensively refutes these strategies.

That said, there is little question that, given the preconditions and criteria set in *Kahsai*, when pseudolaw emerges in a Canadian criminal proceeding, that will usually require court appointment of an amicus to carry the defence of a pseudolaw accused or offender:

(1) pseudolaw appears in offence scenarios, including very serious offences, that will attract full *Charter* sections 7–11 protections;

(2) pseudolaw get-out-of-jail-free strategies are very common, but represent no defence at all in a criminal proceeding because these "unknown to law" arguments are not a valid full answer and defence; and

(3) the resulting effective non-participation by the criminal accused or offender creates an imbalance between the Crown and the pseudolaw litigant, so the court is required to restore a fair proceeding with a court-appointed counsel.

If correct, then the test in *Kahsai* simply does not address the underlying political and tactical orientation of pseudolaw litigants, and their probable affiliation with marginal but organized anti-authority social groups and sometimes commercial information vendors; many pseudolaw gurus operate on a "for pay" basis.

One positive aspect of *Kahsai* is that Justice Karakatsanis does at least implicitly confirm the *Fabrikant* "nuclear option"[211] is part of a trial judge's tool kit: a trial judge may go so far as to completely exclude an accused or offender's participation in their criminal proceedings if their disruptive misconduct requires that extreme degree of intervention. In jury proceedings, that step is more than plausible for true believer OPCA accused and offenders.

While criminal proceedings may be "more fair" following the *Kahsai* rules, there is no reason to expect this approach will result in simpler and more timely criminal litigation where

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[210] But see Berg, *supra* note 5 (for a different analysis focused on principled rights).

[211] *R v Fabrikant*, 1995 CanLII 5384 (QCCA), leave to appeal to SCC refused, 24688 (17 August 1995).

pseudolaw is involved. Instead, the opposite is predictable, as are numerous potential grounds for appeal.

This amicus requirement in pseudolaw criminal litigation will predictably complicate and prolong criminal court proceedings. *Kahsai* creates an ongoing onus for the trial judge (and possibly also for the Crown) to consider whether an amicus is necessary for fairness due to imbalance. A prudent criminal trial judge will likely need to give reasons no matter which alternative is chosen. Either outcome will be a basis for an appeal and retrial.

Since *Kahsai* does not address the institutional disruptor category of problematic accused and offenders, motivated by perceived benefit and political objectives, the same onus and obligations for judicial and Crown support will also apply to OPCA litigants. Unlike the stereotypical "baffled and lost" SRL,[212] some pseudolaw litigants are astute legal tacticians.[213] They will clue into the possibility of appeals grounded on *Kahsai* and other jurisprudence, arguing they, as vulnerable SRLs, received inadequate judicial and amicus support. At least one appeal by a lawyer was based on allegations that a trial judge did not adequately counsel and caution a pseudolaw accused, who was characterized as "a victim of legal misinformation."[214] Since pseudolaw adherents are often either directly networked or share a common information source — the cultic milieu — knowledge about this strategy will spread.

Delay will almost inevitably occur.[215] Appointing an amicus is an additional logistical procedural step. The amicus will then need adequate time and resources to prepare, which was one of the factual issues in *Kahsai*. The highly antagonistic attitude and perspective of true believer pseudolaw adherents toward lawyers provides little basis to anticipate that a court-appointed amicus and the accused or offender will co-operate and coordinate.

Unless the trial judge ruthlessly prunes and terminates pseudolaw arguments advanced by the pseudolaw accused or offender[216] — a step that is a yet further basis for appeal as denying full answer and defence — the court will probably face and have to respond to two separate sets of allegations and arguments: one conventional, one strange. In jury proceedings that would lead to complicated jury instructions, and those jury instructions would also create grounds for appeal on what was or was not a "defence unknown to law" that should not be put to the jury.

Being practical and realistic about what will happen when an amicus is assigned to a pseudolaw accused or offender is important. Pseudolaw accused and offenders will

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[212] To be explicit, no quantitative data actually supports that the model accurately describes the typical Canadian self-represented accused or offender (Hann et al, *supra* note 6), though this stereotype is, obviously, broadly propagated in certain legal and academic circles.

