Supreme Court of Canada Self-Represented Appellants in 2017

by

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Abstract

Self-Represented Litigants [SRLs] are persons who appear in court and tribunal proceedings without a lawyer. Despite SRLs being the subject of considerable attention as a facet of the "access to justice crisis", no statistically valid quantitative investigation of a Canadian SRL population exists. Instead, most information that purports to describe Canadian SRLs has been obtained from surveys.

This study is a document- and court record-based investigation of litigation activities and characteristics of all SRLs who filed leave to appeal applications in the Supreme Court of Canada [SCC] in 2017. 125 leave to appeal applications were the basis for a quantitative, statistically valid population profile of 122 SRLs and their activities. SRLs are rarely successful at the SCC. While the study population's applications all completed the leave to appeal process, all but one application were rejected by that gatekeeping process. No procedural obstacle was identified to SRL participation at the SCC. Instead, the SCC extends deadlines, provides fee waivers, and accepts irregular filings.

Most applications had only one party on either side. A broad and diverse range of legal dispute types were the substrate for the SRLs' candidate appeals. Family law subject appeals were rare: 6.4%. Many leave to appeal applications were unsophisticated or problematic documents. Half of the leave to appeal applications did not adequately identify the candidate appeal's facts and issues. Many applications exhibit problematic litigation characteristics. Two thirds of applications implicated the Canadian *Charter of Rights and Freedoms*, but very few applications advanced viable claims of that kind. Accurate references to case law and legislation were uncommon. About one in five applications were markedly superior in communicating information, legal arguments, and identifying relevant legal authorities. These more sophisticated

applications were also much less likely to make rights-based allegations or complain of misconduct by justice system participants.

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

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

Acknowledgments

In *Agricola*, Publius Cornellus wrote: “Inquissima haec bellorum condicio est: prospera omnes sibi indicant, aduersa uni imputantur” : “This is an unfair thing about war: victory is claimed by all, failure to one alone.” Unlike a military campaign, any post-secondary thesis will have but a single name identified. In truth, that victory is always a cumulative affair.

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Beyond that, I have the rare benefit of over a decade of discussion, analysis, learning, and collaboration with the truly remarkable, tired but dedicated, cadre of that institution. I consider myself privileged to be a minor cog in that apparatus. The Court’s contributions, though invisible, run deep throughout this investigation. All their names belong here, but I must express particular appreciation to Associate Chief Justice John D. Rooke for both his direct support of my projects, but also the opportunity to collaborate on the strategic directions that led to my appointment as the Court’s Complex Litigant Management Counsel. It has been a good hunt.

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I. Introduction

The last decade has seen much commentary and discussion about Canadian self-represented litigants [SRLs]: persons who appear in courts and tribunals without a lawyer.[1] Most public dialogue about Canadian SRLs shares a common narrative:

1. SRL numbers are increasing;
2. SRLs are a family law phenomenon;
3. SRLs do not self-represent out of choice, but instead because they cannot afford a lawyer;
4. SRLs find the alien and complex character of Canadian law and legal procedure difficult;
5. litigation that involves SRLs is lengthier and more complex, and that stresses already over-taxed Canadian courts; and
6. almost all SRLs are good-faith, fair-dealing actors, but only a very few are problematic "bad apples" who misuse court processes.

All this is part of an "access to justice crisis", though the scope and character of this "crisis" is, to be generous, amorphous. That said, the plight of SRLs is very commonly mentioned whenever the "access to justice" topic comes up. Despite the broad emphasis on the allegedly unsatisfied needs of Canadian SRLs, the Canadian SRL population is only weakly characterized and documented. Who Canadian SRLs are, and what they do, is essentially unknown. What is known largely comes from small population surveys and interviews.[2] These sources are of questionable reliability, and the degree to which this information accurately describes SRLs, or specific SRL subgroups, is unclear. Worse, non-Canadian investigations based on court records contradict much of the Canadian SRL narrative.[3]

Bad data often leads to bad policy. Our limited understanding of who SRLs are, and what they do, may handicap and misdirect Canada's developing response to SRLs who appear before

[1] "Self-represented litigant" is the usual term used in Canadian jurisprudence and legal commentary. "Litigant in person" is the most common equivalent term in the UK, Australia, New Zealand, and the Republic of Ireland. US jurisprudence usually refers to SRLs as "pro se" litigants.
[2] Reviewed in Part II(B)(1).
[3] Reviewed in Part II(B)(2).

courts and tribunals. This investigation is designed as a model study that illustrates a methodology to investigate the Canadian SRL population and its activities that generates statistically reliable information on a population-specific basis.

Meaningful investigation of Canadian SRLs almost certainly needs to target individual subgroups. There is no reason to presume, and much basis to reject, that the experiences and challenges to both SRLs and the court apparatuses would be the same when, for example, a SRL appears in a traffic court to dispute a speeding ticket, as when a parent brings a court application as part of a decade-long process to manage shared custody of a child with special needs. Then there is the diversity in knowledge, experience, and capacity that is an inherent aspect of human nature. Yet SRLs are usually described as a monolith.

This investigation focusses on SRL activities in one court: the Supreme Court of Canada [SCC]. That approach has advantages and drawbacks. The first advantage is that the SCC provides a national sample because this Court potentially draws litigants from all Canadian jurisdictions. Second, SCC SRLs are not limited to any particular litigation subjects, though their court dispute will naturally be shaped by lower court proceeding events. Third, because SCC appeals follow a specific litigation sequence with discrete and well-defined steps, materials used and procedures followed by each SRL should be largely the same. That permits "side by side" comparison of individuals who possess common characteristics. Finally, the SCC appeal process typically takes under two years, which permits a complete contemporary profile of a SRL population and its litigation. Lower court proceedings provide more information to evaluate these persons and their activities. However, the primary disadvantage of this SCC-specific focus is that the potential relevance and implications of what is learned about SRL activity and conduct is limited to those SRLs who interact with the SCC. There is little reason to expect that SRLs in Canada's highest court are representative of the Canadian SRL population as a whole, and particularly SRLs engaged in trial-level proceedings. These SRLs have already traversed at least two layers of trial and appeal proceedings. That is a filtering process. SCC SRLs may have accumulated some degree of experience. Their perspectives and objectives are also plausibly different from SRLs in lower courts because this population has persisted after at least some degree of litigation failure. Characteristics and conduct of SCC SRLs may nevertheless be *relevant* to SRLs in other litigation contexts.

This thesis originally proposed to examine both appellant and respondent SRLs active at the SCC in 2017. 2017 is a recent year, but enough time elapsed between 2017 and the start of this study so that all 2017 SCC SRLs exhausted their appeals by the time this investigation commenced. That original scope was subsequently narrowed to eliminate the respondent population. In 2017, 125 leave applications were filed by 122 SRLs.[4] However, one or more SRLs were respondents in only 15 SCC dockets opened in that year. In seven of the SRL respondent matters the appellant(s) were represented by counsel. Eight candidate appeals had both SRL appellants and respondents. The potential 2017 SRL respondent population was therefore very small. A further complication was that in nine appeals the SRL respondent took no steps and filed no materials. Of the remaining six 2017 SRL respondents who did participate in some manner during the SCC leave application process, the materials filed by one respondent were unavailable due to a publication ban.[5] Combined, no information could be obtained on any positive activity by two thirds of the 2017 SRL respondents. In light of these small numbers, and the broad lack of meaningful participation by this group, no further investigation was conducted of the 2017 SCC SRL respondent population.

The memoranda of leave to appeal arguments for the 125 candidate SRL appeals were ordered from the SCC Registry and reviewed in detail. These documents, docket records, and reported court and tribunal decisions were used to develop detailed profiles of the 2017 SRL appellants - the "Study Group Appellants", and their 2017 SCC court activities - the "Study Group Applications".

A number of observations flow from the data collected:

1. The litigation subjects and disputes that led to Study Group Application candidate appeals are diverse. The same is true for the characteristics of the Study Group Appellants. There is no typical SCC SRL appeal.
2. No evidence indicates that Study Group Appellants were unable to comply with the SCC's procedures. Once the SCC Registry opened a docket record, all Study Group Applications completed the leave to appeal process.
3. Most Study Group Applications involved one responding party.

[4] See Part III(B) below for how this population was defined.
[5] See Part III(B) for discussion of this category.

4. Study Group Appellants were usually the ones who started the dispute that ultimately led to the candidate SCC appeal. Nearly three quarters of litigation processes that led to a SCC candidate appeal were initiated by the Study Group Appellant.

5. Study Group Application candidate appeals involved a very diverse range of litigation subjects. Torts was the most common observed litigation category, while job- or employment-related disputes were the most common litigation issue subject. Family law subject litigation was uncommon.

6. Most Study Group Applications were poorly prepared. Half failed to provide either or both the relevant facts or the legal issues for the SCC to review. Only one in five Study Group Applications provided both a basis for a meaningful response and included accurate references to *any* relevant legal authorities, legislation, or cases.

7. Many Study Group Applications involve hopeless allegations:

   a) The majority of Study Group Applications alleged bias, misconduct, and illegal conduct by justice system participants such as judges, law enforcement, and lawyers. These allegations were rarely substantiated in any way.

   b) The majority of Study Group Applications mention rights, typically *Canadian Charter of Rights and Freedoms* [*Charter*][6] rights. Those rights-based claims were not elaborated, but instead invoked. Many rights-based claims had no basis in law.

8. Study Group Appellant pre-SCC and SCC litigation exhibits a high incidence of problematic litigation conduct. Study Group Appellants are disproportionately likely to be subject to court access restriction orders imposed by lower courts. Problematic litigation and court access restrictions are linked to the number of appearances by a Study Group Appellant at the SCC.

10. Information that directly references Study Group Appellant mental health occurs at a low frequency. However, a substantial number of Study Group Appellants exhibit an unusual pattern of persistent and expanding litigation, the "Querulous

[6] *Canadian Charter of Rights and Freedoms*, Part 1, *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

Litigation Pattern". Some mental health professionals link this litigation pattern to a psychiatric condition: querulousness.

The population- and document-based approach applied in this model study produced a detailed profile of a SRL population and their activities. In some senses this population does not match the usual SRL narrative. That observation does not mean the SRL narrative is always wrong, but rather emphasizes the need to verify what we think we know about SRLs by examining what actually occurs in courthouses across Canada.

II. Background and Relevant Prior Investigation

A. Overview

The current thesis project has a very broad *potential* scope since its subject population - SRL appellants active at the SCC in 2017 - is a proverbial *terra incognita*. The Study Group Appellants do not appear to have been previously investigated or characterized. The same is also true for earlier and subsequent annual SCC SRL groups. Since so little is known about the Study Group Appellants, three "anchor" themes that are defining or plausible characteristics of the Study Group Appellants are a useful point of departure to identify potentially relevant background and comparator information.

First, the Study Group Appellants are self-represented. That makes them a subset of a larger litigant population: the "SRL Phenomenon". Many individuals now appear in Canadian and other UK tradition common law courts without a lawyer. This study's first anchor theme is what is known - or more accurately, what is *said* to be known - about the SRL Phenomenon. Who are SRLs? Why do they appear in courts without a lawyer? Are SRLs more common in certain kinds of disputes? If a reliable profile of the overall SRL population were available then that would provide a baseline comparator to evaluate whether the Study Group Appellants reflect the SRL Phenomenon as a whole, or, instead, the Study Group Appellants are different and unique.

Failure is a second anchor theme of the Study Group Appellants. Post-2000, only one SRL appeal was granted. SRLs are almost always excluded by SCC gatekeeping processes. This review documents what is known about the SRLs' lack of success and how that compares to reported outcomes for SRLs in the high courts of the US and Australia.

Some observations suggest that a significant proportion of the Study Group Appellants have or are engaged in litigation steps that misuse court processes. Misuse of courts, sometimes called

"abuse of process", is this review's third anchor theme. This review examines some aspects of the limited judicial, legal academic, and mental health commentary on problematic litigation and litigants.

B. The SRL Phenomenon

The SRL Phenomenon is a hot topic for Canadian legal scholars. Legal representation is identified as a major "access to justice" issue. Exhortations that Canada faces an "access to justice crisis" that has denied SRLs their court-mediated rights are commonplace.[7] Despite that, the Canadian SRL population is only weakly characterized and documented. As point of clarification, this review does not distinguish between SRLs who are "unrepresented" (choose to appear without a lawyer) vs "self-represented" (unable to obtain a lawyer).[8] This distinction appears to be less common in more recent commentary on SRL subjects.

1. Descriptions of the Canadian SRL Phenomenon

Most information about Canadian SRLs comes from surveys of lawyers, judges, court workers, and litigants. Their opinions align on some points, including a high incidence of SRLs in family litigation,[9] and that many SRLs are unrepresented because of the cost of legal

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[7] E.g. Beverley McLachlin, "The Challenges We Face" (2007) 40:2 UBC L Rev 819 at 822-23; Beverley McLachlin, "The Legal Procession in the 21st Century" (14 August 2015), online: *Supreme Court of Canada* <www.scc-csc.ca/judges-juges/spe-dis/bm-2015-08-14-eng.aspx> [perma.cc/7WCR-QH8G].

[8] Reviewed in Trevor C W Farrow et al, *Addressing the Needs of Self-Represented Litigants in the Canadian Justice System* (Toronto and Edmonton: Association of Canadian Court Administrators, 2012) [unpublished] at 14, online (pdf): *Association of Canadian Court Administrators* <www.cfcj-fcjc.org/sites/default/files/docs/2013/Addressing%20the%20Needs%20of%20SRLs%20ACCA%20White%20Paper%20March%202012%20Final%20Revised%20Version.pdf> [perma.cc/3TWT-33HN].

[9] Rachel Birnbaum & Nicholas Bala, "Views of Ontario Lawyers on Family Litigants Without Representation" (2012) 63 UNBLJ 99 at 104 [Birnbaum, "Views"]; Rachel Birnbaum, Nicholas Bala & Lorne Bertrand, "The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants" (2013) 91:1 Can Bar Rev 67 [Birnbaum, "Rise"] at 74-75; Lorne D Bertrand, Joanne J Paetsch & Nicolas Bala, "Self-Represented Litigants in Family Law Disputes: Views of Alberta Lawyers" (December 2012) at 4-5 [Bertrand, "Lawyers"], online (pdf): *CanLII* <commentary.canlii.org/w/canlii/2012CanLIIDocs74>; John-Paul E Boyd & Lorne D Bertrand, "Self-Represented Litigants in Family Law Disputes: Contrasting the Views of Albert Family Law Lawyers and Judges of the Alberta Court of Queen's Bench" (July 2014) at 5-6, online

services.[10] A less common explanation for persons appearing without lawyers is that SRLs are confident they can manage their litigation.[11] Survey respondents broadly agree that SRL matters involve additional cost and take more time to resolve,[12] and that SRLs find legal proceedings difficult and underestimate the challenges posed by court proceedings.[13] Lawyers and judges report represented litigants obtain better outcomes than SRLs, but at an increased expense.[14]

Three authors report direct surveys of SRL populations: Birnbaum et al - 275 family dispute litigants, 60% whom were SRLs; Langan - 35 SRL family dispute litigants; Macfarlane - 259 SRLs, 60% involved in family disputes.[15] Unexpectedly, Macfarlane's family dispute SRL population were predominately divorce rather than common law partnership disputes, for example in Alberta 85%/15%, respectively.[16] These different SRL studies report strikingly different age profiles. The Birnbaum et al SRL population were predominately under 30.[17] Macfarlane's study SRLs were predominately over 40 (77%), with only 3% under the age of

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(pdf): *CanLII* <commentary.canlii.org/w/canlii/2014CanLIIDocs125>; John-Paul E Boyd, Lorne D Bertrand & Joanne J Paetsch, "Self-Represented Litigants in Family Law Disputes: Views of the Judges of the Alberta Court of Queen's Bench" (April 2014) at 6-7 [Boyd, "Judges"], online (pdf): *CanLII* <commentary.canlii.org/w/canlii/2014CanLIIDocs127>; Farrow, *supra* note 8 at 15-16; Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants" (May 2013) [unpublished] [Macfarlane, "Report"] at 25-26, 32-33, online (pdf): *NSRLP* <representingyourselfcanada.com/wp-content/uploads/2015/07/nsrlp-srl-research-study-final-report.pdf> [perma.cc/3NLW-9N27].

[10] Birnbaum, "Views", *supra* note 9 at 104-106; Birnbaum, "Rise", *supra* note 9 at 76-77, 92-95; Anna-Marie Langan, "Threatening the Balance of the Scales of Justice: Unrepresented Litigants in the Family Courts of Ontario" (2005) 30:2 Queens LJ 825 at 832, 861; Bertrand, "Lawyers", *supra* note 9 at 4; Boyd & Bertrand, *supra* note 9 at 6; Boyd, "Judges", *supra* note 9 at 7; Macfarlane, "Report", *supra* note 9 at 39-43.

[11] Birnbaum, "Views", *supra* note 9 at 105; Bertrand, "Lawyers", *supra* note 9 at 4-5; Boyd & Bertrand, *supra* note 9 at 6.

[12] Birnbaum, "Views", *supra* note 9 at 108-109; Birnbaum, "Rise", *supra* note 9 at 79; Langan, *supra* note 10 at 833.

[13] Birnbaum, "Rise", *supra* note 9 at 79; Langan, *supra* note 10 at 833, 843; Boyd, "Judges", *supra* note 9 at 12-14; Farrow, *supra* note 8 at 18-19, 58-59, 65-68; Macfarlane, "Report", *supra* note 9 at 50-55.

[14] Birnbaum, "Views", *supra* note 9 at 111-113; Birnbaum, "Rise", *supra* note 9 at 87-88 - but 89 contradicts; Bertrand, "Lawyers", *supra* note 9 at 8-12; Boyd, "Judges", *supra* note 9 at 9-10.

[15] Birnbaum, "Rise", *supra* note 9; Langan, *supra* note 10; Macfarlane, "Report", *supra* note 9.

[16] Macfarlane, "Report", *supra* note 9 at 25.

[17] Birnbaum, "Rise", *supra* note 9 at 78.

30.[18] Langan's study population exhibit a normal distribution profile centered on ages 31-40.[19] Birnbaum et al and Langan describe SRLs as a low-income population. 85% of Langan's survey SRLs respondents had an annual income under $30,000, and half received social assistance.[20] Similarly, a little under 60% of Birnbaum et al's SRL population reported an income under $30,000.[21] 60% of Macfarlane' respondents report an income of over $30,000, with 6% over $100,000.[22] Birnbaum et al states many SRL litigants have limited "education and literacy skills", yet 77% of Macfarlane's population self-report they are professionals, or college or university educated.[23]

One point where lawyers, judges, and SRLs differ is how they evaluate each other's conduct. Lawyers and their clients report judges treat SRLs fairly, or provide SRLs an unfair advantage.[24] Surveyed judges overwhelmingly report that the treatment SRLs receive from the judiciary is very fair, or fair, but express less confidence in the conduct of lawyers who appear opposite SRLs in court.[25] Most represented and SRL litigants in Birnbaum et al's study population indicate judges treat SRLs "Very Well" or SRLs receive "Good Treatment".[26] The Macfarlane SRL population state the opposite; they report very negative experiences with judges and opposing lawyers, and denounce Canadian judges as escaping discipline justified by their improper conduct.[27] Macfarlane's SRLs found court processes and litigation traumatic.[28]

The demographic profiles of the three Canadian SRL survey populations are quite different. That observation suggests these investigators' sampling captured different groups. So do their investigation methodologies. Macfarlane's sample were volunteers that self-identified as SRLs, and who responded to posters and a website that invited comments.[29] Birnbaum et al conducted

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[18] Macfarlane, "Report", *supra* note 9 at 27.
[19] Langan, *supra* note 10 at 860.
[20] *Ibid* at 831, 861
[21] Birnbaum, "Rise", *supra* note 9 at 78.
[22] Macfarlane, "Report", *supra* note 9 at 28.
[23] Birnbaum, "Rise", *supra* note 9 at 86; Macfarlane, "Report", *supra* note 9 at 30-31.
[24] Birnbaum, "Rise", *supra* note 9 at 81-82; Birnbaum, "Views", *supra* note 9 at 109-11; Bertrand, "Lawyers", *supra* note 9 at 9-12.
[25] Boyd, "Judges", *supra* note 9 at 10-11.
[26] Birnbaum, "Rise", *supra* note 9 at 81-83.
[27] Macfarlane, "Report", *supra* note 9 at 13-14, 91-92, 95-104.
[28] *Ibid* at 108-10.
[29] *Ibid* at 17-20.

field interviews of family law litigants after their court appearances.[30] To be fair, none of the three SRL survey studies purports to be randomized or quantitative, though Macfarlane calls her sample "highly representative" and "effectively randomized as a result of the myriad points of entry."[31] Birnbaum et al acknowledge issues with their survey methodologies and a need for empirical data.[32]

The available surveys leave many gaps. No criminal, ticket, or licence offense SRL populations were investigated. Instead, study populations are either explicitly limited to[33] or predominately composed[34] of SRLs with family litigation subject disputes. SRL appellate activity was not explored.[35] Problematic SRL conduct is barely addressed. Judges report SRLs have a higher incidence of personality and anxiety disorders, and mental health issues.[36] Court workers frequently identified mental health issues (70%) and problematic conduct (62%) as challenges when assisting SRLs.[37] Macfarlane eliminated eight individuals from her study as "demonstrating enough emotional instability to indicate that they possibly suffered from a mental illness of some kind",[38] but otherwise appears to presume her SRL survey population were good-faith, fair-dealing actors. Interestingly, part of Macfarlane's Alberta study population were problematic pseudolaw litigants, a fact Macfarlane does not appear to have appreciated.[39] Macfarlane also does not address the "vexatious" or "querulous" litigation phenomenon.[40]

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[30] Birnbaum, "Rise", *supra* note 9 at 73-74.
[31] Macfarlane, "Report", *supra* note 9 at 19-21.
[32] Birnbaum, "Rise", *supra* note 9 at 75-76, 94-95.
[33] E.g. Birnbaum, "Views", *supra* note 9; Birnbaum, "Rise", *supra* note 9; Langan, *supra* note 10.
[34] E.g. Macfarlane, "Report", *supra* note 9.
[35] Farrow, *supra* note 8 at 57 reports 16% of surveyed court workers were from appellate courts but that subpopulation is not reported separately.
[36] Boyd, "Judges", *supra* note 9 at 8.
[37] Farrow, *supra* note 8 at 18, 63.
[38] Macfarlane, "Report", *supra* note 9 at 32.
[39] Paraclete Edward Jay Robin, "Getting assaulted obstructed nuisance and intimidated on law courts day 420" (25 April 2012) at 00h:14m, online (video): *YouTube* <www.youtube.com/watch?v=EER4olAYgq8> [perma.cc blocked]. The individual in this video, Edward Jay Robin Belanger, is the leader or "guru" of "CERI", a fake church that purports pseudolaw immunizes its members from being subject to Canadian law, see *Meads v Meads*, 2012 ABQB 571 at paras 134-39, 183-88 [*Meads*]. The author is familiar with CERI as an aspect of his professional duties. At this point CERI's Edmonton-area membership was probably 10-20.
[40] See Part II(D).