[213] Some pseudolaw promoters and adherents operate at a near lawyer skill level, such as Detaxer David Kevin Lindsay: Netolitzky, "History #1," *supra* note 79 at 620–21; Netolitzky & Warman, *supra* note 105 at 744, 762–63, 766. Lindsay and others like him actively seek out opportunities to act and advise in other people's litigation (see e.g. *Dick*, *supra* note 115; *Mukagasigwa v Nkusi*, 2023 ABKB 423, abandoned appeal struck 2023 ABCA 272; *Manulife Bank of Canada v Thomas*, 2023 ABKB 564; *ATB Financial v Dimsdale Auto Parts Ltd*, 2024 ABKB 143).

[214] *Nagle*, *supra* note 136 at para 8.

[215] See e.g. *Smith*, *supra* note 113 at para 31.

[216] A recommended step: *Meads*, *supra* note 21 at para 552. *R v Hardy*, 2022 BCPC 189 illustrates this approach.

predictably refuse to co-operate with or accept an amicus.[217] The amicus will be rejected as an enemy actor, a BAR member. That tainted perception of an amicus will be further contaminated because these lawyers are court-appointed. From a pseudolaw worldview perspective, that step can only be for nefarious purposes and to impose the false "bad law": "You're taking away my voice and replacing it with this stooge of the Temple Bar." Furthermore, assigning an amicus will plausibly trigger active resistance because that step is interpreted as an invisible contract that creates joinder.

The amicus and their not-client will almost certainly disagree about what is the "real law" that will be applied during the criminal proceeding. When the amicus does advance legitimate and reasoned arguments that conflict with pseudolaw, that will just confirm to a true believer pseudolaw accused or offender that the amicus is their enemy. How would a trial judge manage in-court conflict between the amicus, attempting to discharge the "fair proceeding" obligation, and an angry pseudolaw accused or offender, saying "that is not the law," and demanding that their variation of the rule or principle is considered and evaluated? Now imagine that dialogue before a jury, for example, in concluding submissions.

Interactions between the amicus and the pseudolaw accused or offender are primed for conflict and complication. Suppose the amicus raises a valid *Charter* issue, but the accused or offender stridently refuses to consider themselves bound by or operating within the Canadian constitution and its principles. Should the trial judge let the amicus proceed, or follow the principle that the accused or offender "owns" their full answer and defence? Either alternative is still yet another basis for an appeal.

A court-appointed amicus involves public expense, possibly beyond or outside of legal aid resources. Bluntly, the task would not likely be attractive to most defence counsel. Besides the high-conflict environment with the accused or offender, the amicus will very plausibly encounter professional complaints, lawsuits, and unconventional pseudolaw-based threats and proceedings.[218] An amicus counsel will typically be a sole practitioner or part of a small law firm. Unlike Crown and government lawyers, they will personally carry the plausibly substantial expense, time, and logistical requirements required to respond to "counterattacks" by their not-client. An uncomfortable possibility is that borderline or rogue lawyers such as Christie, Bogue, and De Bartolo might be attracted to this role, though a court-initiated and operated amicus appointment process should minimize that risk. But what if the pseudolaw accused or offender presents a rogue lawyer as their counsel of choice?

Amicus curiae have been appointed in the past to assist in responding to accused and offenders deploying pseudolaw, however, their efficacy is difficult to gauge. For example, in *R v Hardy* an amicus was appointed in relation to contempt proceedings.[219] In *Martin*,[220] the Court appointed an amicus with broad authorization to participate in the defence, but rejected a pseudolaw non-lawyer representative chosen as an agent by the accused.[221] While 13 reported judgments over nearly five years follow, here the trial judge notes that the amicus

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217 Berg, *supra* note 5 at Part 6 (says the same of ad hoc disruptors as well).
218 Or worse, since in at least one instance a pseudolaw accused or offender promised to kill his defence counsel (*McKechnie (Re)*, 2018 ABQB 677 at para 13) and was subsequently convicted of uttering death threats (*R v McKechnie*, 2020 ABCA 247 at para 2).
219 2022 BCPC 237. See also *Hardy*, *supra* note 101 at paras 107–10.
220 *Martin*, *supra* note 145 at para 5.
221 *Ibid* at para 6.

operated in an effective manner, successfully raising and advancing arguments on behalf of the accused.[222] *R. v. Sawatzky* reports an amicus making an unsuccessful *Charter* application on behalf of a pseudolaw accused.[223] In *Berg*, the accused dismissed his defence counsel, who then agreed to continue to act as an amicus, but the resulting benefits are less clear, along with the amicus and accused's relationship.[224]

US experiences further illuminate the merits of pseudolaw litigants receiving an amicus practically by default.[225] In that country, state-funded defence counsel is a constitutional right,[226] and self-representation, while also a constitutional right, requires a precautionary "*Faretta* colloquy"[227] to ensure an informed public defender representation or self-representation choice. Typically, a self-represented pseudolaw accused or offender will still be assigned a lawyer, a "standby" defence counsel, sometimes called "elbow counsel."[228]

Katie Bagley and Melissa Siskind recently reviewed how the dual US rights to self-represent and public defender counsel conflict when pseudolaw is involved.[229] They illustrate this by example of how the introduction of pseudolaw creates Catch-22 "damned if you do, damned if you don't" scenarios for trial judges and prosecutors that are easily gamed by defendants.[230] The authors observe how commonplace pseudolaw courtroom arguments around jurisdiction, Strawman Theory, and joinder provide exactly the bases to support a subsequent claim that the choice to self-represent was uninformed or the court's *Faretta* instructions were defective.[231] Alternatively, US courts may impose defence counsel where a pseudolaw accused or offender rejects court authority by "firing" the judge, being in "a [general] rebellion against the system" or "intent to disrupt and obstruct the proceedings," however that, too, provides strong grounds for a subsequent appeal.[232]

Bagley and Siskind stress that the prosecutor should plan to educate judges about pseudolaw concepts and communities, to establish that the accused and offenders possess adequate competence, knowledge, and intelligence, and to demonstrate how pseudolaw strategies are "an intentional strategy to obstruct and delay proceedings."[233] Unlike the Court of Appeal for Ontario in *Francoeur*, US courts recognize pseudolaw adherents are a different and distinct category of self-represented persons; pseudolaw is a bad litigation choice by "fools," who are not "incompetent."[234] Interestingly, in the US context, these authors

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222 *R v Martin*, 2013 NSPC 49; *R v Martin*, 2015 NSPC 57 at paras 6–7.
223 *R v Sawatzky*, 2017 ONSC 4289.
224 *R v Berg*, 2019 ABQB 541.
225 See Berg, *supra* note 5 for rejection of the US approach on the basis that self-representation should be an absolute right in criminal proceedings.
226 Via the Sixth Amendment (US Const amend VI) as interpreted in *Gideon v Wainwright*, 372 US 335 (1963).
227 *Faretta v California*, 422 US 806 (1975).
228 Reviewed in Jona Goldschmidt, "Judging the Effectiveness of Standby Counsel: Are They Phone Psychics? Theatrical Understudies? Or Both?" (2015) 24:2 Rev L & Social Justice 133.
229 Katie Bagley & Melissa Siskind, "A Fool for a Client: Legal and Practical Considerations when Facing Pro Se Defendants" (2023) Dep't Just J Fed L & Practice 129.
230 *Ibid* at 133–34.
231 *Ibid* at 130–32, 134–35.
232 *Ibid* at 137–38.
233 *Ibid* at 138–40.
234 *Ibid* at 140, citing *United States v Johnson*, 610 F (3d) 1138 at 1140 (9th Circuit 2010).

conclude standby counsel should always be appointed when the court authorizes a pseudolaw accused or defendant to self-represent as a kind of damage mitigation step.[235]

Other US commentary also distinguishes pseudolaw accused and offenders from other "ordinary" self-represented persons on a cultural and social basis, as persons who intentionally break systems. Mellie Ligon stresses the calculated and political character of Moorish Law concepts, and how that factor shifts the appropriate criminal court responses to representation issues, and termination of pseudolaw arguments.[236]