2. Empirical Data Raises Questions

Little empirical data exists that describes SRLs and their activities. What is available raises concerns as to whether the Canadian survey investigations are reliable, and, more broadly, about what might be described as SRL and SRL litigation stereotypes.

John Greacen's 2002 review of several US studies challenges SRL litigation is increasing.[41] Greacen reports extreme differences in SRL participation by subject matter.[42] For example, over half California family law subject actions involve SRLs. While that proportion was increasing, SRL involvement in tort and commercial matters was negligible (2-3%) and static. Litigation that involves SRLs is stereotypically described as slow and lengthy. Unexpectedly, Greacen documents family and small claims court appearances where a SRL was involved took less court time, 30% and 49%, respectively.[43] Washington State SRL family matters were much less likely to go to trial, and resolved earlier than if lawyers were involved.[44] In a 2014 follow-up study[45] Greacen proposed litigants selectively self-represent or engage lawyers in a calculated manner proportionate to the seriousness of the litigation subject matter. SRLs were most common in small claims matters (91.1%), less frequent in family subject litigation (35.3%), and were uncommon in large civil (11.5%) and motor vehicle injury (6.1%) actions.[46]

Limited Canadian data supports this more complex pattern of SRL activity. In Quebec between 1994-1999 SRL appearances increased substantially in family litigation matters (30.3% to 43%) but *decreased* in civil matters before the Quebec Superior Court (16.2% to 14.2%) and the Court of Quebec (27.5% to 20.3%).[47]

An Australian 2012 survey by Richardson et al of Commonwealth SRL research stresses the problem of treating SRLs as a homogenous population, instead concluding SRL activities are

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[41] John M Greacen, "An Administrator's Perspective: The Impact of Self-Represented Litigants on Trial Courts - Testing our Stereotypes against Real Data" (2002) 41:3 Judges' J 32 [Greacen, "Impact"].
[42] *Ibid* at 33.
[43] *Ibid* at 34, see also John M Greacen, "Self-Represented Litigants, the Courts, and the Legal Profession, Myths and Realities" (2014) 52:4 Fam Ct Rev 662 at 667-68 [Greacen, "Myths"].
[44] Greacen, "Impact", *supra* note 41 at 34-35.
[45] Greacen, "Myths", *supra* note 43 at 663-64.
[46] *Ibid* at 664.
[47] Claude Duchesnay, "Se Representer Seul" (2002) 34:13 Barreau, online: *Internet Archive* <web.archive.org/web/20080407103153/http://www.barreau.qc.ca/publications/journal/vol34/no13/seul.html>.

highly contextual.[48] A further complication is this population often captures persons who were previously represented, who may be receiving information from non-lawyer or lawyer advisors, or who may even be lawyers acting on their own behalf.[49] Similar to Greacen, Richardson et al report large variations in SRL incidence between courts, tribunals, and in different litigation subject domains.[50] The highest frequency was in divorce filings (70%), but also the High Court of Australia (67%), while in the State of Victoria County and Supreme Courts SRLs are only 3% and 4.5% of the litigant population. A subsequent 2018 report repeats only limited data supports the wide-spread and plausibly exaggerated perception of an increasing incidence of SRLs in Australian courts and tribunals.[51] Inadequate data limits any conclusion on whether SRLs require more institutional resources, on their degree of success, and whether SRLs cause delay.[52] Richardson et al recommend better and more consistent data collection.

Moorhead & Sefton in 2005 surveyed UK Court records for 1,029 civil and 1,334 family trial proceedings that involved SRLs.[53] Like Greacen, Moorhead & Sefton found a complex profile where the frequency and gender of unrepresented litigants varied widely depending on the dispute subject. Litigants retained counsel for "substantial or complex" disputes.[54] Court data did not substantiate an "explosion in unrepresented litigants".[55] Defendants in certain litigation domains were more often self-represented. However, defendant "non-representation" was often simply "non-participation".[56] The trajectory of matters involving SRLs showed only "minor"

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[48] Elizabeth Richardson, Tania Sourdin & Nerida Wallace, *Self-Represented Litigants: Literature Review* (Melbourne: Australian Centre for Court and Justice System Innovation, 2012) [unpublished] [Richardson, "Literature"], online (pdf): *SSRN* <papers.ssrn.com/sol3/papers.cfm?abstract_id=2713503> [perma.cc/NV3A-ZR7U].
[49] *Ibid* at 10-11.
[50] *Ibid* at 24-28.
[51] Liz Richardson, Geneviere Grant & Janina Boughey, *The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice* (Australasian Institute of Judicial Administration, 2018) at ii, 29-36 [Richardson, "Impacts"], online (pdf): *AIJA* <aija.org.au/wp-content/uploads/2018/11/10803_SRL_Enviro-Scan-Report_WEB3.pdf> [perma.cc/9UG6-ANGG].
[52] *Ibid* at ii-iv, 36-51.
[53] Richard Moorhead & Mark Sefton, *Litigants in person: Unrepresented litigants in first instance proceedings* (Department for Constitutional Affairs, 2005), online (pdf): *ORCA* <orca.cf.ac.uk/2956/1/1221.pdf> [perma.cc/SQF4-7P42].
[54] *Ibid* at 250.
[55] *Ibid* at 60-61, 251-52.
[56] *Ibid* at 247-48.

differences in both family subject and civil litigation,[57] however SRLs filed fewer documents, made fewer applications, more often did not attend court or contest litigation, and only rarely conducted appeals.[58]

Several studies challenge the stereotype that SRLs are unable to meaningfully operate in court and interact with the judiciary. Greacen describes a 2007 experiment where court proceedings that involved SRLs were videotaped and then those recordings were replayed for the SRLs to evaluate their understanding of what had transpired.[59] SRLs demonstrated a high level of comprehension. Experiment participant judges and SRLs both rated each other's conduct in a positive manner. The judges in this investigation indicated SRL proceedings required no additional time. Other recent US field studies show lawyers provided no benefit in employment insurance claims and when tenants resist eviction.[60]

An interesting theme emerges from non-Canadian attempts to describe SRLs. Investigators suspect that common lawyer, judge, and court worker stereotypes of the typical SRL are distorted by a smaller, highly problematic SRL subpopulation. Greacen suggests SRL stereotypes may be based on worst case scenarios.[61] Richardson et al identify a small population of problematic SRLs: "persistent litigants or querulous litigants".[62] Moorhead & Sefton, too, report a "striking, though possibly superficial" lawyer and court worker focus on "obsessive" and "vexatious litigants", while judges reported this problem SRL population is comparatively small.[63] UK judges, however, stress these individuals had a disproportionate and disruptive effect.

3. Who are Canada's SRLs?

What does all this tell us about Canadian SRLs? Comparatively little. Survey-based research is inherently limited by reporter knowledge, belief, and honesty. There is good reason to conclude that SRLs are a heterogenous population. Their conduct and characteristics are

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[57] *Ibid* at 111-12.
[58] *Ibid* at 125-27.
[59] Greacen, "Myths", *supra* note 43 at 666-67.
[60] Reviewed in Jeanne Charn, "Celebrating the "Null" Finding: Evidence-Based Strategies for Improving Access to Legal Services" (2013) 122:8 Yale LJ 2206.
[61] Greacen, "Impact", *supra* note 41 at 35.
[62] Richardson, "Impacts", *supra* note 51 at iv.
[63] Moorhead & Sefton, *supra* note 53 at 79-82, 88-91.

plausibly different in different litigation contexts. Common wisdom concerning SRLs may be an oversimplification. Court staff, lawyers, and judges may very well focus on their worst-case experiences, and under-weigh mundane encounters and SRL matters that resolve on a document-only or settlement basis.

Is any of the usual SRL narrative accurate? Probably, in at least some situations. Greacen, Richardson et al, and Moorhead & Sefton's context-sensitive approach reveals a spectrum of litigation and dispute-related activities, which both match and contradict expectations. Are these non-Canadian investigations even relevant? Any answer to that question is really only a guess.

Perhaps the ancient elephant and blind men parable is the best explanation. Individual studies may accurately capture an aspect of the SRL Phenomenon, or describe a subpopulation of a larger community. Lawyers and judges in one court plausibly encounter SRLs who are quite different from those in other contexts. SRLs may successfully navigate simple criminal ticket and small debt proceedings, but flounder in more complex litigation. Each SRL brings a unique set of personal strengths and weaknesses to court. To imagine SRL subjective and objective experiences and outcomes would be uniform defies the diversity of humanity and the variety of legal processes and proceedings.

If correct, then the unfocussed survey-based, highly subjective approach employed to date to investigate Canadian SRLs has little merit. The Moorhead & Sefton study provides a superior model. First, collect a statistically valid, objective, and complete profile distilled from reliable documentary sources. With that foundation laid, subjective observations and experiences can be collected, tested, and located within a known and described framework.

C. High Court Gatekeeping Processes Exclude SRLs

The second anchor theme of this review investigates SRL failure before the high courts of Canada, the US, and Australia.

1. Canada

Netolitzky, "Limitations" reviews how since 2000 SRLs have met with only very limited success at the SCC:

1. incomplete data indicates SRLs file around a fifth to a third of new candidate SCC appeals, over 100 applications per year;

2. SRL leave to appeal applications are rarely granted, at a rate of less than one application per year; and
3. six SRLs had full appeals; one appeal was granted where the SRL participated in a meaningful way.[64]

One 2017 SRL leave to appeal application was granted.[65] That appellant was, however, represented by counsel in the subsequent full appeal proceeding.[66] The appeal was dismissed.

Overall, about 10% of SCC leave to appeal applications are granted each year,[67] so SRLs are disproportionately unsuccessful at this step. No data explains why these outcomes are so different. No reasons are provided when a leave application is rejected,[68] which is a SCC policy "to preserve our total discretion on the choice of the business that the Court hears."[69]

Several SCC justices have described how the leave to appeal process operates.[70] The SCC may take jurisdiction where a question is of "public importance" due to "the importance of any issue of law or any issues of mixed law and fact", or where otherwise warranted.[71] Sopinka J identified a number of "hot buttons" that attract SCC interest:

1. constitutional challenges to legislation, common law, or government practices;
2. when Canadian courts of appeal are in conflict;
3. novel points of law;
4. interpretation of federal statutes, or multiple provincial statutes; and
5. indigenous rights.[72]

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[64] Donald J Netolitzky, "Enforcement of Leave to Appeal Limitations Periods at the Supreme Court of Canada" (2021) 20 SCLR (in press) at 1(A-B) [Netolitzky, "Limitations"].
[65] *Mazraani v Industrial Alliance Insurance and Financial Services Inc* (2 November 2017), Ottawa 37642 (SCC).
[66] *Mazraani v Industrial Alliance Insurance and Financial Services Inc*, 2018 SCC 50 [*Mazraani*].
[67] Supreme Court of Canada, *Supreme Court of Canada Statistics 2007-2017* at 8 [*Statistics 2007-2017*], online (pdf): *Supreme Court of Canada* <www.scc-csc.ca/case-dossier/stat/pdf/doc-eng.pdf> [perma.cc/E3GV-A8VN].
[68] *R v Hinse*, [1995] 4 SCR 597 at 609, 130 DLR (4th) 54 [*Hinse*].
[69] Clement Gascon, "Avoir le Dernier Mot? Mythe ou Realite?" (2017) 58:3 C de D 581 at 586, citing *Hinse*, *supra* note 68 at 609.
[70] Gascon, *supra* note 69; Bertha Wilson, "Leave to Appeal to the Supreme Court of Canada" (1983) 4:1 Adv Q 1.
[71] *Supreme Court Act*, RSC 1985, c S-26, ss 40(1-2) [*SCA*].
[72] Sanda Rodgers, "Getting Heard: Leave to Appeal, Interveners and Procedural Barriers to Social Justice in the Supreme Court of Canada" (2010) 50 SCLR (2d) 1 at para 13; Eugene

More recently, former SCC Justice Gascon disclosed additional factors:

1. the quantum of money at stake "is rarely decisive";
2. the underlying file should be complete and a "good record";
3. anticipated or existing legislative responses are a basis to refuse leave; and
4. the SCC denying leave does not mean its justices agree a lower court decision was correct.[73]

Justice Gascon explained incoming leave applications are first read and summarized by staff lawyers, then independently reviewed by three SCC justices, and sometimes circulated to all court justices.[74] If the full court discusses a leave application, leave is granted if four SCC justices "express their interest to hear the case."[75]

The SCC does not publish statistics on the frequency of successful SRL leave applications, however, in a 2018 speech Chief Justice Wagner reported 1-2 SRL leave applications are granted "every five or so years."[76] Despite their significant numbers, SRL appellants are almost entirely unsuccessful at the SCC.[77] At present, no data explains why that would be the case.

2. The US and Australia

SRL activities in several other national high courts have been investigated. These forums also use pre-appeal gatekeeping processes. Again, SRLs are almost always unsuccessful at this step.

Meehan et al, *Supreme Court of Canada Manual: Practice and Advocacy* (Toronto: Thomson, 2016) at 3:15; D Lynne Watt et al, *Supreme Court of Canada Practice 2019* (Toronto: Thomson Reuters, 2019) at 12-16.

[73] Gascon, *supra* note 69 at 585. See also Wilson, *supra* note 70 at 3.

[74] Gascon, *supra* note 69 at 586.

[75] *Ibid*.

[76] Richard Wagner, "Access to Justice: A Social Imperative" (4 October 2018), online: *Supreme Court of Canada* <www.scc-csc.ca/judges-juges/spe-dis/rw-2018-10-04-eng.aspx> [perma.cc/A8HU-M4CU].

[77] The one exception to this pattern is that SRLs very frequently obtain time extensions beyond the *SCA*, s 58(1)(a) 60-day limitations period deadline: Netolitzky, "Limitations", *supra* note 64. In 2017 82.6% (N=46) of SRL motions to extend the time to serve and file leave to appeal applications were successful. The longest successful 2017 time extension was over three years. However, represented SCC appellants met with a similar degree of success, and so this observation simply reflects the SCC's "generous approach" to timing identified in *R v Roberge*, 2005 SCC 48 at para 6 [*Roberge*].

a. The Supreme Court of the United States

A candidate appellant must submit "a petition for a writ of certiorari" to access the Supreme Court of the United States [SCOTUS].[78] Kevin H Smith in two papers published in 1999 and 2001 examined SCOTUS "*pro se*" (SRL) certiorari applications.[79] Smith reports that only a small fraction, about 0.2%, of all SCOTUS certiorari applications are granted.[80] Successful SRL certiorari applications are very rare.[81] For example, in 1980-1983 only two SRL certiorari applications were successful. Smith investigated random samples of SCOTUS civil certiorari applications that raised an "equal protections issue". 22.6% and 23.8% of the samples were SRLs.[82] In both studies no SRL certiorari applications were granted. Smith's 1999 investigation examined whether lack of success correlated with the subject of the SRL appeals.

Rule 10(a)[83] sets the criteria for the SCOTUS to take on a candidate appeal. Certiorari is only granted for "compelling reasons", including where US appeal courts are in conflict, and where a lower court "has decided an important question" that has not been settled by the SCOTUS. Smith investigated whether SRL certiorari applications mention or meet these criteria. He concluded that SRL applications are less likely to identify conflicting authorities, unsettled law, and dissenting lower court opinions.[84] SRL certiorari applications more often flow from an oral rather than written lower appeal court decision, and in SCOTUS proceedings SRL applications triggered fewer written responses.[85]

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[78] Procedures reviewed in Lawrence S Wrightsman, *The Psychology of the Supreme Court* (Oxford: Oxford University Press, 2006) at 59-66, see also Kevin H Smith, "Justice for All?: The Supreme Court's Denial of Pro Se Petitions for Certiorari" (1999) 63:2 Alb L Rev 381 at 395-400 [Smith, "Justice"].

[79] Smith, "Justice", *supra* note 78; Kevin H Smith, "Certiorari and the Supreme Court Agenda: An Empirical Analysis" (2001) 54:4 Okla L Rev 727 [Smith, "Certiorari"].

[80] Smith, "Certiorari", *supra* note 79 at 729.

[81] Smith, "Justice", *supra* note 78 at 383-84.

[82] *Ibid* at 383; Smith, "Certiorari", *supra* note 79 at 755.

[83] *Rules of the Supreme Court*, Rule 10.

[84] Smith, "Justice", *supra* note 78 at 405-14.

[85] *Ibid* at 416-19. SCOTUS certiorari procedures permit written materials in response to leave applications, including by the Solicitor General. David C Thompson & Melanie F Wachtell, "An Empirical Analysis of Supreme Court Certiorari Petition Procedures: The Call for Response and the Call for the Views of the Solicitor General" (2009) 16:2 Geo Mason L Rev 237 report a significant positive correlation between reply submissions and the SCOTUS granting certiorari and hearing an appeal.

Smith concluded "frivolous case attributes" were about three-fold higher than for certiorari applications where a lawyer was involved.[86] Smith therefore rejected that the SCOTUS discriminates against unrepresented persons, a characteristic that Smith links to "bias against the poor and powerless".[87] Instead, Smith identified substantive defects in SRL SCOTUS certiorari applications that, in Smith's opinion, confirmed that Court's pattern of denying access to SRLs was an efficient and appropriate allocation of court resources.

An interesting aspect of Smith's investigation of SCOTUS SRL litigation activity is he plausibly under-reports the true extent to which SRL applications both represent a significant fraction of SCOTUS SRL litigation and SRLs' lack of success. Smith only investigated SCOTUS certiorari applications where the appellant had paid a filing fee. That excluded "*in forma pauperis*" petitions. In Smith's study period "paid" petitions were successful at a rate about 10-fold higher than "unpaid" petitions.[88] Smith excluded the *in forma pauperis* appellate subpopulation since its low success rate would make statistical analysis difficult.[89] Around 2/3 of SCOTUS certiorari petitions are *in forma pauperis*, and most are filed by incarcerated indigent prisoners.[90] A substantial portion of these applicants are unrepresented.[91] These observations imply Smith's study underrepresents overall SRL failure at the SCOTUS.

b. The High Court of Australia

The High Court of Australia [HCA] also engages in appeal gatekeeping by a "special leave to appeal" process. The criteria identified by former Chief Justice Mason broadly parallel those applied by the SCC and the SCOTUS. The HCA intervenes where the question is of "public importance", where lower authorities diverge, issues are justiciable, and, generally, as a "law making" function.[92]

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[86] Smith, "Justice", *supra* note 78 at 420-21.
[87] *Ibid* at 422-24.
[88] *Ibid* at 383.
[89] *Ibid* at 381. Smith also excluded "criminal cases" due to their low proportion in his initial study population.
[90] Wrightsman, *supra* note 78 at 60; Wendy L Watson, "The U.S. Supreme Court's *In Forma Pauperis* Docket: A Descriptive Analysis" (2006) 27:1 Justice System J 47.
[91] Watson, *supra* note 90 at 52. Watson's certiorari applications pool is dated (1976-1985) and may not be representative of recent SCOTUS litigation.
[92] Anthony Mason, "The High Court as Gatekeeper" (2000) 24:3 Melbourne UL Rev 784 at 785-86.

The HCA differs from the previous two common law appellate high courts as until 2005 all HCA leave applications received an oral hearing before two judges.[93] The rising volume of special leave applications, particularly from SRLs, first led to fixed duration hearings,[94] and then a mandatory document-based process. SRL leave applications were limited to a maximum of ten pages.[95] In 2016, the HCA further narrowed access to special leave to appeal hearings. Post-2016, an oral hearing is only conducted for any appellant, represented or not, where a two or three judge panel concludes that procedure is warranted.[96]

SRLs are a major component of the HCA's appellant population.[97] Wickham reports that in 2005 the majority of special leave applications (57%, N=720) were from SRLs.[98] A recent detailed investigation by Stewart & Stuhmcke of all special leave applications filed between 2013-2015 reported 46% (N=783) were SRLs.[99] None were granted leave. SRL appellants were most often engaged in civil rather than criminal subject appeals (211 vs 107), but HCA appeals include a large third SRL population with immigration law issues (N=140).[100] In total, 85% of all HCA immigration law special leave applications were by SRLs. Stewart & Stuhmcke observe that the subject matter of immigration law appeals is unlikely to trigger appellate review.[101]

Stewart & Stuhmcke expressed concern over SRLs' failure to access the HCA, and note that only one 2013-2015 SRL special leave application even resulted in an oral leave hearing.[102] Their study also investigated litigants who received legal aid support. Legal aid candidate appellants had substantial success at obtaining leave, 27.5% (N=40),[103] however the authors' suggestion that restricted access to legal aid challenges the HCA's ability to deal fairly and efficiently with SRL appeals is undermined by the fact that their study's SRL population was

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[93] Ben Wickham, "The Procedural and Substantive Aspects of Applications for Special Leave to Appeal in the High Court of Australia" (2007) 82:1 Adel L Rev 153 at 154.
[94] Mason, *supra* note 92 at 786-87.
[95] Wickham, *supra* note 93 at 154.
[96] Pam Stewart & Anita Stuhmcke, "Litigants and Legal Representatives: A Study of Special Leave Applications in the High Court of Australia" (2019) 41:1 Sydney L Rev 35 at 40-41.
[97] Richardson, "Literature", *supra* note 48 at 24.
[98] Wickham, *supra* note 93 at 153.
[99] Stewart & Stuhmcke, *supra* note 96 at 46.
[100] *Ibid* at 47.
[101] *Ibid* at 50-51.
[102] *Ibid* at 49.
[103] *Ibid* at 52.

predominately composed of civil and immigration matters (76.6%, N=458), while the study's legal aid population were virtually all criminal appeals (92.5%, N=40).[104]

3. Patterns of SRL Activity at High Courts.

Access to the SCC, SCOTUS, and HCA is similar. An appellant usually first seeks leave. At present, each of these high courts principally evaluates leave applications via document-based processes. The criteria on which leave is granted are also similar. High courts have broad discretion, but focus on legal questions of general application and where subordinate courts are in conflict. These courts reject their function is to correct errors.[105] Their purpose is to make law.

SRLs are uniformly unsuccessful at the leave stage in all three courts. Smith concluded the SCOTUS rejects SRL certiorari applications because they are frivolous, or fail to meet the criteria that trigger appellate interest. Stewart & Stuhmcke did not investigate why HCA SRL applicants are unsuccessful, so their suggestion that ineffective presentation and/or argument might be remedied by legal aid is, at best, a hypothesis.

The proportion of SRL leave applications (20-30%) at the SCC seems lower than at the SCOTUS (likely around two thirds) and HCA (around half). Data collected by Smith and Stewart & Stuhmcke suggests a possibility explanation. The SCOTUS receives a very large volume of prisoner SRL applications. Similarly, immigration subject appeals, almost all by SRLs, made up a large proportion (21.5%, n=168) of HCA 2013-2015 special leave applications. Graphs published in the HCA 2015-2016 Annual Report shows a strong correlation between the fraction of SRL and immigration matter special leave applications. That observation suggests the HCA's incoming case load is disproportionately one specific type of special leave application: SRL immigration matters. HCA immigration subject applications peaked in 2007-2008, *as*

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[104] *Ibid* at 50-51, 70.

[105] Gascon, *supra* note 69 at 585; Wilson, *supra* note 70 at 3; Smith, "Justice", *supra* note 78 at 387-95; Smith, "Certiorari", *supra* note 79 at 738-43; Wickham, *supra* note 93 at 155-56. Mason, *supra* note 92 at 786 qualifies this and indicates the HCA will engage in error correction in criminal matters to address "a miscarriage of justice", see also Stewart & Stuhmcke, *supra* note 96 at 38-40.

almost 2/3 of all HLA leave applications.[106] No source that reviews SCC leave applications by subject report a similar "super-active" subject area.[107]

D. Problematic Litigants and Litigation

Misuse of court processes is not a new phenomenon.[108] Legislative responses to manage such litigation date to the 1800s.[109] A perception exists that misuse and abuse of the courts is increasing.[110] Some evidence supports that conclusion.[111] Problematic litigation has possibly been aggravated by reforms that facilitate SRL access to court processes.[112] Certain writers highlight how the common law's veneration of "a right to your day in court" creates a structural vulnerability, or even a blind spot, when it comes to managing problematic litigants.[113]

Most abuse of court is by unrepresented persons, however judicial experience suggests this subpopulation represents only a small and atypical facet of the SRL Phenomenon.[114] The effect of abusive SRLs belies their number. These few problem individuals consume a disproportionate

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[106] High Court of Australia, *Annual Report* at 21, online (pdf): *High Court of Australia* <www.hcourt.gov.au/assets/corporate/annual-reports/HCA_Annual_Report_2015-16.pdf> [perma.cc/4C82-K3RW].
[107] For example for 2017: Matthew Estabrooks et al, "Annual Report on Applications for Leave to Appeal to the Supreme Court of Canada: The 2016-2017 Term" (2018) 88 SCLR 101 [Estabrooks et al, "2016-2017"]; *Statistics 2007-2017*, *supra* note 67 at 8.
[108] Grant Lester & Simon Smith, "Inventor, Entrepreneur, Rascal, Crank or Querulent: Australia's Vexatious Litigant Sanction 75 Years On" (2006) 13 Psychiatry Psychology & L 1; Gary M Caplan & Hy Bloom, "Litigants Behaving Badly: Querulousness in Law and Medicine" 2015 44:4 Adv Q 411 at 411-16.
[109] Michael Taggert, "Alexander Chaffers and the Genesis of the Vexatious Actions Act 1896" (2004) 63:1 Cambridge LJ 656; Yves-Marie Morissette, "Querulous and Vexatious Litigants as a Disorder of a Modern Legal System" (2019) 24:3 Can Crim L Rev 265 at 302 [Morissette, "Disorder"].
[110] Morissette, "Disorder", *supra* note 109 at 277-78; *Unrau v National Dental Examining Board*, 2019 ABQB 283 at para 89 [*Unrau #2*].
[111] Morissette, "Disorder", *supra* 109 at 303, Appendix B; Lester & Smith, *supra* note 108 at 17; Donald J Netolitzky & Richard Warman, "Enjoy the Silence: Pseudolaw at the Supreme Court of Canada" (2020) 57:3 Alta L Rev 715 at 730.
[112] Morissette, "Disorder", *supra* note 109 at 281, 308.
[113] Morissette, "Disorder", *supra* note 109 at 286-91; Benjamin Lévy, "From paranoia querulans to vexatious litigants: a short history on madness between psychiatry and the law. Part 2" (2015) 26:1 History Psychiatry 36 at 37-43 [Levy, "History #2"].
[114] Morissette, "Disorder", *supra* note 109 at 274-75; *Unrau #2*, *supra* note 110 at paras 88-89.

fraction of court resources,[115] cause harm that cascades outside their own proceedings, and degrade the operation and function of courts as a common community resource.[116]

Canadian courts generally agree about what kinds of activity misuse court processes,[117] however the language used to describe that activity is inconsistent.[118] Labels used include frivolous, vexatious, abusive, and querulous.[119] For the purposes of this study, "problematic litigation" indicates that litigation exhibits one or more litigation misconduct characteristics or "indicia" that could merit a court terminating that action. A "problematic litigant" is a litigant whose activities include these indicia. An "abusive action" is one where a court or tribunal has concluded that a litigant's matter or activities include "problematic litigation" indicia such that the court or tribunal took litigation management steps in response to that problematic litigation.[120] A "vexatious litigant" is a person whose "problematic litigation" has led to court or tribunal access restrictions so that the "vexatious litigant" is required to seek permission, or "leave", before taking certain steps. An order that imposes court or tribunal access restrictions is sometimes called a "vexatious litigant order".

Academic commentary about problematic litigation and vexatious litigants is sparse. While the authority of courts to terminate abusive actions is well developed, there is broad disagreement between Canadian appeal courts on the authority and thresholds to impose court access restrictions.[121] The vexatious litigant population is very probably a complex one where different factors, personal characteristics, and motivations lead to problematic litigation.[122]

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[115] No quantitative study of abusive litigants' impact on courts appears to exist, however Paul E Mullen & Grant Lester, "Vexatious Litigants and Unusually Persistent Complainants and Petitioners: From Querulous Paranoia to Querulous Behaviour" (2006) 24 Behav Sci & L 333 at 335 report a survey of Australian "agencies of accountability" found "unusually persistent complainers" make up under 1% of complainants, but consume 15-30% of all resources.
[116] *Olumide v Canada*, 2017 FCA 42 at paras 17-20.
[117] The list of factors identified in *Lang Michener Lash Johnston v Fabian* (1987), 37 DLR (4th) 685, 59 OR (2d) 353 (HCJ) [*Lang*] is a broadly endorsed, while *Unrau #2*, *supra* note 110 at paras 609-732 provides a more recent and detailed index, but see *Jonsson v Lymer*, 2020 ABCA 167 at para 40 [*Jonsson*].
[118] *Unrau #2*, *supra* note 110 at 64-85.
[119] *Ibid*.
[120] See Part III(D)(2).
[121] *Unrau #2*, *supra* note 110 at paras 373-490; *Jonsson*, *supra* note 117.
[122] *Unrau #2*, *supra* note 110 at paras 96-342.

1. The Distillation Effect

Persistent appeals are an indicium of litigation misconduct. Justice Yves-Marie Morissette of the Quebec Court of Appeal suggests problematic litigants are over-represented in appellate forums.[123] This outcome is the result of a "Distillation Effect", where the litigation pattern(s) exhibited by some problematic litigants selects and directs these individuals into appellate courts.[124] Some problematic litigants refuse to abandon their problematic litigation, and, instead, conduct appeals until that alternative is exhausted. Logically, the Distillation Effect would be most pronounced at the highest court in a jurisdiction, where the worst-case problematic litigants are selected for and funneled. In Canada that is the SCC.

Some evidence supports this model. A previous study concluded thirteen of the 122 SRL Study Group Appellants used pseudolaw arguments, a universally rejected form of abusive litigation.[125] Preliminary investigation of the Study Group Appellants determined 37.7% (n=46) of SRL appellants had filed multiple SCC leave to appeal applications. 9.0% (n=11) of the Study Population were responsible for two or more SCC leave applications *initiated in 2017 alone*. Certain problematic litigants who are active at the SCC have appeal records that go back decades. For example, between 1993 and 2017 Valery Fabrikant[126] and Gilles Patenaude filed 18 and 19 SCC appeals, respectively. None were granted leave. Lower courts have declared both Fabrikant[127] and Patenaude[128] to be vexatious litigants.

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[123] Morissette, "Disorder", *supra* note 109 at 285, 306, footnote 26.
[124] Donald J Netolitzky, "Comment on Y.-M. Morissette, "Querulous and Vexatious Litigants as a Disorder of a Modern Legal System"" (2019) 24:3 Can Crim L Rev 251 [Netolitzky, "Comment"] at 257.
[125] Netolitzky & Warman, *supra* note 111. Note that this paper measures SCC activity on a "per application" rather than a "per appellant" basis, and reports eight OPCA leave to appeal applications in 2017, taking into account the two merged OPCA leave to appeal applications initiated by Luc Bernard d'Abadie.
[126] Activities reviewed in Morissette, "Disorder", *supra* note 109.
[127] *Fabrikant v Canada (Correctional Service)*, 2003 CanLII 23428 (QCCA); *Productions Pixcom inc v Fabrikant*, 2005 QCCA 703; *Canada (Attorney General) v Fabrikant*, 2019 FCA 198.
[128] *Patenaude c Québec (Procureure générale)*, 2016 QCCS 3047, aff'd 2016 QCCA 1583, leave to appeal to SCC refused, 37264 (26 January 2017).

2. Querulous Litigation Patterns

Mental health professionals link problematic litigation to a range of mental health conditions, including delusional disorder, schizophrenia, bipolar disorder, and personality disorders (paranoid, narcissistic, obsessive compulsive).[129] However, clinical investigation and academic commentary has largely focused on a long-described but little studied aberrant response to disputes, where the affected person experiences a negative dispute-related outcome, and then relentlessly pursues that subject, responding to each subsequent negative result by attacking other involved parties. 19th century psychiatrists named this pathology "querulous paranoia".[130] Australian psychiatrist Grant Lester is the foremost authority on this condition,[131] and his description and explanation of querulous litigants is broadly accepted by other academic and mental health commentators.[132]

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

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[129] Caplan & Bloom, *supra* note 108 at 422-23, 427-32; Mullen & Lester, *supra* note 115 at 343-45; Benjamin Lévy, "La <<querulence processive>>: vacarme, silence ou parole?" (2015) 56:3-4 C de D 467 at 479 [Levy, "Vacarme"].

[130] See Benjamin Lévy, "From paranoia querulans to vexatious litigants: a short history on madness between psychiatry and the law. Part 1" (2014) 25:3 History Psychiatry 1 [Levy, History #1] and Levy, "History #2", *supra* note 113 for a historical review of this topic.

[131] Grant Lester et al, "Unusual persistent complainants" (2004) 184 British J Psychiatry 352; Mullen & Lester, *supra* note 115; Grant Lester, "Searching for the Spectrum of the Querulous" in Wayne Peterick & Grant Sinnamon, eds, *The Psychology of Criminal and Antisocial Behaviour* (London: Academic Press, 2017) 489.

[132] Caplan & Bloom, *supra* note 108 at 422; C Adam Coffee, Stanley L Brodsky & David M Sams, "I'll See You in Court... Again: Psychopathology and Hyperlitigious Litigants" (2017) 45:1 J Am Academy Psychiatry & L 62 at 65; Levy, "Vacarme", *supra* note 129 at 479; Morissette, "Disorder", *supra* note 109 at 271, 276.

While querulous litigants are comparatively normal individuals prior to them being captured in a querulous litigation whirlpool, certain "sensitizing" events and traits predispose some individuals to querulous conduct.[133] Morissette JA hypothesizes that querulous litigation is a kind of temporary mental health disorder where the affected individual is trapped within a conceptual loop, unable to disengage from the now exponentiating dispute.[134] Another suggestion, proposed by French psychologist Benjamin Lévy, is querulous individuals perceive themselves as unheard and ignored. They repeatedly re-engage court and dispute processes with the objective of being seen and triggering a response.[135]

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

3 Problematic Litigation Management at the SCC

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

Then there is a cautionary parallel from other jurisdictions. The HCA and SCOTUS receive a disproportionate volume of unmeritorious appeals from specific, predominately SRL, populations. Former judge Richard Posner recently described how the scale of this incoming SRL prisoner workload into the US Federal Circuit Appeal Courts requires teams of staff attorneys who greatly outnumber the courts' judicial compliment, and whose entire workload is to evaluate SRL appeals and prepare draft decisions in response.[136]

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[133] Caplan & Bloom, *supra* note 108 at 423-25; Mullen & Lester, *supra* note 115 at 343-45.
[134] Morissette, "Disorder", *supra* note 109 at 278-81.
[135] Levy, "Vacarme", *supra* note 129 at 479.
[136] Richard Posner, *Reforming the Federal Judiciary: My Former Court Needs to Overhaul Its Staff Attorney Program and Begin Televising Its Oral Arguments* (CreateSpace Independent Publishing Platform, 2017).

The SCC might face a SRL deluge, one for which the Court seems only somewhat prepared. Though the SCC is a "hard target", it also has a particular vulnerability. As a statutory court, the SCC is only equipped with litigation management tools that are provided by legislation. Stratas JA of the Federal Court of Appeal has examined how recent SCC jurisprudence appears to have narrowed the authority of statutory courts to manage and defend their processes.[137] That leaves the SCC with only one existing mechanism, *Rules of the Supreme Court of Canada* ss 66-67 [*SCC Rules*],[138] which authorizes the SCC to stay a *specific* proceeding conducted "in a vexatious manner" [*SCC Rule* 67 order]. In this sense the SCC has much less capacity to manage abusive litigation and litigants than many Canadian trial courts.[139]

III. Methodology

A. Terminology

For consistency and ease of reference, leave applications are identified by the last name or organization name of the first appellant and the SCC docket number. Where the appellant(s) are only identified by initials, those initials form the name. For example, "Olumide 37660" refers to the *Ade Olumide v Canadian Judicial Council* leave application assigned SCC docket 37660. If a single SCC docket record included multiple SCC leave applications, the individual applications are distinguished by a decimal suffix to the docket number. For example, "Bernard 36834.3" identifies the third leave application in *Elizabeth Bernard v Canada Revenue Agency*, docket 36834, filed on September 29, 2016.

B. Identifying Leave Applications Filed in 2017 by SRLs

Candidate 2017 SRL SCC leave to appeal applications were identified via the "Supreme Court of Canada Bulletins of Proceedings" [Bulletins] published weekly by the SCC.[140] Each Bulletin identifies "Applications for leave to appeal filed", which are newly completed leave applications. Each Bulletin published in 2017 and corresponding online SCC docket records

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[137] David Stratas, "A Judiciary Cleaved: Superior Courts, Statutory Courts and the Illogic of Difference" (2017) 68 UNBLJ 54.
[138] *Rules of the Supreme Court of Canada*, SOR/2002-156, ss 66-67 [*SCC Rules*].
[139] Reviewed in *Unrau #2*, *supra* note 110 at paras 373-542.
[140] Online: *Supreme Court of Canada* <decisions.scc-csc.ca/scc-csc/bulletins/en/nav_date.do> [perma.cc/X6KE-ZXD8].

were reviewed.[141] "Applications for leave to appeal filed" with the same name for the appellant and representative were candidate SRL leave applications. Self-representation was confirmed via online SCC docket records.

In total, 129 candidate SRL leave applications were identified. Electronic copies of "Applicant's Memorandum of Argument"[142] Parts I-V were ordered from the SCC Records branch[143] for each candidate application for leave to appeal.

Four applications were eliminated from the study because these were either filed by a lawyer representing him or herself,[144] or the application was prepared and submitted by lawyers.[145] These applications were excluded because this study is intended to investigate how SRLs who are not legally trained professionals operate in and interact with the SCC.

In eight instances SCC Records was unable to complete the leave application document request. This result flows from two different scenarios. Four Study Group Applications[146] were subject to a "publication ban". SCC Records was not permitted to release the requested leave to appeal documents. These Study Group Applications were included in this study because related lower court decisions were identified and available along with SCC docket records. The Study Group Applications include few family law dispute candidate appeals. Two "publication ban" matters were divorces.[147] Eliminating the "publication ban" group could distort the role and character of family subject litigation in SCC SRL appeals.

The other four unsuccessful document requests were instances where SCC Records reported no leave application memoranda of argument were on file.[148] In each of these "no application" scenarios, the SCC docket record shows that *something* was reviewed by the SCC, which resulted in a leave application decision. "All materials on application for leave" were submitted

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[141] Identified via the SCC Case Information search engine, online: *Supreme Court of Canada* <scc-csc.ca/case-dossier/info/search-recherche-eng.aspx> [perma.cc/Q5JB-KBXV].
[142] The SCC has prepared a "fill in the blank" form version of this document for SRLs: "Application for Leave to Appeal Form", online (pdf): *Supreme Court of Canada* <scc-csc.ca/unrep-nonrep/forms-formulaires/application-demande-eng.pdf> [perma.cc/6FYN-ANT8].
[143] Online: *Supreme Court of Canada* <scc-csc.ca/case-dossier/rec-doc/request-demande-eng.aspx> [perma.cc/H2RU-TXDB].
[144] Offman 35875; Roberts 37653; Lee 37735.
[145] Krivicic 37726.
[146] See Appendix A: Pierre 37639; AH 37661; IJ 37669; VC 37690.
[147] See Appendix A: AH 37661; VC 37690.
[148] See Appendix A: Humby 37394; Agostino 37464; Hammami 37652; Gonzalez 37517.2.

to a panel of three SCC justices, who then dismissed or would dismiss each "application for leave to appeal". For Agostino 47464 and Hammami 37652, the SCC docket indicates only incomplete paperwork was received by the SCC Registry. Docket records imply the Gonzalez 37517.2 documents received by the SCC Registry were not an appeal application, but instead a "writ of Habeas Corpus Ad Subjicendum" from the "appellant". The SCC Registry accepts and files highly irregular documents as leave to appeal applications, despite that *Rules of the Supreme Court of Canada* s 25 [*SCC Rules*][149] sets out a mandatory five-part leave application and memorandum of argument scheme, and a 20-page memorandum of argument maximum length.[150]

SCC Records being unable to satisfy the document requests, and the fact SCC justices evaluated some kind of filed materials, implies whatever these four appellants provided to the Court was either or both so incomplete and so highly non-compliant that, in effect, no *SCC Rules* s 25 application was received. This investigation is generally intended to both examine the ability (and lack there-of) of SRLs to operate at the SCC, and the effect of SRL litigation on the SCC. Given those objectives, the four "no application" SCC matters were included in the study, as they triggered a full SCC leave application review and decision. Otherwise, these filings were classified as generally unsuitable for a meaningful response.[151]

C. The Study Group Applications and Appellants

125 SCC leave to appeal applications filed in 2017 by SRL litigants form the "Study Group Applications": Appendix A. Initial review of the Study Group Applications identified 123 named leave to appeal applicants: 116 natural persons and seven corporations.[152]

Placid 37558 at first appeared to be an application by a corporation, "Placid Inc", however review of this highly irregular handwritten application revealed that the applicant was instead Justin Thyssen Placid, who self-identified as "President of Placid Inc". Placid was involuntarily

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[149] *SCC Rules*, *supra* note 138, s 25.
[150] *Ibid*, s 8 permits SCC judges and the Registrar to each waive compliance with the *SCC Rules*, but also to refuse irregular documents.
[151] See Part III(D)(1). The four "no application" matters were assigned a "Sophistication Score" of 1.
[152] The number and identity of SRL appellants was determined by the leave to appeal application rather than the SCC docket where those two sources diverge. For example, the SCC docket for Dove 37487 only identifies one appellant, Wally Dove, but the application included three other individuals: Jason Dove, Glenn Bursey, and Michael Bursey, "human beings".

institutionalized and treated for mental health issues.[153] Placid had, for no obvious reason, titled the leave application as being from a corporation. To the degree to which Placid 37558 might be characterized, its allegations are some kind of medical malpractice proceeding. The corporate veneer in the leave application's language was disregarded.

The corporate co-appellant in Hagan 37747 was excluded from this study because the SCC dismissed an application by Hagan to represent that business. The other five corporations were represented by a natural person co-appellant, or an officer of that corporation, pursuant to *SCC Rules* ss 15(2-3).[154]

These remaining 122 individuals are the "Study Group Appellants".

D. Investigation of the Study Group Applications and Study Group Appellants

Data was collected to characterize both the Study Group Applications and Appellants.

1. Study Group Applications

Three primary sources provided information to characterize the Study Group Applications:

1. the SCC online docket records for that application,
2. the leave application and five-part memorandum of argument, and
3. other reported court and tribunal decisions that relate to the application and applicant(s).

Variables recorded during review of the Study Group Applications included:

1. information to describe the application (e.g. leave application docket number, party names, whether the SCC has classified the appeal as criminal or civil);
2. information concerning lower court proceedings, where available;
3. characteristics of the SCC leave to appeal application, including format, language, and document length;
4. key dates in the leave to appeal process;

[153] Online: *Supreme Court of Canada* <scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=37558> [perma.cc/BP53-QRVR].
[154] *SCC Rules*, *supra* note 138, ss 15(2-3).