Barrows examines a specific US criminal prosecution scenario where One Peoples Public Trust guru/promoter and lawyer Heather Tucci-Jarraf and a follower were permitted to self-represent.[237] They advanced a diverse array of pseudolaw claims and arguments. Tucci-Jarraf and her co-accused were assigned standby elbow counsel but the Court did not impose representation. Samuel Barrows considers that an error which could have been avoided if the trial judge was better informed about pseudolaw concepts and strategies. The result was an unnecessarily lengthy and complex trial, and plausibly worse results for the offenders. Tucci-Jarraf and her follower then unsuccessfully argued the trial judge was wrong to let them self-represent; they were not competent to defend themselves.[238] The Sixth Circuit Court rejected that argument, concluding "their idiosyncratic actions and unconventional beliefs" were a choice, and a poor one, so now the offenders "[learned] that lesson the hard way."[239]

While no doubt well-intentioned and grounded in Canadian principle-driven constitutional approaches to obtain "fair" criminal proceedings, the specific character of pseudolaw and its users simply fall outside the conceptual structure set in *Kahsai*.

VIII. CONCLUSIONS

The Supreme Court's reasoning and conclusions in *Kahsai* mean that assigning an amicus, including an amicus who operates to advance criminal defences, is very likely required in any situation where an accused or offender deploys stereotypic pseudolaw get-out-of-jail-free strategies. That will be most self-represented pseudolaw adherents facing criminal prosecution.[240] Since the Supreme Court is unlikely to return to this subject anytime soon this requirement will remain in effect for the foreseeable future, unless appellate courts differentiate between ad hoc disruptors verus institutional OPCA pseudolaw disruptors. That distinction is possible, since an appeal court simply could (correctly) conclude that *Kahsai* neither evaluated OPCA litigation, nor set a binding precedent for what is the appropriate response to these abusive tactics from a trial fairness perspective.

Is this good policy? It seems strange that persons who deploy standardized and formulaic mechanisms to break court processes would, as a result, obtain further advantages at the

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235 Bagley & Siskind, *supra* note 229 at 142–44.

236 Mellie Ligon, "The Sovereign Citizen Movement: A Comparative Analysis with Similar Foreign Movements and Takeaways for the United States Judicial System" (2021) 35:2 Emory Intl L Rev 297 at 308, 320–21.

237 Samuel Barrows, "Sovereigns, Freemen, and Desperate Souls: Towards a Rigorous Understanding of Pseudolitigation Tactics in United States Courts" (2021) 62:3 Boston College L Rev 905 at 938–40.

238 *United States v Tucci-Jarraf*, 939 F (3d) 790 (6th Cir 2019).

239 *Ibid* at 796–97.

240 Table 2, above.

public's expense, and in the process create additional grounds for appeal. Reports from the US on the effectiveness of elbow counsel in this context are not encouraging, but, to be fair, the criminal prosecution and defence environment in that country is in critical senses very different, with a constitutional right to defence representation in criminal proceedings.

Intermediate appellate courts could, therefore, develop rules that distinguish between pseudolaw and non-pseudolaw criminal court process disruptors, but that requires intermediate appellate provincial courts to reject the conclusion by the Court of Appeal for Ontario in *Francoeur* [241] that prohibits identifying persons as "OPCA litigants" or "pseudolaw litigants." One particularly discouraging aspect of *Francoeur* is that this decision was issued at a point where Canada has unusually well-developed jurisprudence and legal academic resources that document the unique nature and special (typically negative) attributes of pseudolaw adherents. If Ontario appellate judges got this wrong, the possibility that other provincial appeal courts will reach equally ill-informed conclusions is realistic and worrisome.

The situation with *Kahsai* and its failure to address OPCA litigation and the pseudolaw phenomenon illustrates a broader issue. The rule that legal analysis should be grounded in a factual scenario rather than a theoretical matrix is no doubt useful to avoid conclusions unconnected from the actual issues encountered in Canadian courts.[242] But an example, or a few examples, of "real world" litigation dispute scenarios may not accurately reflect the "situation on the ground" in a broader sense. What would be better is if appeal court decisions reflected and were framed on the general pattern of litigation as a whole, rather than potentially unusual and non-representative examples or individuals like Kahsai. Here, the Supreme Court entirely missed the pseudolaw phenomenon, and the large volume of associated litigation, case law, and academic commentary. Why did that happen?

One answer is there simply is no broad statistical data on what Canadian courts do. At least some long-standing perceptions, for example of SRL activities, are simply wrong.[243] This article provides some data on pseudolaw litigation activities in Canadian criminal proceedings, but, really, that is at best an incomplete portrait of what is happening in Canada. But at least it is not a guess.