5. whether certain events occurred during the leave to appeal review process, such as a fee waiver[155] from the SCC Registrar, an unfavourable cost award, or a *SCC Rule* 67 order;[156]
6. the subject of the appeal;
7. whether the Study Group Application raised one or more categories of rights:
   a) a *Charter* right, and the *Charter* section(s) indicated, if any,
   b) rights or special status that result from being a SRL and appearing in court without a lawyer,
   c) being the target of racism and/or racial discrimination, but not expressed as a *Charter* right,
   d) being the target of non-racial discrimination, but not expressed as a *Charter* right,
   e) "human rights",
   f) "privacy" rights, and
   g) rights resulting from indigenous origin or affiliation, but not expressed as a *Charter* right;
8. allegations of bias, misconduct, and criminality by justice system participants, such as judges, law enforcement, and lawyers;
9. whether the leave application exhibited problematic litigation characteristics; and
10. whether the candidate appeal exhibited any "hot button" characteristics that favour SCC intervention.

A number of conditions satisfied the problematic leave to appeal application criterion:

1. The leave application received a SS=1 score, which meant that leave application is a hopeless appeal that failed to provide a meaningful basis on which the Court and responding parties could reply.[157]
2. The leave application was part of the "no application" category.[158]

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[155] *Ibid*, s 82(2).
[156] *Ibid*, ss 66-67.
[157] *kisikawpimootewin v Canada*, 2004 FC 1426 [*kisikawpimootewin*]; *Unrau #2*, *supra* note 110 at paras 626-31.
[158] See Part III(B) above.

3. The SCC ruled it had no jurisdiction to hear the proposed appeal, and on that basis dismissed the leave to appeal application, or indicated it would have dismissed the leave to appeal application for that reason.[159]
4. The leave to appeal application involved Organized Pseudolegal Commercial Argument [OPCA] concepts and strategies.[160]
5. The leave to appeal application exhibited one or more of the generally accepted indicia of problematic litigation identified in Canadian jurisprudence.[161] The problematic litigation criterion was not intended to evaluate the validity or strength of arguments advanced by the Study Group Applications, so indicia that relate to the merit of the leave to appeal application, or lack-thereof, did not satisfy the problematic leave to appeal application criterion, other than where the problematic leave to appeal application was an attempt to re-litigate an issue or a collateral attack.

If a Study Group leave to appeal application was identified as problematic then the factor(s) that satisfied that characteristic were individually recorded.

Each Study Group Application was scored using two indices. First, Study Group Applications were assigned a five point "Sophistication Score" or "SS" to evaluate to what degree the leave application identified relevant information and issues, legal authorities, and adhered to the leave to appeal memorandum of argument five-part structure:

SS=1 An incoherent or incomplete document. Relevant facts, issues, and/or complaints are unclear, or bald allegations, so that the application would fail the *kisikawpimootewin v Canada*[162] minimum pleadings requirements for a non-abusive application. By definition, an application that falls into this category is problematic litigation.

SS=2 Application facts are adequately pled, but issues are either:
a) only broad questions not linked to the application's facts,

[159] See Appendix A: Lin 37377; Tilahun 37448; Clark 37472; Placid 37558; Lin 37629; Olumide 37600; Olumide 37602; Olumide 37603; Olumide 37604; Olumide 37605; Olumide 37660; Olumide 37763.
[160] *Meads*, *supra* note 39.
[161] *Unrau #2*, *supra* note 110; *Lang*, *supra* note 117.
[162] *kisikawpimootewin*, *supra* note 157.

b) not identified, but may be implied from the facts and argument, or
c) incomplete and unclear.

SS=3 Application facts and issues are clear and adequately pled. The facts and issues relate to each other. The responding parties and court have a basis for a meaningful response. Authorities (legislation, case law, other legal authorities) are absent, unrelated to the facts and issues, or inaccurate.

SS=4 The five-part leave to appeal application format is strictly followed. Application facts and issues are adequately pled so as to provide a basis for a meaningful response. Some authorities (legislation, case law, other legal authorities) are identified, those authorities are accurate and relevant, and the application provides some indication of how those authorities relate to the proposed appeal's issue(s).

SS=5 A professional and complete product. The five-part leave to appeal application format is strictly followed. Application facts and issues are stated with precision. Relevant authorities (legislation, case law, other legal authorities) are identified, accurate, and explicitly linked to the issues. The application specifically indicates how its issues are of potentially broad legal relevance or otherwise merit SCC response.

SS therefore measures two characteristics, the SRL's ability to: 1) identify relevant information, legal issues, and authorities, and 2) communicate that information to the SCC. Second, each application was assigned a "Disruption Score", or "DS",[163] that evaluates the degree to which the law in Canada would be affected if the candidate appeal was granted:

DS=1 A successful appeal affects only the litigants or a small and specialized group.

DS=2 A successful appeal affects an important legal principle in a particular legal subject, such as who is subject to income tax.

DS=3 A successful appeal has broad implications to a particular legal subject; for example ruling that income tax is unconstitutional.

DS=4 A successful appeal disrupts entire government or institutional operations, or fundamentally re-orders rights and freedoms; for example, ruling that criminal

[163] Netolitzky & Warman, *supra* note 111 at 725-26.

legislation and prohibitions only operate where a person consents to be subject to criminal law jurisdiction.

DS=5 The conventional constitutional order is revised or superseded; for example, ruling that the *Magna Carta* has supraconstitutional effect, or God's Law is supreme.

Study Group Applications were generally approached and interpreted as a "freestanding document", and evaluated on the basis of the application's own content. For example, when assigning SS, the intended meaning and objective(s) of the leave to appeal application were assessed using the memorandum of argument, rather than imputing information from other sources. That approach focused this investigation on the Study Group Appellants' ability to explain their proposed appeal, relevant facts, and the proposed appeal's issue(s).

In most instances Study Group Application data and characteristics were readily identified and scored. There were certain exceptions. Where no leave to appeal application was available (the "publication ban" and "no application" categories), application-specific information was recorded as unknown, except that a SS=1 was assigned to the four "no application" Study Group Applications.

Sometimes the litigation and proposed appeal subjects were difficult to identify, but for different reasons. Some leave to appeal applications described litigation falling into multiple broad categories (e.g. both tort and contract), or that crossed conventional legal category boundaries (e.g. mixing civil and criminal law components). Other applications were simply incoherent or unrelated to known legal concepts, so the application's subject and intent were unclear or could not be described. Other times a leave application's focus was unrelated to lower court proceedings and decisions. Lower court decisions and docket records were therefore sometimes the primary source to determine the overall nature of the legal dispute from which the proposed appeal had emerged.

Another complicating factor was how Study Group Applications involved the *Charter*. Many leave to appeal applications mentioned the *Charter*, *Charter* rights, or alleged that *Charter* rights had been breached. However, only very few leave to appeal applications particularized the facts and issues of these *Charter*-related claims, offending the minimum pleadings requirement set by

the SCC in *Mackay v Manitoba*.[164] Complicating matters further, Study Group Applications often did not identify any particular part or section of the *Charter* that was involved in the proposed appeal, or only provided incomplete information. For example, Martinez 37644 indicated *Charter* s 11 was involved, but does not identify which of that section's nine specific legal rights were implicated. Rather than attempt to interpret the Study Group Appellants' intent, *Charter* references were recorded exactly as indicated in the Study Group Applications.

2. Study Group Appellants

Information to describe Study Group Appellants was identified and recorded in much the same way. Variables recorded included:

1. the Study Group Appellant's name;
2. demographic information, where available;
3. information on the number of SCC applications that had been conducted by the Study Group Appellant;
3. information about all SCC leave applications filed by the Study Group Appellant, and the frequency at which the Study Group Appellant's SCC activity involved events such as fee waivers, cost awards, and reconsideration applications;
4. whether a lower court decision concluded the Study Group Appellant had engaged in abusive litigation, and/or imposed court or tribunal gatekeeping restrictions that require the Study Group Appellant obtain permission prior to taking a dispute litigation step;
5. whether:

   a) the Study Group Appellant was or is subject to court-ordered steps based on the Study Group Appellant's mental health condition,

   b) a court or tribunal decision concluded that the Study Group Appellant's dispute actions and/or claims were the product of delusion, or

   c) the Study Group Appellant self-identified as mentally ill, being impaired by mental health issues, having a mental health condition, or having suffered from brain and/or neurological injuries; and

[164] *Mackay v Manitoba*, [1989] 2 SCR 357, 61 DLR (4th) 385 [*Mackay*].

6. the Study Group Appellant exhibited the Querulous Litigation Pattern.[165]

Similar to the Study Group Applications, the process of identifying and evaluating characteristics of the Study Group Appellants was usually straightforward. One potentially complicating factor was whether identified litigation, court records, and other information that involve someone with the same name represented the same or different individuals. Where someone had the same first and last name as a Study Group Appellant no common identity was presumed unless linking information was located. Litigation was presumed to involve the same individual if the two candidate litigants had the same first and last name, and also a common middle initial or middle name. In some cases, common identity was confirmed by application personal service information. Otherwise, the available documentary record was frequently sufficient to link candidate records by facts such as common events, litigation opponents, and dispute issues. In other instances common identity was confirmed when reported court decisions surveyed the litigation record of a Study Group Appellant, usually in the context of whether to impose court access restrictions.

Whether a Study Group Appellant was subject to court or tribunal access restrictions involved review of court and tribunal reported decisions and court docket records for instances where gatekeeping steps were imposed on the Study Group Appellant so that the Study Group Appellant must obtain court or tribunal permission prior to taking designated litigation steps. A simple statement that a person was "vexatious" or "querulous" did not satisfy this criterion. Registries of persons subject to court access restrictions in Alberta[166] and Quebec provincial courts[167] were also searched.

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

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[165] See Part II(D)(2).

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

[167] Online: *Justice Quebec* <justice.gouv.qc.ca/en/programs-and-services/registers/public-registry-of-litigants-subject-to-authorization-by-the-superior-court-of-quebec> [perma.cc/SE8K-332P].

1. a court or tribunal decision concluded that the Study Group Appellant's dispute activities were "abusive", an "abuse of process", "frivolous", "querulous", or "vexatious", or otherwise misused court processes;
2. pleadings or applications by the Study Group Appellant were struck out because that litigation was on its face hopeless, for example under Ontario *Rule* 2.1,[168] Alberta Court of Queen's Bench Civil Practice Note No. 7,[169] or per the *Rule in kisikawpimootewin*[170] that the filing did not permit a meaningful response;
3. a court ordered elevated costs against the Study Group Appellant in response to litigation misconduct;
4. a court or tribunal imposed court or tribunal access restrictions because of the Study Group Appellant's litigation misconduct;
5. a court or tribunal removed or prohibited a Study Group Appellant from acting as a litigation or dispute representative in a third-party's litigation for bad conduct;
6. the Study Group Appellant employed OPCA litigation strategies and motifs; or
7. a court or tribunal decision identified litigation activities that satisfy established court-identified criteria as being problematic,[171] for example a court decision rejects allegations of judicial bias as having no basis, that litigation was a collateral attack or other form of re-litigation, or that litigation was conducted for a wrongful and abusive purpose.

3. Statistical Linkage

The statistical relationship between certain binary Study Group Application and Appellant characteristics was evaluated with the chi-squared (x^2) test using a 0.05 significance level.

E. Examples of Study Group Data Acquisition Processes

The following three examples illustrate the methodology used to characterize Study Group Applications and Appellants.

[168] *Ontario Rules of Civil Procedure*, RRO 1990, Reg 194, s 2.1 [*Ontario Rules*].
[169] *Unrau v National Dental Examining Board*, 2018 ABQB 874 [*Unrau #1*].
[170] *Unrau #2*, *supra* note 110 at paras 626-30.
[171] *Unrau #2*, *supra* note 110; *Lang*, *supra* note 117.

1. Prisecaru 37591

The June 16, 2017 Bulletin identifies *Corneliu Prisecaru et al v Intact Insurance (Ont)* as a new SCC leave to appeal application, assigned docket 37591. Review of the corresponding SCC docket record identified two SRL candidate appellants: Corneilu and Lidia Prisecaru. These two Study Group Appellants and the Prisecaru 37591 Study Group Application were added to this investigation's dataset.

The Prisecaru 37591 docket is straight-forward. The first docket record was May 9, 2017. The SCC Registry opened an "incomplete application to file" on June 2, 2017. The Prisecarus did not supply the order of the lower court proceeding until two weeks after that. Intact Insurance filed a response on July 4, 2017, and the docket materials were submitted to Justices Moldaver, Karakatsanis, and Wagner (as he then was) on September 18, 2017.[172]

The Prisecaru 39591 leave to appeal application was dismissed on October 26, 2017. Costs were ordered against the candidate appellants. The Prisecarus sought reconsideration on November 23, 2017, which was not accepted for filing on January 16, 2018. The file was closed on that date, however the docket record also indicates that there must have been some additional communication between the Prisecarus and the SCC Registry, since on January 29, 2018 the Registrar sent correspondence to the Prisecarus indicating they had exhausted their remedies with the Court.

The Prisecaru 37591 leave to appeal memorandum of argument was ordered from the SCC Registry. This five-page document was completed with handwriting in the SCC template "fill in the blanks" memorandum of argument form.[173] Rather than attempt to provide a summary, the substance of this quite brief application is best illustrated by reproducing its text in full:

> Part I - Statement of Facts
>
> 1. On January 27, 2013 my neighbors house exploded an[d] caught on fire. My house was damaged and me and my family had to leave the explosion site as the authorities ordered. For the following 3 months until May 4, 2013 my family lived out of a hotel. On May 4 I had to rent a house with my own money. I being the houses only salary, because the insurance stopped paying our hotel rooms. I requested $30,000 from Insurance to buy furniture and give me a rented home and we will close the case but the

[172] The September 18, 2017 Bulletin identifies the judges in question, but the subsequent October 26, 2017 decision that dismisses the leave application names all SCC justices, which appears to be the Court's more recent practice.

[173] See note 142.

insurance refused. They told me to go to court if I don't agree with them. I am paying a high amount of rent since then and my family continues to suffer to this day: traumatized by such an unfortunate event. And scarred by the insurance company's mistreatment and inability to respect their duty.

Part II - Statement of the Questions in Issue

1. Why did non of the Judges respond to the testimonies of Intact insurances misconduct and refusal to obey their contract?

2. Why are the rights of humans and children violated: where the children are traumatized yet are asked to live in separate homes?

3. When the doctors reports about the families condition why was the alternative dwelling offered to the family not similar to the original?

4. After so many motions and the trial why was I given all the costs even though my case was not solved?

Part III - Statement of Argument

1. Intact insurance company did not respect the insurance contract and mistreated my family. After the explosion I was forced to live in a hotel with 3 small rooms for 13 people. Everytime I talked to the insurance company they responded carelessly trying to do as little as possible for me. They refused to give me a rented home and spent a much greater expense to keep me in the hotel. I asked for $30,000 to buy furniture and rent a house but they refused and sent me to court. My request was less than the hotel expense. It was like Intact was doing things against me just to not agree in helping me. Because of their inability to cooperate and act humane I now seek compensation as displayed in my proof of loss. Intact Insurance refused to close the claim at the appropriate time. I now must take this case to the end and understand why I have suffered for so long, me and my family.

Part IV - Submissions in Support of Order Sought Concerning Costs

1. Due to the trauma and refusal to help me, I seek that Intact Insurance pay the costs ordered from the previous courts and compensate my proof of loss. Intact caused me and my family grief as it took a lot of my time and money during these 4 years. Constantly I was pressured to pay costs as I did not have money being the single salary in a large family. Intact did not respect their contract and treated my claim with careless service not offering any help or comfort after a traumatizing event my family went through. Therefore Intact Insurance should pay these costs.

Part V - Order or Order Sought

1. Intact Insurance must account for acting this way to me by paying the proof of loss.

2. Intact Insurance must explain why my family had to go through this battle.

3. The judge shall bring righteousness to my case after all my pain and suffering.

Prisecaru 37591 provides a basic factual narrative of what occurred and the underlying complaint. The Prisecarus' residence was damaged, their family was provided alternative lodging, but the Prisecarus were not satisfied with that step. The Part II issues and Part III argument do not clearly lay out the nature of the dispute. The Prisecarus apparently believe there was a breach of contract by Intact Insurance, but several of the Part II issues appear to go in different directions, for example an abstract human rights violation question, and a complaint about costs.

There also seem to be two separate contract complaints against Intact Insurance: 1) inadequate or inappropriate replacement housing, and 2) that the Prisecarus' claim was rejected. The second breach is not elaborated to any further degree, that is just a bald allegation. The Part V orders sought do not clarify the Prisecarus' intent any further.

Prisecaru 37591 was assigned a Sophistication Score of 2. The basic factual matrix is largely clear, and the basic underlying legal complaint may be inferred. The Prisecarus seek to appeal the lower court result and that the SCC enforce some part or parts of a residential insurance contract, though Intact Insurance's actual obligations under that contract are not laid out.

This application is very weak, but does not exhibit indicia of problematic litigation. There are no allegations of justice system participant misconduct. The only rights-based motif is a mention of "rights of humans and children". To the extent that the issues of the proposed appeal are indicated, Prisecaru 37591 seeks that the SCC determine Intact Insurance's contractual obligations, and confirm that those obligations were, in fact, not satisfied. There is no "law-making" aspect to this candidate appeal, nor does it raise any "hot buttons" that attract SCC attention. Prisecaru 37591 has a Disruption Score of 1; it does not relate to anyone other than the parties.

The Prisecarus are identified in one reported court decision, the Ontario Court of Appeal judgment which they sought leave to appeal.[174] This two-paragraph decision dismissed the appeal as solely made against findings of fact that were supported by the trial evidence.

[174] *Prisecaru v Intact Insurance*, 2017 ONCA 303.

The Prisecarus were coded as not exhibiting either problematic litigation or mental health characteristics. As far as can be determined from the available record, these two Study Group Appellants have not been involved in any other Canadian legal dispute.

2. Lanigan 37717.1

Two new leave to appeal applications were reported between E. Jo-Anne Lanigan and the Prince Edward Island Teachers' Federation in the September 22, 2017 Bulletin. Both were assigned docket 37717. Review of the SCC record showed these two applications were before the SCC at the same time and considered together. The SCC Registry received Lanigan 37717.1 on May 24, 2017, and Lanigan 33717.2 on August 10, 2017.

Lanigan 37717.1 was filed outside the 60-day *Supreme Court Act* s 58(1)(a) [*SCA*][175] limitations period. The candidate appellant filed a *SCA* s 59(1)[176] motion to extend the time to serve and file Lanigan 37717.1 on September 21, 2017.

File materials were submitted to Justices Abella, Gascon, and Brown on January 15, 2018. The Court on February 8, 2018 granted the motion for late filing of Lanigan 37717.1, but dismissed both applications, with costs. The costs quantum awarded is not indicated in the docket record.

Lanigan 37717.1 was ordered and received from the SCC Registry. The memorandum of argument is a 20-page typed document that strictly follows the SCC's five-part document schema. Lanigan provided a succinct but detailed chronology of events, tracing from the original dispute through to the Prince Edward Island Court of Appeal decision under appeal.[177] Lanigan was a school principal who was demoted by her school board. Her union did not grieve that demotion, despite Lanigan providing a letter of rebuttal. The union claimed it only learned about Lanigan's demotion after a 20-day limitations period expired. When Lanigan sued the school board that lawsuit was dismissed as she had no standing. Lanigan then sued her union, and was successful, receiving $277,244 in damages. However, the Prince Edward Island Court of Appeal rejected the unfavourable findings of fact made by the trial judge and overturned that award. Lanigan's factual narrative pinpoints supporting materials.

Lanigan 37717.1 identifies two issues, but really raises three separate points:

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[175] *SCA*, *supra* note 71, s 58(1).
[176] *Ibid*, s 59(1).
[177] See Appendix A: Lanigan 37717.1 at paras 1-31.

1. the appeal court should have accepted the trial findings of fact,
2. the collective agreement allowed the union to authorize Lanigan to sue the school board on her own, and that was relevant to the union's liability, and
3. a more general policy issue that when a teacher's union represents both teachers and their superior administrators that creates a conflict of interest.

Most of Lanigan's argument focusses on the first point, and correctly identifies the palpable and overriding error threshold for appellate intervention on findings of fact.[178] The authority that Lanigan cites for this rule is a criminal appeal, but nevertheless relevant.[179] Lanigan also identifies and accurately reviews jurisprudence on how workers who belong to unions have restricted individual litigation rights as a consequence of the collective bargaining process.[180] The conflict of interest issue is not especially developed and cites no authorities, nor does this issue link into the remedy sought. Lanigan 37717.1 does not implicate the *Charter* or make any other rights-based claims. The application does not allege misconduct by justice system participants.

Lanigan 37717.1 is a well drafted and presented leave to appeal application. It clearly establishes the factual and legal issues involved, accurately cites relevant authorities, and follows the memorandum of argument five-part scheme. Its chief weaknesses are the underdeveloped conflict of interest argument, and Lanigan's bald claims that her action should be granted leave "given the great public importance and seriousness of the issues raised".[181] In fact, Lanigan does not propose any change to Canadian law, other than perhaps a possible new test for the scope of worker types who may be grouped in a union, but that issue is essentially undeveloped. Given these observations, Lanigan 37717.1 was assigned a Sophistication Score of 4, and a Disruption Score of 1. This application had no problematic litigation characteristics.

Lanigan herself is the subject of six reported lower court decisions, all of which were accurately summarized in Lanigan 37717.1. Lanigan was represented by a lawyer until her second appearance at the Prince Edward Island Court of Appeal. The available record shows no indication Lanigan has engaged in problematic litigation or has any mental health issues.

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[178] *Ibid* at paras 27, 29, 42-43.
[179] *Ibid* at para 86, citing *R v Hogg*, 2013 PECA 11, dissent adopted *in toto*, 2014 SCC 18.
[180] See Appendix A: Lanigan 37717.1 at paras 63-72.
[181] *Ibid* at para 96.

3. Noddle 37706

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

The docket records imply that Noddle had some difficulty completing his application, since the Registrar on three occasions returned documents to Noddle along with "a kit".[182] After receiving a response from the respondent, the file was submitted to Chief Justice McLachlin and Justices Côté and Brown on October 16, 2017. The Court on November 30, 2017 granted an application to extend the SCC's service and filing limitations period, but dismissed a motion to appoint counsel[183] and the leave to appeal application itself. Costs are not indicated.

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

Noddle's leave to appeal memorandum of argument was obtained from the SCC Registrar. This 20-page typed document was difficult to interpret. The November 30, 2017 SCC decision that dismissed Noddle 37706 identifies the leave application as being from *R v Noddle*, 2016 BCCA 164, however that decision is never mentioned in the Noddle 37706 leave to appeal application. Instead the application identifies Noddle not as a criminal accused, but instead as "The Applicant (The Plaintiff)", and names the Attorney Generals of British Columbia, Canada, and Ontario, "The Ministry of Justice", and "The Ministry of Health" as "Respondents (The Defendants)". Following this study's strategy of capturing the SRL's intent, the Noddle 37706 respondent data was updated to add four additional parties.

The first part of Noddle 37706 states that Noddle was prescribed a drug called "Aldara", and that he experienced serious negative effects as a consequence, including him being arrested,

[182] Noddle 37706 docket records: May 19, 2016; July 4, 2016; September 1, 2016.
[183] This application is not found in the docket record.

prosecuted, and almost killed by beatings that he received while detained. Paragraph two of the application reads: "ALDARA WILL KILL YOU !!! Aldara, DO NOT USE ALDARA...". The materials that follow at times imply a kind of *Charter*-based claim concerning state obligations to provide healthcare, complain that Noddle was denied a court appointed lawyer of his choice,[184] but also that a Crown Prosecutor had improperly failed to provide medical records and medical information relating to Aldara to Noddle's at trial defence counsel.[185] Noddle identifies this last item as a *R v Stinchcombe*[186] disclosure issue.

Almost a third of the Noddle 37706 memorandum of argument appears to have been "copy/pasted" from several sources, including the Law Society of British Columbia code of conduct for lawyers,[187] and what appears to be a number of legal information resources, including a website titled "The Canadian Criminal Law Notebook".[188]

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

> The criminal code allows those who have been injured or disabled to give evidence as a witness in any way that is intelligible.
>
> I do not understand or comprehend the rules of the Canadian courts. Why am I being legally bullied after ***BRAIN TISSUE DAMAGE*** from their medical assault for attempting to seek compensation ?
>
> Why am I being refused legal counsel after being injured. I have spent 8 months everyday attempting to comprehend court proceedings, and claims are begin struck because I don't know how to comprehend the rules of the courts, that is why citizens must have legal representation, or automatically lose their court cases.
>
> My constitutional rights precede the rules of the court. The FACT that I was injured in May 2010 and the ***BRAIN TISSUE DAMAGE*** just started healing enough in January 2016 to express what has happened, has left me without

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[184] See Appendix A: Noddle 37706, paras 14-36.
[185] *Ibid*, paras 37-38, 42-51.
[186] *R v Stinchcombe*, [1991] 3 SCR 326, 130 NR 277.
[187] See Appendix A: Noddle 37706 at pp 5-9; Law Society of British Columbia, "Code of Professional Conduct for British Columbia", online: *Law Society of British Columbia* <www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/> [*perma.cc/WC5S-UMKQ*].
[188] See Appendix A: Noddle 37706 at p 10; online: *The Canadian Criminal Law Notebook* <criminalnotebook.ca/index.php/Appellate_Evidence> [perma.cc/YSP3-ZEYR].

> compensation. The court rules are incredibly difficult, on a level I cannot comprehend.[189]

Noddle then seeks the following remedies:

> Any person who has been disabled or injured by the Ministry of Health in Canada from any medication, does not have the burden to prove the dangers of the medications, but the results of medical evidence from the the medication, has the right to select any counsel of his choosing, to represent the injured party in civil proceedings.
>
> The Appellant/Plaintiff has a right to counsel under the charter of rights, but there is no affective way to get counsel. It is just empty words on a piece of paper if there is no means to get counsel due to lack of funding, and lack of available lawyers. *Section 24 of the Canadian Charter of Rights and Freedoms provides for remedies available to those whose Charter rights are shown to be violated.*[190]

At various points Noddle 37706 implicates *Charter* sections 6(2), 6(3), 7, 9, 12, 15(1), 24(1) and "675(1)". The only *Charter* right that is factually developed in any manner is the section 7 *Stinchcombe* complaint. Noddle alleges bad conduct on the part of the Crown Prosecutor, who he says concealed information critical to his defence.[191] Confusingly, Noddle claims he has no right to represent himself because he lacks "legal capacity".[192]

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

Noddle 37706 was assigned a Sophistication Score of 2, but that was only because the facts of the alleged *Stinchcombe* complaint were clearly stated. Noddle 37706 straddles the threshold of SS level one and two. Noddle does not explicitly link the alleged disclosure defect to a remedy, but what Noddle is trying to do in his application (at least in part) seems to be a challenge to the fairness of an earlier criminal proceeding. To the degree the disclosure issue is discernable, it related to findings of fact, or applications of facts to a legal standard. For instance,

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[189] See Appendix A: Noddle 37706 at Part III, emphasis in original.
[190] *Ibid* at Part IV, italics in original.
[191] *Ibid* at paras 48-50.
[192] *Ibid* at paras 15-16, 34-35.

Noddle does not say *R v Stinchcombe* was wrong, only that it ought to have been applied. This means the Disruption Score for this application is 1, Noddle 37706 does not seek to revise Canadian law and the proposed appeal is only relevant to Noddle himself.

Noddle is the subject of 17 reported Canadian court decisions. These disclose a sad and troubling narrative. Noddle in 2014 was convicted of criminal harassment and breaches of recognizance.[193] The trial prosecution is not reported. Noddle filed a late appeal that was denied by the British Columbia Court of Appeal.[194] That is the decision that the SCC identifies as the target of Noddle 37706.

In 2018 Noddle was convicted of criminal harassment a second time. This time the trial conviction and sentencing decisions are reported and provide much more context regarding Noddle and his circumstances.[195] Noddle was represented in both his 2014 and 2018 trial proceedings. The complainant in the two prosecutions was the same woman, a psychiatrist who Noddle had known in grade school.[196] In brief, over a decade later Noddle exhibited escalating stalking behaviour and breached orders that prohibited contact with the complainant. His later communications including conspiratorial claims about threats to world populations,[197] and that Noddle, as an inventor, had created countermeasures for these.[198]

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

> You will not give me a lawyer. I would have happily had a lawyer. If you gave me a lawyer, [the complainant] would have been served by somebody else, but I do not have that option. I do not have any money. I do not know anything about civil law. I was placed in this position to protect Canadians. You are talking about harming people's genitals, their reproductive organs. Fucking Canadians, we have a right not to be injured this way.[199]

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

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[193] *R v Noddle*, 2016 BCCA 164 at para 2.
[194] *Ibid*.
[195] Conviction: *R v Noddle*, 2018 BCSC 1780 [*R v Noddle #3*]. Sentencing: *R v Noddle*, 2018 BCSC 2013 [*R v Noddle #4*].
[196] *R v Noddle #3*, *supra* note 195 at para 6.
[197] *Ibid* at paras 7-43.
[198] *Ibid* at paras 42-43.
[199] *R v Noddle #4*, *supra* note 195 at para 97.

Noddle as a SRL appealed his 2018 conviction on a several bases, including that he could not be convicted because brain injury meant he was incapable of forming intent. Noddle applied for court appointed counsel, which was dismissed.[200]

In 2016 Noddle was made subject to court access restrictions in the British Columbia Supreme Court.[201] Noddle was conducting civil lawsuits in multiple jurisdictions; Noddle engaged in "forum shopping" his civil lawsuits.[202]

Noddle exhibits the Querulous Litigation Pattern of expanding problematic litigation, for example suing all provincial and territorial Attorneys General, judges, police involved in his criminal investigations, and even the psychiatrist who was the target of his criminal harassment.[203] Noddle's claims involve excessive and impossible remedies, such as $5 trillion in compensation, and punitive, aggravated, and special damages.[204] Noddle's conduct satisfied both the lower court abusive litigation and court access restrictions characteristics. Noddle was also coded as self-reporting brain injury.[205]

If Noddle 37706 was intended to appeal the identified 2016 British Columbia Court of Appeal decision then Noddle 37706 had no prospect of success. Noddle 37706 has nothing to do with the British Columbia Court of Appeal's decision to refuse to extend the filing period for Noddle's conviction and sentence appeal. Noddle 37706 raises no ground of appeal to that outcome, and, in fact, never even mentions that happened. Since this study investigates the Study Group Applications on their face, and not the application's potential merit, this observation was not relevant to how data that described Noddle 37706 and Darren Noddle was scored.

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[200] *R v Noddle*, 2019 BCCA 140.
[201] *Noddle v Canada (Attorney General)*, 2016 BCSC 607 at para 23 [*Noddle v Canada #1*].
[202] *Ibid*; *Noddle v Canada (Deputy Attorney General)*, 2016 ONSC 4866 [*Noddle v Canada #2*]; *Noddle v Canada (Attorney General)*, 2017 ONSC 215; *Noddle v Ontario (Attorney General)*, 2017 ONSC 4461; *Noddle v Canada*, 2016 FC 966; *Noddle v Canada,* 2016 FC 967; *Noddle v Canada*, 2016 FC 968; *Noddle v Canada*, 2016 FC 969; *Noddle v Her Majesty the Queen* (6 August 2019), Vancouver T-812-19 (FC).
[203] *Noddle v Canada #1*, *supra* note 201.
[204] *Noddle v Canada #2*, *supra* note 202 at para 5.
[205] See Appendix A: Noddle 37706 at Part III.

IV. Results and Observations

Data collected permits a quantitative review of how SRL appellants engaged with the SCC leave to appeal process in 2017.

A. SRLs and the SCC Leave to Appeal Process in 2017

125 leave to appeal dockets were opened in 2017 by 122 SRLs. Most Study Group Appellants paid the $75 filing fee.[206] A few appellants sought and received fee waivers[207] from the SCC Registrar (16.8%, N=125). All fee waiver requests were granted.

The leave to appeal process has four main steps:

1. initial communication between the Study Group Appellant and the SCC Registry;
2. the Registrar opens a docket file or reports a leave to appeal application is complete;
3. the candidate appeal is assigned to a panel of three SCC justices after receipt of correspondence and/or submissions from the responding parties; and
4. the Court issues a decision on whether to grant leave.

The average periods between these four steps were: steps 1-2: 56.6 days; steps 2-3: 87.1 days; steps 3-4: 40.1 days (N=125). On average, the entire process took close to six months (183.8 days, N=125). Figure 1 illustrates the time required for Study Group Applications to complete the leave to appeal process steps:

[206] *SCC Rules*, *supra* note 138, Schedule A.
[207] *Ibid*, s 82(2).

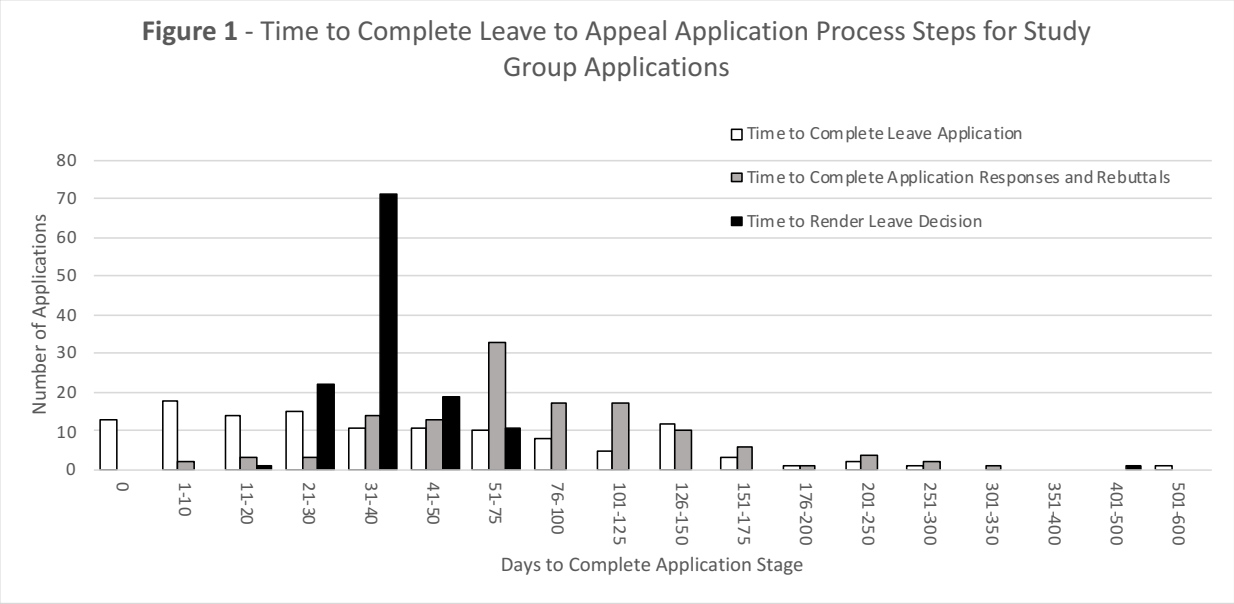

Figure 1 - Distribution of the time required for Study Group Applications to advance through the SCC leave to appeal process (N=125). "Time to Complete Leave Application" indicates the number of days between when a Study Group Appellant first contacted the SCC Registry and the Registry docket reports an open file or a completed application. "Time to Complete Responses and Rebuttals" indicates the number of days between when the Registry opened a file or reported a completed application and the Registry submitted the leave to appeal file materials to a three-justice panel. "Time to Render Leave Decision" indicates the number of days between when the file was referred and the SCC issued a leave to appeal decision. Note that the "Days to Complete Application Stage" axis intervals are not consistent.

This study did not evaluate the frequency at which *SCA* s 59(1)[208] applications were sought to extend the Study Group Applications' 60-day service and filing limitations period.[209] However, Netolitzky, "Limitations" determined that in 2017 33.6% (n=46) of SRL appellants made a section 59(1) application, and that 82.6% (n=38) of those applications were successful.[210] One Study Group Application, Mazraani 37642, was granted leave to appeal. The other 124 Study Group Applications were dismissed. 73.4% (N=94)[211] of the unsuccessful Study Group Appellants were ordered to pay costs. Where the SCC docket record indicates a cost award

[208] *SCA*, *supra* note 71, s 59(1).
[209] *Ibid*, s 58(1)(a).
[210] See Netolitzky, "Limitations", *supra* note 64. The manner in which this study and the Netolitzky, "Limitations" paper identify SRL SCC litigation meant that the 2017 study populations in these two investigations are not the same. Netolitzky, "Limitations Period" included certain SRL applications that were eliminated from this study, see Part III(B).
[211] The Study Group Applications' docket records provided no information on whether costs were ordered for 31 leave to appeal applications.

quantum the average amount was $1,150.41 (N=24). Elevated solicitor/client costs of $14,249.90 were ordered in Belway 37708.

The SCC possesses a residual authority to reconsider leave to appeal decisions in "exceptional" cases.[212] The SCC Registrar shall per *SCC Rules* s 73(3)(b) reject any reconsideration application where an unsuccessful leave to appeal applicant does not: 1) establish "exceedingly rare circumstances ... that warrant consideration", or 2) provide an explanation of why the issue was not previously raised. Reconsideration processes were initiated in 18.4% (n=23) of the unsuccessful Study Group Applications. The Registrar did not accept any leave reconsideration application for filing, presumably because the supporting affidavits failed to satisfy the *SCC Rule* s 73(3)(b) criteria.

If a SCC justice concludes that a litigant "... is conducting a proceeding in a vexatious matter", or that filing additional documents would be "vexatious or ... for an improper purpose", then *SCC Rule* 67 permits the justice to order the proceeding stayed or to order the Registrar not to accept further documents from a litigant. *SCC Rule* 67 was applied in 12 Study Group Applications in essentially identical circumstances. In each instance a Study Group Appellant was denied leave, but the Study Group Appellant continued to send materials to the SCC Registry. A *SCC Rule* 67 order was issued that directed the Registrar discard any further documents received in relation to these dockets.

B. Study Group Leave to Appeal Applications

One of the two primary objectives of this study is to investigate and characterize candidate SRL appeals received by the SCC in 2017.

As previously indicated, no application documents were obtained for eight Study Group Applications. Much information concerning these Study Group Applications was available from the SCC docket records, and lower court and tribunal litigation. The result is that a small number of Study Group Applications were excluded from some population characteristics. In the analysis that follows, the Study Application population size usually indicates whether or not the "publication ban" and "no application" populations were a part of a sample population:

N=125 data involves all Study Group Applications,

[212] *Hinse*, *supra* note 68 at paras 8-10.

N=121 data involves all Study Group Applications, except for the "publication ban" category, or

N=117 data involves all non-"publication ban" and "no application" Study Group Applications.

1. Pre-SCC Activity

The SCC docket record, reported lower court and tribunal decisions, and non-SCC docket records provided substantial information on the pre-SCC history of the Study Group Applications.

Study Group Applications challenged court decisions from the Federal Court and each of the Canadian provinces, except for Newfoundland and Labrador. Candidate appeals were neither identified of decisions of the three Canadian territorial Courts of Appeal, nor the Courts Martial. Figure 2 illustrates the frequency at which Study Group Applications challenged litigation from subordinate court jurisdictions:

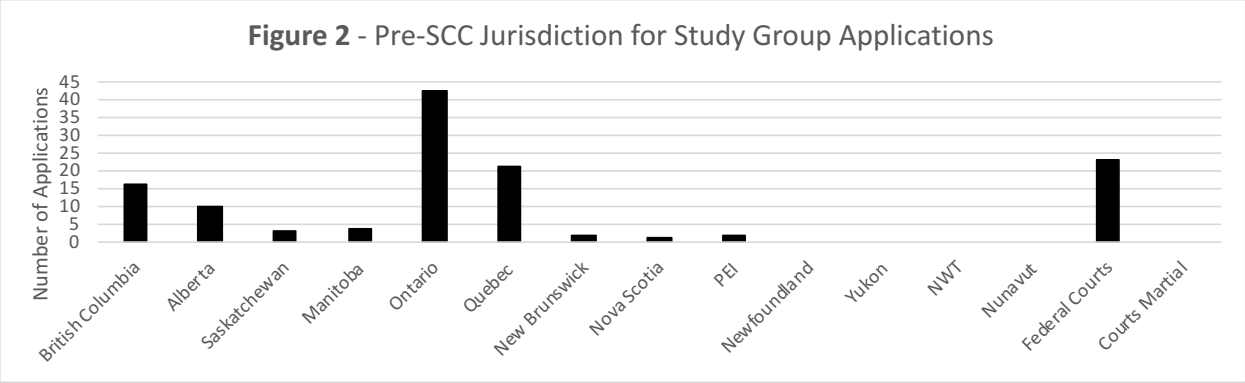

Figure 2 - Distribution of Study Group Applications that challenged decisions of Canada's subordinate appeal courts by source jurisdiction (N=125). "PEI" indicates Prince Edward Island. "Newfoundland" indicates Newfoundland and Labrador. "NWT" indicates North West Territories.

The number of Study Group Applications per province is generally proportional to the populations of those jurisdictions.

Study Group Applications usually challenge a unanimous appeal court ruling. A dissent occurred in only one (0.95%, N=105) pre-SCC court of appeal decision. No reported decision or docket records were available for 20 Study Group Applications to evaluate whether the lower appeal court decision was unanimous or divided, however those 20 decisions were very likely

unanimous, since a split outcome in an appeal court would be a strong reason to prepare a written judgment to explain why the appeal panel did not agree.

Reported lower court decisions typically indicate whether or not the Study Group Appellant had a lawyer or was self-represented in that proceeding. In four instances a Study Group Application had an unusual pre-SCC representation pattern which combined SRL activity and some other form of representation or assistance by an amicus[213] or a rogue unauthorized representative.[214] Figure 3 summarizes the patterns of lawyer vs SRL representation in pre-SCC proceedings:

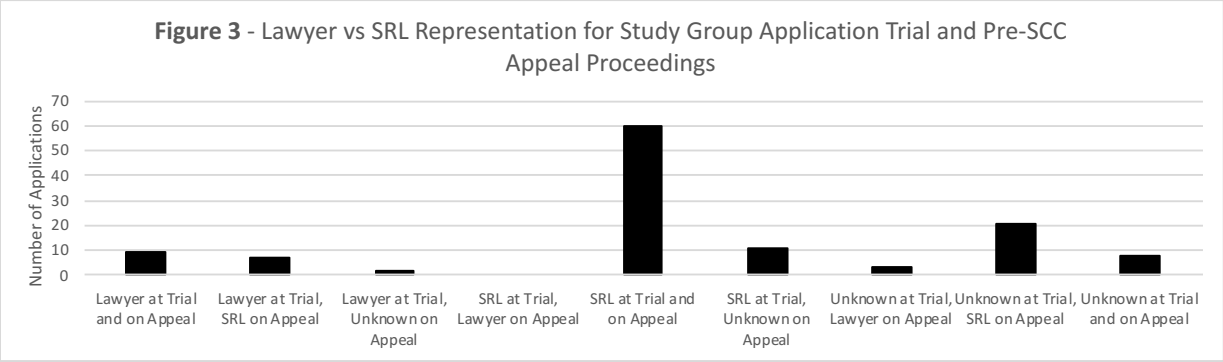

Figure 3 - Frequency of SRL and lawyer representation in Study Group Application trial and appeal proceedings (N=121). Figure 3 excludes Gonzalez 37517.2, Ranieri 37796, d'Abadie 37507, and d'Abadie 37508 because of the unusual representation patterns in those four matters.

The substantial proportion of proceedings where representation status could not be determined means this information should be viewed with caution. The most common identified representation pattern was the Study Group Appellant self-represented throughout all documented pre-SCC proceedings.

2. Documentary Characteristics of the Study Group Applications

The proportion of English and French language Study Group Applications (82.9%, 17.1% respectively, N=117) generally corresponds to the proportion of persons in Canada who speak those languages.[215] A large majority of Study Group Applications were typed (85.5%, n=100).

[213] See Appendix A: Gonzalez 37517.2; Ranieri 37796.
[214] See Appendix A: d'Abadie 37507; d'Abadie 37508.
[215] "Data tables, 2016 Census", online: *Statistics Canada* <www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK

6.8% (n=8) were either entirely handwritten documents or SCC leave to appeal template forms filled out with handwriting.[216] 7.7% (n=9) combined typed and handwritten content. At present *SCC Rules* s 21[217] requires that all print and electronic documents filed with the SCC follow specific document preparation guidelines.[218] The guidelines in force during 2017 are not known.