Since the Supreme Court and other appeal courts have only limited inherent information gathering functions — "judicial notice"[244] — the burden to provide quantitative information to shift appeal decision making from "working on anecdote" to "operating within a broad-based data context" will come from parties and interveners. That said, the scope of the submissions and evidence of these actors has limitations.[245] In *Kahsai* there was *no* data-based context. A preferable alternative would be an organic capacity for appeal courts to

[241] *Francoeur*, *supra* note 207.

[242] The "reasonably hypothetical" cruel and unusual punishment analysis (*Charter*, *supra* note 3, s 12) being the obvious exception: *R v Nur*, 2015 SCC 15. See also *R v Hills*, 2023 SCC 2 at paras 68–77 (for a broader review).

[243] See e.g. Netolitzky, "Unwind," *supra* note 6 at Parts II, IV(C), V(C).

[244] Reviewed in *R v Spence*, 2005 SCC 71.

[245] Reviewed by Justice Rowe in concurring reasons in *R v McGregor*, 2023 SCC 4 at paras 96–15, endorsed in *R v Bykovets*, 2024 SCC 6 at para 163, Wagner CJC, Côté, Rowe, and O'Bonsawin JJA dissenting. See also Supreme Court of Canada, *Notice to Profession - Interventions* (November 2021), online: [perma.cc/7YZ8-87LR]. For more direct and critical comments on inappropriate interventions: *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66 at paras 31–42, Stratas JA.

gather information, though that does not match the common law "judge as sphinx" model of dispute adjudication.

The implications of *Kahsai* and its failure to respond to pseudolaw scenarios means the Supreme Court should now, if possible, address and comment upon OPCA concepts, and the implications of persons deploying this renegade legal system and its not-law rules in Canadian courts. Pseudolaw is principally stagnant in Canada, but has become somewhat more challenging in the past decade, with:

(1) the emergence of more sophisticated Strawman Theory strategies[246] based on Supreme Court statements on how international human rights treaties are implicated in Canadian constitutional principles;[247]

(2) the expanding applications of Indigenous law and the *United Nations Declaration on the Rights of Indigenous Peoples* as foundations for pseudolaw claims, particularly by fake Indigenous groups;[248] and

(3) the festering conceptual inconsistency in Supreme Court interpretation of the *Charter* preamble, and its "supremacy of God" language that provides an alarmingly plausible conceptual basis for laypersons to misapprehend the very basis of Canadian law.[249]

In the meantime, education may, perhaps, assist. As Bagley and Siskind observe, pseudolaw is unusual, and on first contact is a confusing, if not misleading, form of not-law belief.[250] As far as the author is aware, the Canadian Judicial Council, National Judicial Institute, and Canadian Institute for the Administration of Justice have not, to date, offered judicial education programming specifically focused to introduce and contextualize pseudolaw in Canada.[251] While pseudolaw litigation will (thankfully) not likely become a commonplace occurrence in Canadian courtrooms, there also is no prospect pseudolaw is going to disappear, either. Pseudolaw is now a predictable part of the Canadian legal ecosystem. So perhaps judicial education is one place to start.

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246 Netolitzky, "History #2," *supra* note 23 at 822–23, specifically rebutted in *Pomerleau*, *supra* note 53.

247 Pseudolaw adherents in Canada increasingly approach international human rights treaties as the "series of tasty plates on a buffet table from which we can take whatever we like and eat whatever we please": *Attorney General of Canada v Dr. David Kattenburg*, 2020 FCA 164 at para 26.

248 Netolitzky, "History #3," *supra* note 31 at 994–99.

249 Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments as Magic and Ceremony" (2018) 55:4 Alta L Rev 1045 at 1052–53; *Gauvreau v Lebouthillier*, 2021 ABQB 172.

250 Bagley & Siskind, *supra* note 229.

251 For example, searches of the Canadian Judicial Council professional development resources did not identify pseudolaw-related subject matter: Canadian Judicial Council, "Professional Development," online: [perma.cc/V42V-NVJL]. The author has made multiple presentations to the Canadian judiciary on the broader subject of abusive litigation and litigants. Those presentations included a brief, typically five-minute, component introducing pseudolaw and its users, and their unique characteristics.