The large majority (91.7%, N=121) of Study Group Applications were generally compliant with the *SCC Rules* s 25[219] requirements for a valid leave to appeal application, including that the application include a five-part, up to twenty-page memorandum of argument. However, several non-compliant leave to appeal applications demonstrate the SCC Registry accepts irregular candidate SCC SRL filings. For example:

- Pierce 37530 is an entirely handwritten 353-page document which does not follow the five-part memorandum of argument scheme. Instead, this document is best described as a letter to the lawyers who represented Pierce in his lower court proceedings, complaining about their failures to properly represent him at trial and on appeal.
- The Placid 37558 application is nine pages long, and combined typed content and handwriting in the SCC template form. The Placid 37558 application is difficult to interpret because it includes very little information, but instead points to an external document, "compiled instruments in writing which argue and speak for themselves pages 1 to 300".
- Oh 37649 is an incomplete SCC template application form (memorandum of argument parts 2-5 are missing), with minimal handwritten information. However, eight pages of Oh 37649 are two duplicate copies of tables filled in with handwritten name, address, and telephone information, and signatures. Oh 37649 appears to be a complaint about alleged municipal election irregularities, so the tabulated information may document purported voters.

=0&GRP=1&PID=112146&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=132&VID=0&VNAMEE=&VNAMEF=> [perma.cc/AJW8-GG86].

[216] See note 142.

[217] *SCC Rules*, *supra* note 138, s 25.

[218] The present guidelines took effect on January 15, 2019: "Guidelines for Preparing Documents to be Filed with the Supreme Court of Canada" (15 January 2019), online: *Supreme Court of Canada* <scc-csc.ca/parties/gl-ld2019-01-15-eng.aspx> [perma.cc/753P-8CE9]. Earlier versions of these guidelines were not located.

[219] *SCC Rules*, *supra* note 138, s 25.

The four "no application" Study Group Applications discussed in Part III(A) suggests other, even more irregular filings were accepted by the SCC Registry, and then reviewed by a judicial panel. Five Study Group Appellants sought permission to file an over-length leave to appeal application.[220] In four instances that motion was granted; no decision on that question is indicated in the Tilahun 37448 docket record.

The average length of the remaining Study Group leave to appeal application memoranda of argument, parts 1-5 was 13.9 pages (N=112). The *SCC Rule* s 25 maximum is 20 pages. Figure 2 illustrates the range of page lengths for these 112 Study Group memoranda of argument, parts 1-5:

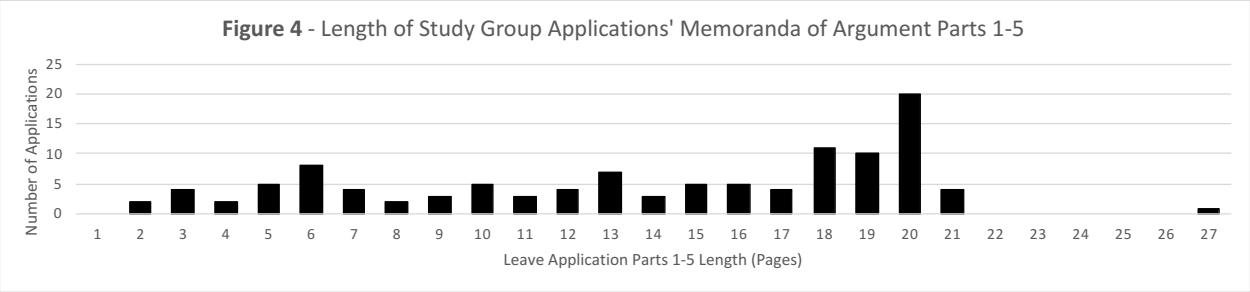

Figure 4 - Document length in pages of certain Study Group Applications' memoranda of argument, parts 1-5 (N=112). This figure excludes Study Group Applications in the "no application" and "publication ban" groups, and five Study Group Applications where the Study Group Appellant sought permission to file an over-length leave to appeal application.

The five applications in Figure 4 where parts 1-5 of the memoranda of argument were over 20 pages did not receive permission for their extra length. These applications nevertheless were submitted to a SCC panel for review.

3. Study Group Application Parties and Issues

The SCC Registry classifies leave to appeal applications as either civil or criminal matters. The Study Group Applications were predominately civil: 92.8% (N=125). The SCC Registry appears to define "civil" vs "criminal" categories by whether a candidate appeal emerged from a criminal prosecution. This sometimes led to unusual results. For example, Hok 37624 was defined as a "civil" subject appeal, though the underlying issue was whether or not Alberta Provincial Court judges were correct to refuse to receive *Criminal Code* ss 507, 507.1[221] private

[220] See Appendix A: Tilahun 37448; Hiamey 37519; Pierce 37530; Février 37583; Dunkers 37618.
[221] *Criminal Code*, RSC 1985, c C-46, ss 507, 507.1.

informations submitted by a SRL. Post-sentence challenges to criminal sentences by detained prisoners were also classified as "civil" matters, including *habeas corpus* applications,[222] challenges to decisions of the Parole Board of Canada,[223] and unorthodox OPCA[224] "get out of jail free" strategies.[225]

Most Study Group applications had only one appellant (median=1, mean=1.14, N=125) and one respondent (median=1, mean=3.48, N=125). Figure 5 illustrates the frequency at which Study Group Applications name different numbers of appellants and respondents:

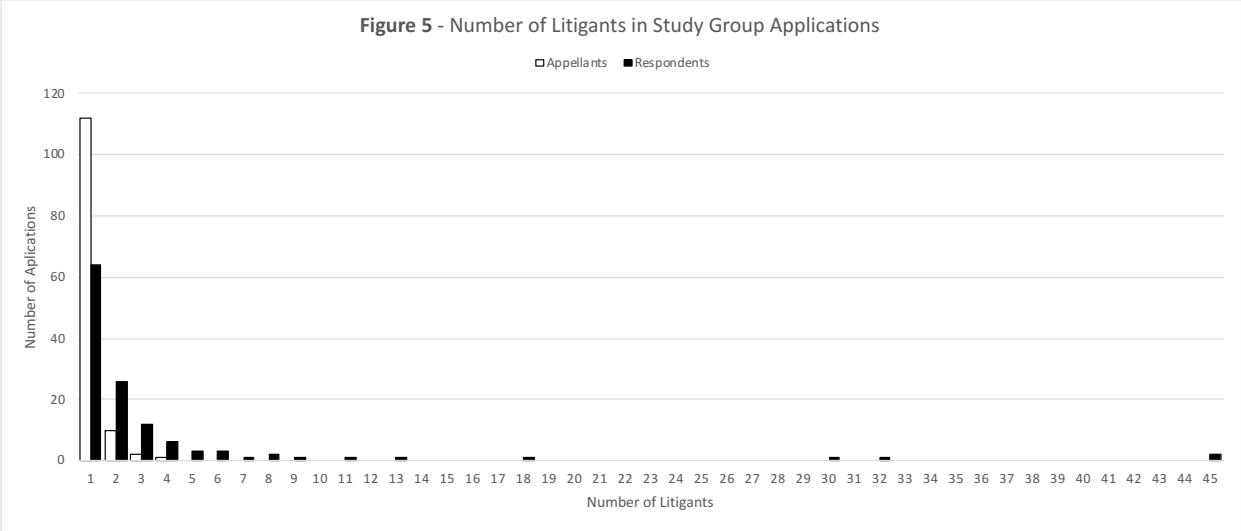

Figure 5 - Frequency at which Study Group Applications named one or more appellants and respondents (N=125).

Study Group Application respondents were placed into four general categories:

1. government (nation, province, territory, municipality),
2. government entity (a government-operated or authorized entity or body, such as an administrative tribunal, a police service, or a professional association),
3. non-government entity (e.g. corporations, unions, churches), and
4. named individuals.

Most Study Group Applications (66.4%, N=125) named only one respondent type. Appeals that involve multiple respondent categories were less common (two types - 24%; three types - 4.8%, all types - 3.2%). Figure 6 illustrates the frequency at which the four respondent type categories

[222] E.g. Appendix A: Thompson 37484.
[223] E.g. Appendix A: Fabrikant 37388.
[224] *Meads*, *supra* note 39.
[225] E.g. Appendix A: d'Abadie 37507; d'Abadie 37508.

appeared in Study Group Applications, either in association with other respondent types categories, or alone:

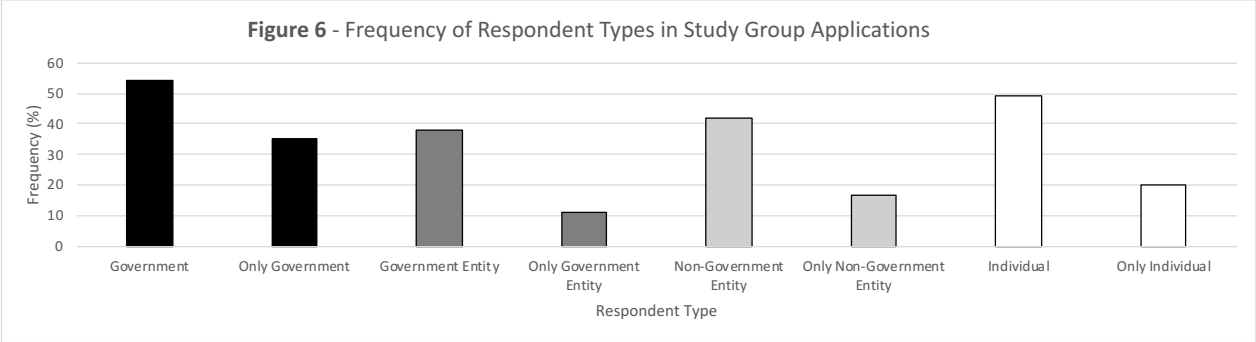

Figure 6 - Frequency that Study Group Applications name respondents in four respondent type categories (N=125). The "Only" categories indicates the number of Study Group Applications where all respondents belong to only that one named category.

No strong pattern emerged as to whether the respondent category types appears as co-representatives. The least common combination was government and non-government entity (n=8), while the most common was non-government entity and individual (n=17).

Most Study Group Applications (73%, N=122) were the result of a litigation process or step initiated by the Study Group Appellant. Only 34.4% (N=122) of Study Group Applications were "defensive" and responded to steps taken by other parties. 7.4% (N=122) of Study Group Applications had both characteristics.

Study Group Applications and lower court and tribunal decisions were reviewed to identify the type and/or subject of the dispute underlying the candidate appeals. As previously described, the nature of the underlying dispute was sometimes difficult to identify. Some appeals have multiple and different subject aspects, for example combining criminal and civil legal issues. With 12 Study Group Applications the litigation subject could not be determined. Table 1 summarizes the litigation subjects identified in the Study Group Leave Applications and their frequency:

Table 1 - Litigation Subject of Study Group Applications

Civil Subject Appeals			Criminal Prosecution Subject Appeals		
Subject		**Number**	**Subject**		**Number**
Tort		28	Criminal Prosecution		8
Contract		8		Assault	1
Family Law		8		Embezzlement	1
	Care of Elderly Parent	1		Harassment	1
	Child Support	1		Motor Vehicle Offense	2
	Divorce / Separation	2		Sexual Assault	2
	Grandparents' Rights	1		Tax Evasion	1
	Reopening Inter-Partner Agreement	2			
	Spousal Support	1			
OPCA Pseudolaw Litigation		8			
	Pseudolaw Claims	5			
	Pseudolaw "Get out of Jail Free"	3			
Union / Labour		7			
Employment		6			
Taxation and Tax Administration		6			
Bankruptcy / Foreclosure		5			
Police Misconduct / Discipline		5			
Professional Regulation and Discipline		5			
Psychiatric Evaluation / NCR Status		5			
Social Support and Benefits		5			
Habeas Corpus		3			
Wills and Estates		3			
Condo Issues		2			
Complaint vs University		2			
Court Procedure		2			
Elections Issues		2			
Land Ownership and Use		2			
Landlord / Tenant		2			
Indigenous Rights		1			
Commercial / Corporate		1			
Civil Contempt		1			
Immigration		1			
Intellectual Property		1			
Parole		1			
Privacy		1			
Private *Criminal Code* Informations		1			
Cannot Classify		12	Cannot Classify		0

Table 1 - Kinds and frequency of civil and criminal litigation subjects identified in the Study Group Applications (N=125). The "Family Law", "OPCA Pseudolaw Litigation", and "Criminal Prosecution" types are further divided into more specific issues and the

alleged criminal offenses. In certain instances a single application resulted in multiple entries on Table 1. For example, d'Abadie 37507 and d'Abadie 37508 were both "*Habeas Corpus*" proceedings, but also attempts to employ "OPCA "Get out of Jail Free"" strategies.

Table 1 shows Study Group Application candidate appeals emerge from a diverse range of litigation. However, stepping back from the specific types of law and processes revealed over half of the civil subject Study Group Applications fall within four larger themes:

1. the Study Group Appellant's job or employment (22.0%, n=24);
2. the Study Group Appellant in a conflict with close relatives (14.7%, n=16);
3. the Study Group Appellant's personal business (11.0%, n=12); and
4. the Study Group Appellant seeking financial support and social benefits (9.2%, n=10).

Figure 7 illustrates the Disruption Score (DS) ratings for Study Group Applications:

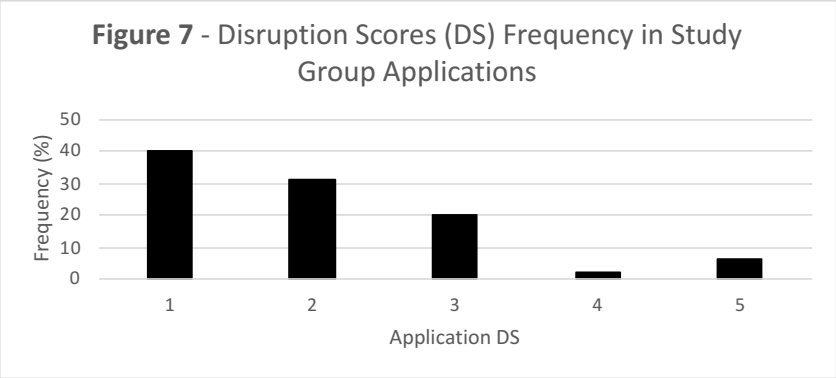

Figure 7 - Frequency at which different Disruption Score (DS) ratings were assigned to Study Group Applications (N=94). See Part III(D)(1) for characteristics of the five DS categories.

Where a Study Group appeal was intended to cause a change to Canadian law, that change typically had a limited scope. Very few Study Group Applications attempted to trigger radical changes to Canadian law and authority (DS=4-5, n=8). All but one of the DS=4-5 applications involved OPCA strategies and concepts. OPCA litigation often attempts to impose radical change to the conventional Canadian legal and social order.[226]

Certain claims and allegations appear with high frequency in the Study Group Applications:

[226] Netolitzky & Warman, *supra* note 111 at 737 reports an average DS of 3.74 for 87 issues raised in OPCA SCC leave applications.

1. allegations of bias, misconduct, and illegal conduct by judges, tribunals, law enforcement personnel, and/or lawyers = 61.5% (N=117);
2. claims that the *Charter*, or one or more *Charter* rights had been breached or were implicated in the proposed appeal = 64.1% (N=117); and
3. other claims that rights had been breached:
   a) "human rights" = 29.9% (N=117),
   b) discrimination on the basis of grounds other than race = 16.2% (N=117), and
   c) special status or rights that result from being a SRL = 14.5% (N=117).

The misconduct and rights-based claims are evaluated in greater detail in Part IV(B)(4), below.

Table 2 identifies *Charter* provisions referenced in the Study Group Applications and their frequency:

Table 2 - *Charter* Rights Identified in Study Group Applications

Charter **Section**	**Right Implicated**	**Frequency**
1	Rights may be justifiably limited	2
2	"Fundamental freedoms"	3
2(b)	Freedom of thought, belief, and expression	2
2(d)	Freedom of association	3
2(e)	(no such *Charter* section)	1
3	Right to vote and be a member of Parliament	3
6(2)	Right to move and work in any province	1
6(3)	Limits are permitted to *Charter*, s 6(2)	1
7	Right to life, liberty, and security of the person	31
8	Prohibition against unreasonable search and seizure	5
9	Prohibition against arbitrary detention and imprisonment	5
11	"Proceedings in criminal and penal matters"	1
11(b)	Right to be tried in a reasonable time	2
11(c)	Prohibition against being compelled to be a witness against oneself	1
11(d)	Presumption of innocence	7
11(g)	Prohibition against retroactive criminal penalties	2
12	Prohibition against cruel and unusual punishment	9
13	Prohibition against self-criminalization	1
14	Right to an interpreter	3
15	"Equality Rights"	26
15(1)	Prohibition against discrimination	8
24	"Enforcement"	5
24(1)	*Charter* breaches lead to an appropriate and just remedy	14
24(2)	Evidence obtained via a *Charter* breach may be excluded	1
25(a)	Indigenous rights recognized by the Royal Proclamation of October 7, 1763	1
26	*Charter* rights do not exclude other rights and freedoms	5
28	Male and female persons have equal rights and freedoms	1
32	"Application of the *Charter*"	3
32(1)	*Charter* applies to federal, provincial, and territorial governments and legislatures	1
33	Notwithstanding clause	2
35(1)	Existing indigenous rights are affirmed	1
52	Canadian Constitution is supreme law of Canada	6
52(1)	Canadian Constitution is supreme law of Canada	4
675(1)	(no such *Charter* section)	1
None	*Charter* right allegedly breached, but no section is identified	20

Table 2 - Incidence of *Charter* rights and claims in Study Group Applications (N=75). Certain leave to appeal applications included more than one *Charter* right or claim reference. Where a *Charter* section was identified that section's identification is reproduced exactly as stated in the Study Group Application.

Study Group Applications often implicated multiple *Charter* provisions. For example, Hordo 37650 identifies *Charter* ss 2, 7, 8, 13, 15, 24, 28, 32, and 52 as relevant. Over a quarter of Study Group Applications (26.7%, N=75) that involve the *Charter* provided no detail beyond an open-ended statement that the Study Group Appellant's *Charter* rights were breached or implicated.

Study Group Applications only rarely provided adequate particulars for the Court and responding parties to evaluate the alleged *Charter* breach, if indeed that was what the appellant was attempting to indicate. This lack of information fails the requirement set by the SCC in *Mackay v Manitoba*[227] that *Charter* issues must be pled from a factual or alleged factual foundation. Overall, the factual foundation requirement for a *Charter* breach issue was only satisfied for nine Study Group Application *Charter* issue claims.[228] The overwhelming majority of *Charter*-related Study Group Application references instead were "bald allegations".[229]

Many Study Group Applications implicate the *Charter* where the *Charter* would not appear to be relevant. 46.5% (N=75) of the applications that implicate the *Charter* name only non-governmental entities and individuals as respondents, despite the rule that the *Charter* only applies to government actors.[230] Hordo 37650 is an example of this pattern. The respondents are the State Farm insurance company and two named individuals.

Most Study Group Applications (61.2%, N=121) exhibited one or more problematic litigation indicium. Table 3 indicates the frequency at which individual indicia were found in all leave to appeal applications, and in applications that had one or more indicium:

[227] *Mackay*, *supra* note 164.
[228] *Charter*, s 7 - Appendix A: d'Abadie 37507, d'Abadie 37508, Mullins 37426, Hok 37446; *Charter*, s 8 - Appendix A: d'Abadie 37507, d'Abadie 37508; *Charter*, s 11(g) - Appendix A: Gagne 37720; *Charter*, s 15(1) - Appendix A: Holley 37562, Wissotzky 37559.
[229] *GH v Alcock*, 2013 ABCA 24 at para 58.
[230] *Charter*, *supra* note 6, s 32; *RWDSU v Dolphin Delivery Ltd*, [1986] 2 SCR 573, 33 DLR (4th) 174.

Table 3 - Frequency of Problematic Litigation Indicia in Study Group Applications

Problematic Litigation Indicium	Number	Frequency in Problematic Applications	Frequency in All Applications
Ungrounded allegations of conspiracy, misconduct, and illegal conduct by law enforcement, lawyers, courts, and/or judges	32	43.2%	26.4%
Application fails to provide a basis for a meaningful response (*Rule in kisikawpimootewin*)	27	36.5%	22.3%
Disproportionate or impossible remedies	23	31.1%	19.0%
Collateral attack, or attempt to re-litigate a decided issue	11	14.9%	9.1%
SCC finds it has no jurisdiction	10	13.5%	8.3%
Litigation has a political objective and does not seek to enforce justiciable rights	8	10.8%	6.6%
OPCA litigation	8	10.8%	6.6%
No leave application filed	4	5.4%	3.3%
Busybody litigation	2	2.7%	1.7%

Table 3 - Incidence and frequency at which certain problematic litigation indicia are present in Study Group Applications (N=121) and Study Group Applications that exhibit one or more problematic litigation indicia (N=74).

4. Application Sophistication Score

The Study Group Applications are diverse documents. One way to classify these applications is by how effectively these documents communicate the Study Group Appellants' arguments and intent. One end of the spectrum are leave to appeal documents that provide little to no basis for the SCC to understand what the SRL appellant says has happened and what the appellant seeks. The opposite extreme are professional or near professional documents that lead the SCC through the "who, what, where, when and why" of the facts and issues, identify and explain relevant authorities, and clearly indicate the remedy or remedies sought.

This range of document content and utility was captured using the five-point Sophistication Scale. This value measures the degree to which Study Group Applications:

1. provide the SCC with:
   a) a factual narrative to explain the overall dispute and the issue(s) involved in this proposed appeal;
   b) a description of the legal issues involved, and the errors of the subordinate decision-makers that should be corrected; and
   c) the relevant law and legislation that is involved in the proposed appeal; and
2. adhere to the five-part memorandum of argument scheme.

Strategically, this measures how a Study Group Application succeeds by: 1) communicating the intended nature of the proposed appeal to the Court, and 2) explaining why the Court should grant leave and intervene.

Sophistication Scores were assigned to all Study Group Leave Applications based on review of their text and content, except:

1. the “no application” group, which received a SS=1, and
2. the “publication ban” group, which were not assigned a SS.

When evaluating the Study Group Applications by SS the population size is usually 121 (N=121).

A full description of the Sophistication Score characteristics is provided above at Part III(D)(1), however, in brief:

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

The average Study Group Application score was 2.58 (N=121). Figure 8 illustrates the frequency of individual Sophistication Scores:

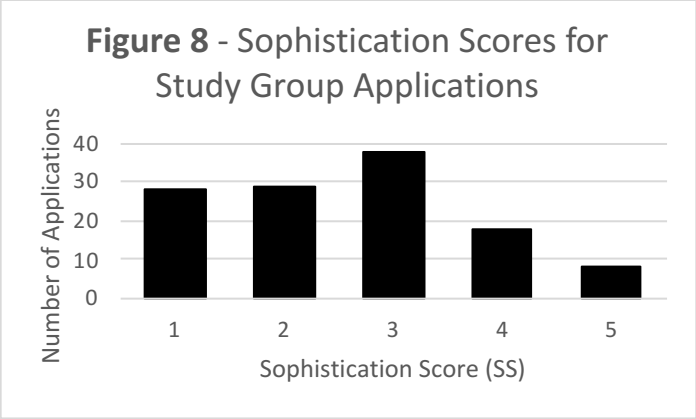

Figure 8 - Incidence of different Sophistication Score (SS) ratings assigned to Study Group Applications (N=121).

Nearly half (47.1%, n=57) of the Study Group Applications failed to plead the relevant facts and issues (SS=1-2). Most (52.9%, n=64) Study Group Applications did provide a basis for a

meaningful Court and respondent response (SS=3-5). Additional accurate reference to relevant legal authorities, legislation, and cases (SS=4-5) was comparatively uncommon (21.5%, n=26). Sophistication Score is not significantly linked to either civil vs criminal candidate appeal subject matter (x^2(4, N=121)=3.71, p=0.446), or Study Group Appellant gender (x^2(4, N=108)=3.21, p=0.523).

Over twice as many Study Group Applications followed from a Study Group Appellant initiating (73%), rather than responding (34.4%), to a litigation process or step. Figure 9 shows that this difference is less for high SS applications:

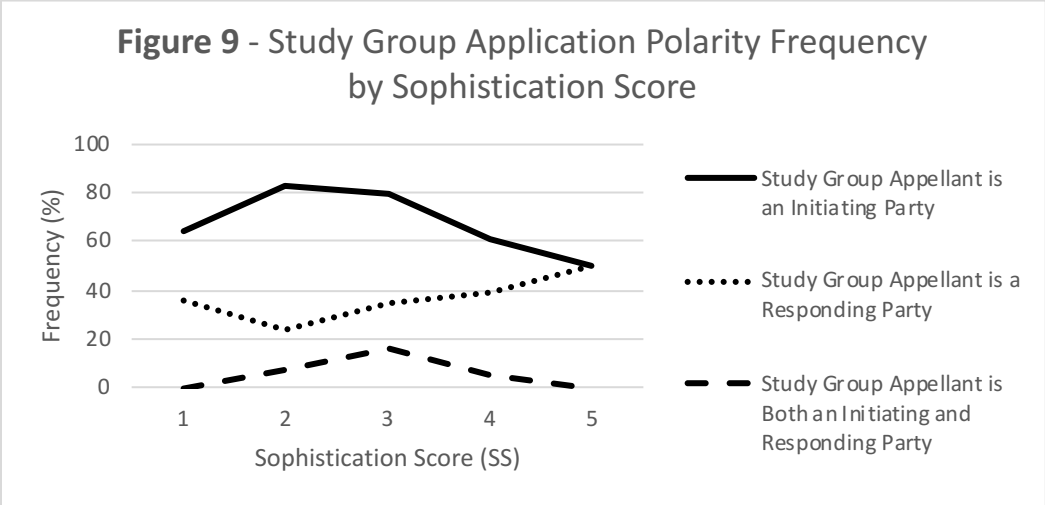

Figure 9 - Frequency at which Study Group Appellants initiated or responded to the legal process that led to a Study Group Application, distributed by Sophistication Score (SS) ratings (N=119). Applications where reciprocal legal processes led to a Study Group Application are included in all three categories.

The Study Group Applications' diverse and complex litigation subject profile (Table 1) meant linking specific topics to SS was not feasible. The general dispute themes were not statistically associated to SS for applications where factual disputes could be evaluated (SS=2-5):

- jobs - x^2(4, N=93)=5.48, p=0.140;
- conflict with close relatives - x^2(4, N=93)=2.61, p=0.456;
- personal business - x^2(4, N=93)=0.138, p=0.987; and
- social support and benefits - x^2(4, N=93)=0.0349, p=0.998.

In contrast, Figure 10 illustrates a strong association between Study Group Application SS and the degree to which applications seek to change Canadian law:

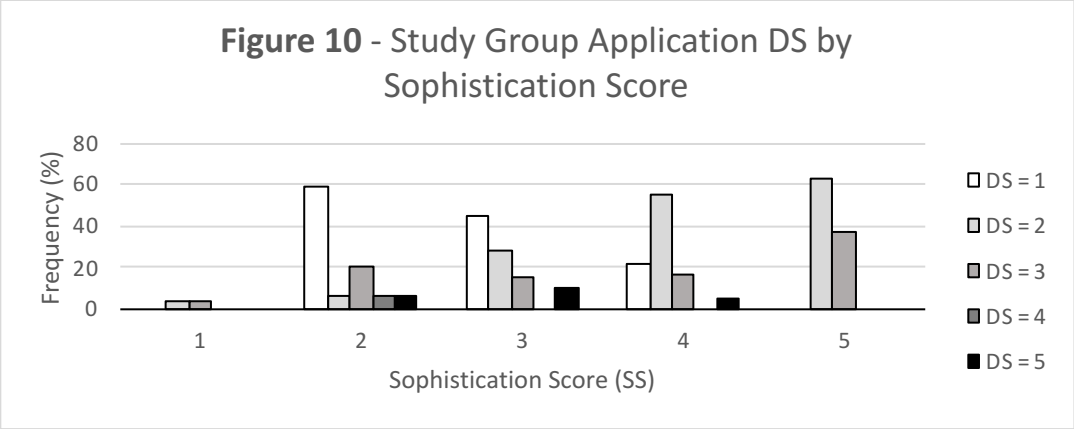

Figure 10 - Degree to which Study Group Applications seek to alter Canadian law, measured by Disruption Score (DS) ratings, distributed by Sophistication Score (SS) ratings (N=95). Increasing DS score indicates greater intended alteration of Canadian law, see Part III(D)(1). 26 applications with SS=1 had no discernable legal issues to rate that would affect existing Canadian law.

The number of Study Group Applications that sought changes that affect the candidate appellant or a small group (DS=1), or to broadly overturn Canadian legal concepts and order (DS=4-5), decrease as SS increases. High SS leave applications largely fall into the DS=2-3 "sweet spot", and propose a change in law that is neither too specialized to attract SCC intervention, nor that would upend Canadian law.

Most Study Group Applications (61.2%, N=121) exhibit problematic litigation characteristics. 73.4% of unsuccessful Study Group Applications led to a cost award against the Study Group Appellant, where that information was available (N=94). *SCC Rule* 67 was used to prohibit further document receipt for 12 Study Group Applications. Figure 11 illustrates how these characteristics relate to application SS:

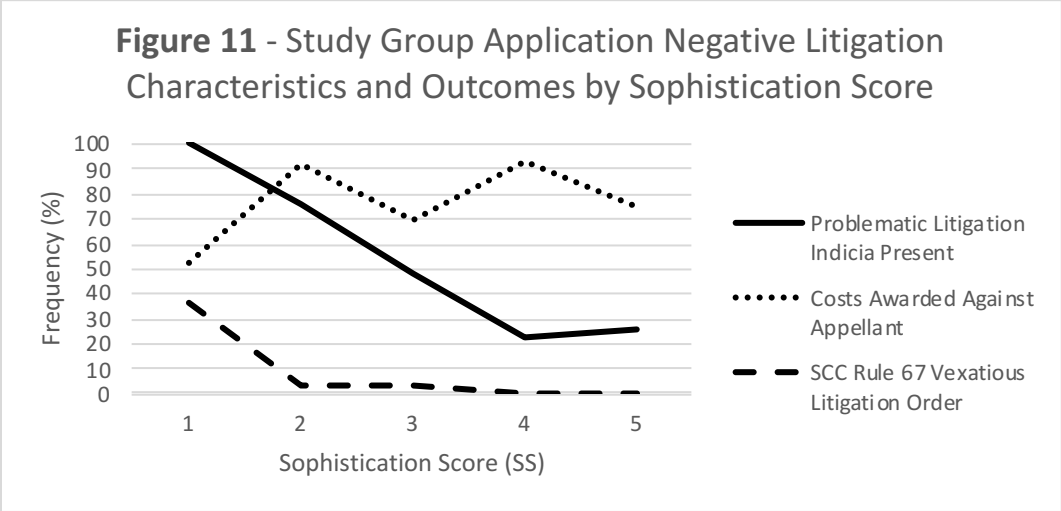

Figure 11 - Frequency of negative litigation characteristics and outcomes, distributed by Sophistication Score (SS) rating. "Problematic Litigation Indicia Present" indicates that review of a Study Group Application and associated docket record identified one or more characteristics that are a basis to classify the leave application as problematic (N=121). "Costs Awarded Against Appellant" indicates the Study Group Appellant was ordered to pay costs in relation to this Study Group Application (N=94). "Rule 67 Vexatious Litigation Order" indicates a *SCC Rule* 67 order was made in relation to this application (N=121).

Problematic litigation indicia show a strong and statistically significant (x^2(4, N=121)=10.6, p=0.0308) negative correlation to SS. Similarly, most *SCC Rule* 67 orders were imposed in low SS application proceedings (x^2(4, N=121)=26.1, p=0.0000303). SS=1 applications were markedly less likely to be the subject of an unfavourable cost award than higher sophistication (SS=2-5) Study Group Applications. This association was statistically significant: x^2(4, N=96)=12.8, p=0.0125.

Many Study Group Applications included complaints of bias, misconduct, and criminality against judges, tribunal decision makers, law enforcement, and lawyers. Judicial bias was the most common allegation (35.9%, n=42), but nearly a third (29.1%, n=34) of Study Group Applications went further, and claimed one or more lower court judges had acted in an illegal or criminal manner. Bias was alleged against a non-court tribunal in 20.5% (n=24) of Study Group Applications. Figure 12 illustrates the frequency of these allegations in relation to application SS:

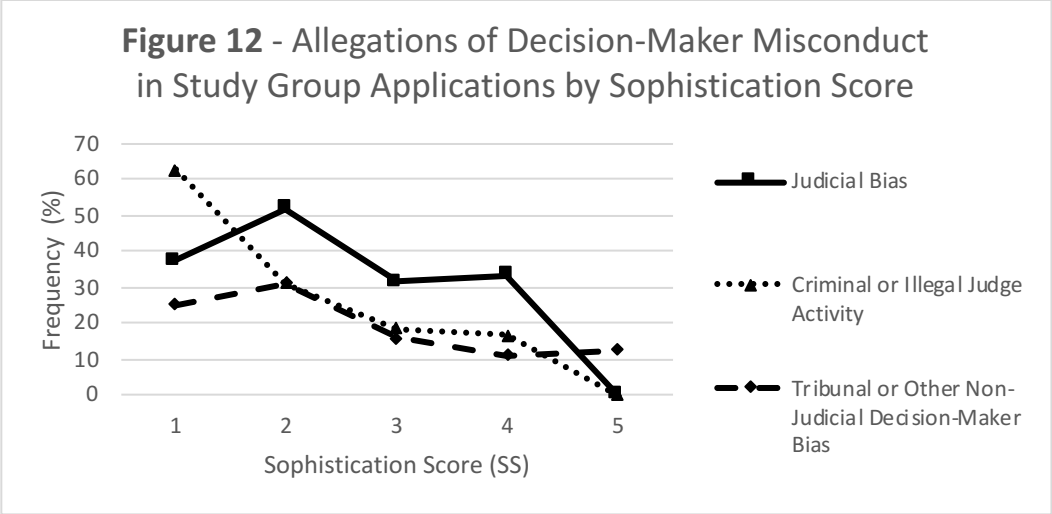

Figure 12 - Frequency at which Study Group Applications included allegations of decision-maker misconduct distributed by Study Group (SS) rating (N=117).

While all three decision-maker misconduct categories generally decrease as Sophistication Score increase, only allegations of criminal or illegal judge activity (x^2(4, N=117)=26.1, p=0.0000303) showed a statistically significant association (judicial bias: x^2(4, N=117)=8.02, p=0.0907; tribunal bias: x^2(4, N=117)=4.08, p=0.396).

Complaints about other justice system participants were less common and not associated with SS:

- police and law enforcement bias and misconduct = 21.4% (n=25), x^2(4, N=117)=4.52, p=0.340;
- opposing lawyer misconduct = 23.9% (n=28), x^2(4, N=117)=6.42, p=0.170; and
- own lawyer misconduct = 8.5% (n=10), x^2(4, N=117)=2.60, p=0.626.

Complaints against justice system participants were very common in Study Group Applications. Figure 13 combines the allegations of justice system participant misconduct to illustrate the frequency at which Study Group Applications of different Sophistication Score included 1) at least one such complaint, or 2) an allegation of bias, illegality, or criminality against one or more judges:

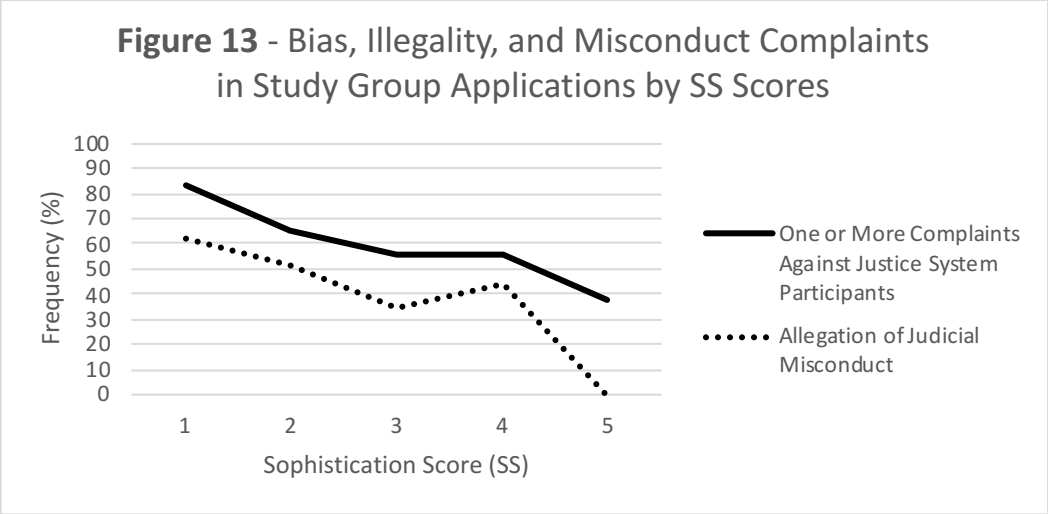

Figure 13 - Frequency at which Study Group Applications included complaints of justice system participant misconduct and judge misconduct, distributed by Sophistication Score (SS) rating (N=117). "One or More Complaints Against Justice System Participants" indicates a Study Group application included one or more complaints of misconduct or bias against a judge, tribunal or other non-court decision-maker, law enforcement, or lawyers. "Allegation of Judicial Misconduct" indicates a Study Group Application included one or more complaints of bias, or illegal or criminal conduct by a judge.

The second common-place complaint encountered in Study Group Applications was that the Study Group Appellant's rights were implicated or breached. None of the seven rights types exhibit a significant association with SS:

- *Charter* - n=75, $x^2(4, N=117)=6.51$, p=0.164;
- human rights - n=35, $x^2(4, N=117)=5.25$, p=0.263;
- non-*Charter* non-racial discrimination - n=19, $x^2(4, N=117)=6.49$, p=0.166;
- SRL rights - n=17, $x^2(4, N=117)=5.16$, p=0.271;
- privacy rights - n=7, $x^2(4, N=117)=1.95$, p=0.744);
- non-*Charter* racial discrimination - n=4, $x^2(4, N=117)=6.05$, p=0.195; and
- indigenous rights - n=4, $x^2(4, N=117)=6.45$, p=0.168.[231]

However, Figure 14 shows the three most common rights-based complaints decrease as application sophistication increased:

[231] All four Study Group Applications that implicated indigenous rights did so in an OPCA context.

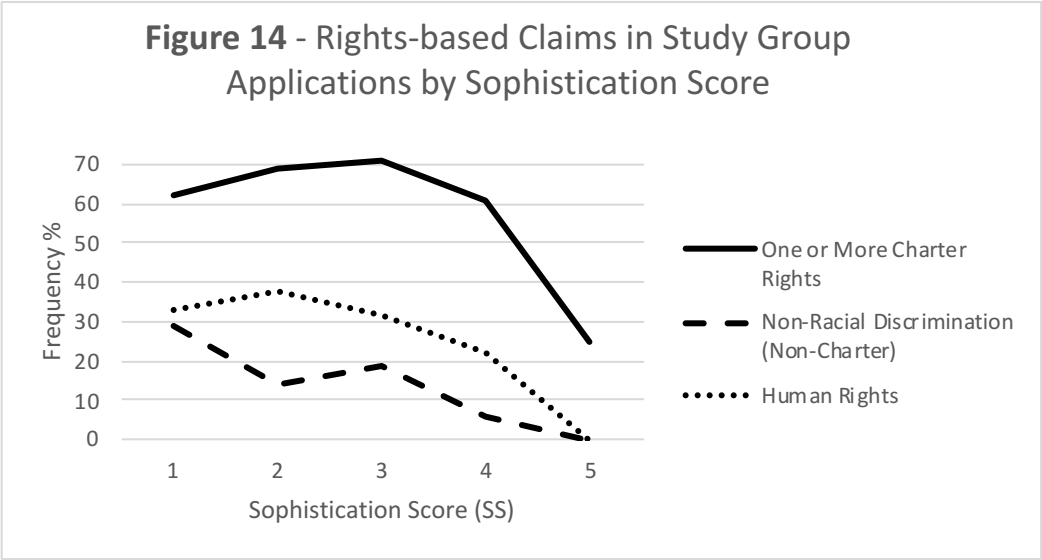

Figure 14 - Frequency at which Study Group Applications include allegations of a breach of rights or that certain rights types are implicated, distributed by Sophistication Score (SS) rating (N=117). Non-racial discrimination claims were placed in the "One or More Charter Rights" category if the Study Group Application framed those rights in a *Charter* context, e.g. that discrimination breached *Charter* s 15.

Most (64.1%, n=68) Study Group Applications include *Charter*-based claims or allegations, however only 9.9% (n=12) of those applications provided alleged facts and information to particularize the *Charter* issue and provide a basis for a meaningful court response. Figure 15 shows a strong correlation between high Sophistication Score (SS=4-5) and the frequency at which *Charter* issues were advanced in a substantive manner:

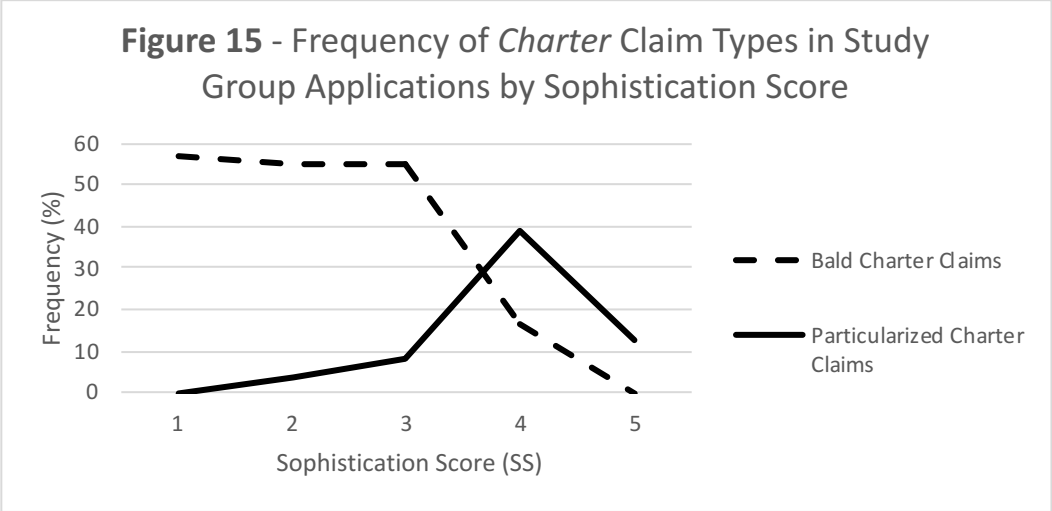

Figure 15 - Frequency at which Study Group Applications include allegations of a breach of *Charter* rights, or implicate *Charter* rights, and also provide adequate particulars for that *Charter* right, distributed by Sophistication Score (SS) rating (N=117). "Bald Charter Claims" Study Group Applications fail to provide adequate detail to meet the requirement for a valid *Charter* application, per *Mackay v Manitoba*.[232] "Particularized Charter Claims" Study Group Applications meet the *Mackay v Manitoba* criteria for a valid *Charter* claim.

SCC justices link the Court's potential interest in a candidate appeal to certain issues and factors. In addition to the presence of *Charter* and indigenous rights issues, which have been addressed above, a leave application will more likely result in a full appeal if there is inconsistent or conflicting lower appeal court jurisprudence, or if the proposed appeal issue(s) affects legislation in multiple jurisdictions.[233] However, the SCC is not likely to grant leave to a candidate appeal where that appeal relates to issues of fact, or applications of fact to an established legal test, since the SCC is a "law-making court", rather than an "appeal court".

Where the substance of a Study Group Application could be evaluated with confidence (SS=2-5), 43.2% (N=95) of those leave applications only alleged fact-finding or fact-application errors. Claims that lower court jurisprudence was inconsistent (8.3%, N=117) and that legislation in multiple jurisdictions was implicated (5.8%, N=117) were both uncommon. Figure 16 illustrates how factors that favour SCC intervention strongly cluster in higher SS applications:

[232] *Supra* note 164.
[233] See text accompanying notes 72-73.

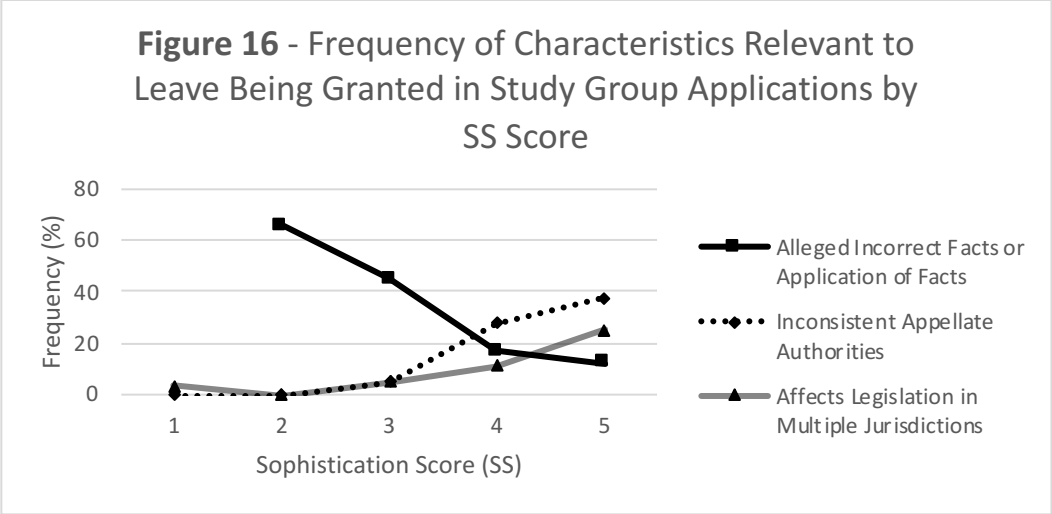

Figure 16 - Frequency at which characteristics relevant to whether the SCC grants leave occur in Study Group Applications, distributed by Sophistication Score (SS) rating. "Alleged Incorrect Facts or Application of Facts" indicates that a Study Group Application does not identify a proposed change to law, but instead that the Study Group Application restricts its issues to findings of fact or the application of accepted legal tests to disputed facts (N=95). No data is presented for SS=1 Study Group applications since these applications did not provide a basis to classify whether the proposed appeal was restricted to fact-related issues. "Inconsistent Appellate Authorities" indicates a Study Group Application identified appeal court decisions that allegedly came to different conclusions on a legal rule or principle, or where a lower court panel split on a legal rule or principle (N=121). "Affects Legislation in Multiple Jurisdictions" indicates a Study Group Application claimed that the issues raised in the proposed appeal affect legislation in multiple jurisdictions (N=121).

5. Mazraani 37642

Only one Study Group Application was granted leave: Mazraani 37642. A single application is not an adequate sample for statistical purposes. Nevertheless, a closer review of this application, its content, and allegations, and pre-SCC litigation is warranted. Mazraani 37642 is a rare exception to the rule.

Mazraani 37642 began in the Tax Court of Canada [TCC] when Kassem Mazraani, a SRL, appealed the Canada Revenue Agency denying Mazraani's employment insurance claim. The trial analysis is largely a review of conflicting witness evidence. Mazraani was entirely successful in his TCC appeal.

The subsequent Federal Court of Appeal decision ordered a retrial: language rights were not respected during the trial.[234] Justice Boivin concluded that the language rights of Mazraani and several witnesses were breached because Mazraani, who did not understand French, was not provided an interpreter, and because Justice Archambault "coaxed" opposing counsel and some witnesses to speak English.[235] The trial judge also provided language translation during the proceeding. Mazraani at trial had agreed to this arrangement, but the Federal Court of Appeal took a strict approach, and concluded that once the language issue emerged, Justice Archambault had no alternative except to stop the proceeding and get Mazraani an interpreter.[236] This appeal decision mentions both Mazraani's and opposing witnesses' language rights, but focusses on the former.

Mazraani filed his leave to appeal application 58 days after the Federal Court of Appeal decision. The leave component of the SCC docket is unremarkable, aside from that a SRL had successfully passed through the SCC's gatekeeping process.

Mazraani 37642 is a 20-page typewritten document. In many ways Mazraani 37642 is a typical SS=3 SRL application. It does not strictly follow the SCC memorandum of argument five-part scheme. Mazraani clearly has some difficulty in expressing himself in English; he acknowledges that is not his first language.[237] Mazraani 37642 outlines the prior litigation, cites to the record, and identifies two issues, that: 1) the Federal Court of Appeal ignored the unfavourable factual findings made at trial, and 2) the TCC decision appeal was based on a manufactured "dangler" issue. In effect, Mazraani's language rights had been used as a "sword" to obtain a new trial, rather than as a "shield" to protect Mazraani's right to a fair trial. Mazraani 37642's pleadings are clearly a basis for a meaningful response.

Mazraani did not cite any relevant authorities, but did carefully pinpoint evidence to the trial transcript and passages from the trial and appeal decisions. Mazraani did not allege judicial bias, but did criticize opposing counsel for allegedly unethical conduct.[238] Mazraani mentions the

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[234] *Industrielle Alliance, Assurance et services financiers inc v Mazraani*, 2017 FCA 80 at paras 27-28 [*Mazraani #2*].
[235] *Ibid* at paras 21-25.
[236] *Ibid* at para 26.
[237] See Appendix A: Mazraani 37642 at 272.
[238] *Ibid* at 284.

Charter on a number of occasions,[239] and reproduces *Charter* s 24, but does not develop a *Charter*-based argument.[240]

Beyond that, Mazraani is angry:

> 60. The Federal Court of Appeal was not balanced and didn't take by all the reasons, the decision was arbitrary and just to quash the judgement.
>
> 61. This decision is a slow kill to me. I worked hard for 5 years sometimes day and night (despite I am not a lawyer) and I was able to present 70 very strong and solid direct and circumstantial evidences and proved to the Tax Court all those facts even the [opposing counsel] confirmed those Evidences. The Federal Court killed all my effort at no time.
>
> 62. This is the most fanatic judgement that leads to hate rage and instability.
>
> 63. The mother doesn't kill one of her children to satisfy the temperamental of her spoiled son.
>
> ...
>
> 65. The Federal Court of Appeal killed those evidences and quashed my rights by creating a different ISSUE (I completely refuse) that led to unfair Judgement.

Mazraani 37642 effectively employs the trial transcript to challenge the Federal Court of Appeal's conclusion that opposing party witnesses also had their language rights infringed. For example, Mazraani identifies how a bilingual witness was repeatedly instructed by opposing counsel to speak in French.[241] Mazraani notes opposing counsel agreed to how language would be dealt with at trial,[242] and never raised language as an issue during the trial.[243]

The SCC's decision, issued November 16, 2018, concluded the TCC approach to language rights breached *Charter* s 19(1) and the *Official Languages Act*[244] rights of Mazraani, opposing counsel, and opposing party witnesses.[245] A new trial was ordered. The SCC categorically rejected a flexible approach to the use of official languages in court, but rather that in court proceedings witness and counsel language preferences must be accommodated.[246] Failure to do so usually requires a re-hearing of the matter.[247]

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[239] *Ibid* at 269, 286-88.
[240] *Ibid* at 288.
[241] *Ibid* at 279-80.
[242] *Ibid* at 274-75.
[243] *Ibid* at 276-77.
[244] *Official Languages Act*, RSC 1985, c 31 (4th Supp).
[245] *Mazraani*, *supra* note 66 at paras 56-65.
[246] *Ibid* at para 20.
[247] *Ibid* at para 48.

Mazraani 37642 is far from a model SCC leave to appeal application. Mazraani 37642 does not follow the SCC's mandatory memorandum of argument scheme. Its issues are discernable, but the application does not frame the in-court language choice questions in the context of either *Charter* s 19(1) or legislation. Similarly, Mazraani's primary focus, that his own language rights were employed in a tactical sense to "unwind" his success at trial, does not dig into the substance of that allegation. Nevertheless, both issues are apparent, and the SCC did respond to each.

Mazraani 37642 illustrates that lawyer-like detail to identify and describe legal issues and law is not a prerequisite to a successful SRL leave to appeal application. The language used by this Study Group Appellant is strong and emotional. That, however, did not block a substantive review of this application and the SCC identifying an issue of national importance.

Mazraani's success during the gatekeeping process suggests that the SCC conducts a substantive review of SRL leave to appeal applications, including those applications that possess significant defects, and that are not professional documents.

C. Study Group Appellants

The second major objective of this investigation is to characterize SRLs who in 2017 filed a leave to appeal application at the SCC. Those Study Group Applications were filed by 122 Study Group Appellants.

1. Demographic Profile

Male appellants substantially outnumber female appellants: 69.7% (n=85) and 26.2% (n=32), respectively. Five appellants were corporations (4.1%). Unexpectedly, review of the Study Group Applications, reported decisions, and other litigation record information provided substantial data on employment and profession for over 80% (N=117) of the non-corporation Study Group Appellants. This information is summarized in Table 4:

Table 4 - Study Group Appellant Employment and Profession

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

Table 4 - Employment and Profession of Study Group Appellants. Some Study Group Appellant were entered in more than one category.

In some instances a particular appellant is part of several Table 4 categories. For example, Raynald Grenier, a now retired dermatologist, has over decades engaged in a second major activity, large-scale silviculture holdings, making him one of the largest such land-owners in Quebec.[248] Grenier is therefore present in three categories: “Professional - Medical doctor”,

[248] *Grenier v The Queen*, 2002 CanLII 46977 (TCC).

"Large business owner", and "Retired". Though not indicated on Table 4, four of the eleven government employees were involved with the Canada Revenue Agency in some capacity.

2. SCC Litigation Activity

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

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

Figure 17 illustrates the frequency at which the Study Group Appellants sought leave to appeal from the SCC in 2017 and overall:

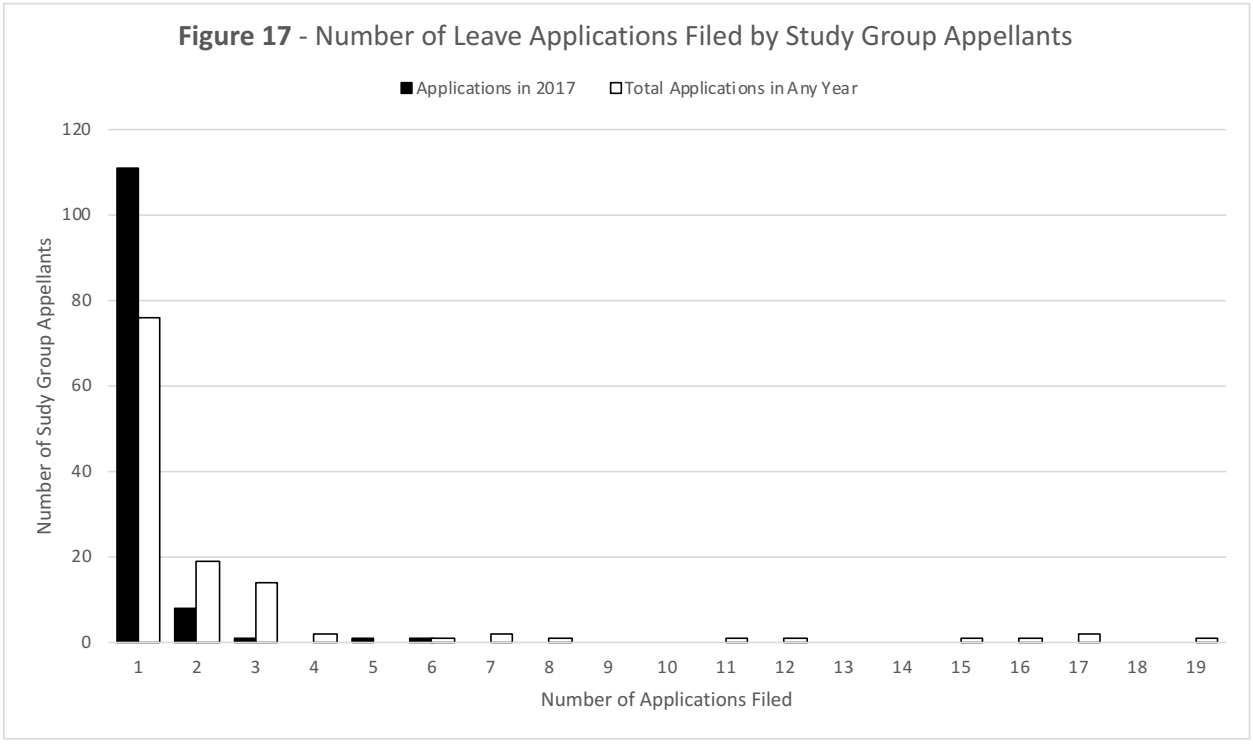


Figure 17 - Frequency at which Study Group Appellants filed SCC leave applications in 2017, and in any year, up to May 1, 2020.

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

Most Study Group Appellants (88.5%, n=108) only filed civil leave applications, however smaller but equal proportions (5.7%, n=7) filed criminal, or both civil and criminal leave to appeal applications. Figure 18 illustrates how the distribution of litigation subject types appears to have no relationship to the number of leave applications filed by a Study Group Appellant:

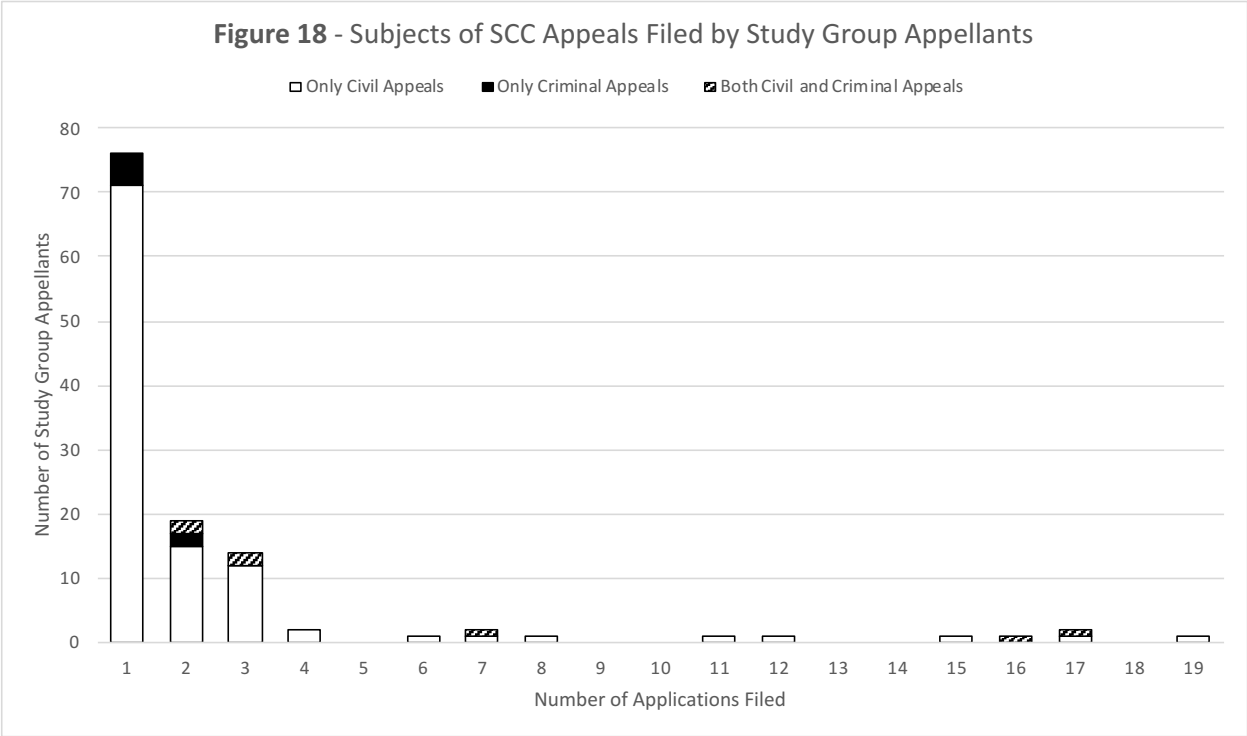


Figure 18 - Frequency at which Study Group Appellants filed civil and criminal subject leave to appeal applications in any year, up to May 1, 2020. Civil and criminal subject matter was defined by how the SCC Registry classified candidate appeals.

Two Study Group Appellants obtained leave to appeal:

- Kassam Mazranni, leave granted November 2, 2017, appeal dismissed November 16, 2018.[249]
- Elizabeth Bernard, leave granted March 16, 2012, appeal dismissed February 7, 2014.[250]

These two appeals were Mazranni and Bernard's first SCC matters. Mazranni has not apparently engaged in other litigation. Bernard subsequently filed a further seven SCC leave applications and has been made subject to Federal Court of Appeal court access restrictions as a vexatious litigant.[251]

[249] *Mazraani*, *supra* note 66.
[250] *Bernard v Canada (Attorney General)*, 2014 SCC 13 [*Bernard*].
[251] *Bernard v Canada (Attorney General)*, 2019 FCA 144.

3. Characterizing the Study Group Appellant Population

Characteristics of Study Group Appellants are organized around two variables:

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

These two variables capture: 1) a Study Group Appellant's capacity to advance legal matters, and 2) the scope of the Study Group Appellant's SCC litigation activities.

Four Study Group Appellants filed more than one 2017 SCC leave application and the Sophistication Score assigned to those leave applications were different. If the Study Group Appellant had two leave to appeal applications the higher Sophistication Score was used to reflect the Study Group Appellant's best demonstrated capacity. Otherwise the more common Sophistication Score was used.

Figures 17-18 illustrates that the frequency at which Study Group Appellants attempt to access the SCC exhibits an exponential decay relationship. The result is a long "tail" of high activity Study Group Appellants. These Study Group Appellants would provide an inadequate sample if evaluated individually. Study Group Appellants were therefore grouped into four categories determined by the total number of leave applications they had filed, in any year, up to May 1, 2020:

- One application - 76 Study Group Appellants
- Two applications - 19 Study Group Appellants
- Three to four applications - 16 Study Group Appellants
- Six to nineteen applications - 11 Study Group Appellants

Analysis using the two organizing variables is only useful if the two variables are independent of each other. The mean number of leave applications filed by Study Group Appellants was 2.45. However, almost two-thirds of Study Group Appellants only filed one SCC leave application, so the median (most common) number of applications filed by Study Group Appellants was one. Figure 19 illustrates how the mean and median number of leave applications filed by Study Group Appellants relate to SS:

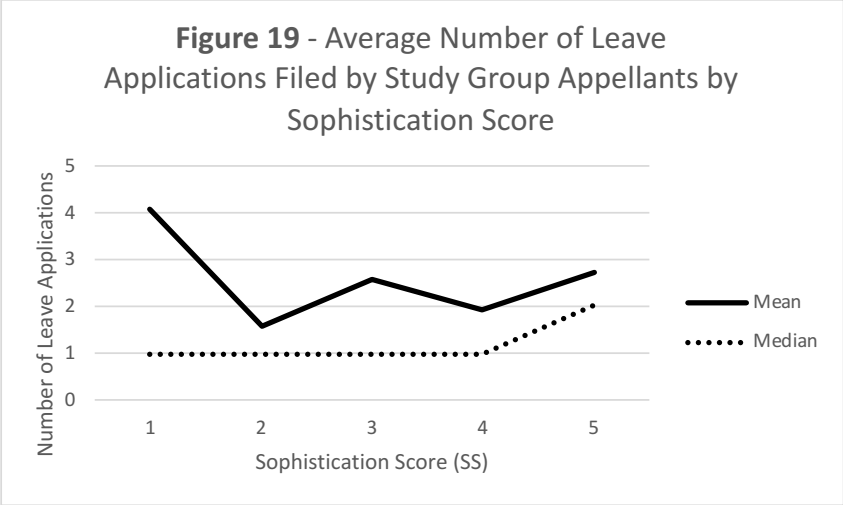


Figure 19 - Mean and median number of leave to appeal applications filed by Study Group Appellants distributed by the Study Group Appellants' Sophistication Score (SS) rating (N=118).

A simple arithmetic mean suggests that low Study Group Appellant SS is linked to high SCC activity, but the median values illustrate that the more common situation at the SCC is that Study Group Appellants at all but SS=5 file only one leave application, and then end their interaction with the SCC. What the mean value for SS=1 actually indicates is that the Study Group Appellants include a disproportionate number of highly active, but low sophistication (SS=1) appellants. On this basis Sophistication Score and number of leave applications appear to be unrelated for most Study Group Appellants. The exceptional population, if any, are highly sophisticated SRL litigants (SS=5).

Figure 20 evaluates the reciprocal relationship, and plots the mean and median Sophistication Scores for the four Study Group Appellant litigation activity groups:

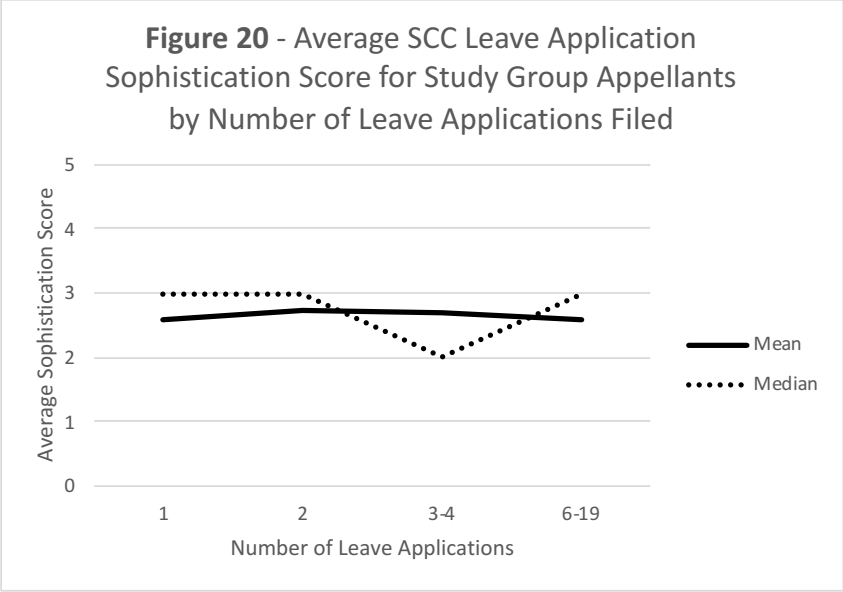


Figure 20 - Mean and median Sophistication Score (SS) ratings for Study Group Appellants who had filed different numbers of leave to appeal applications (N=118).

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

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

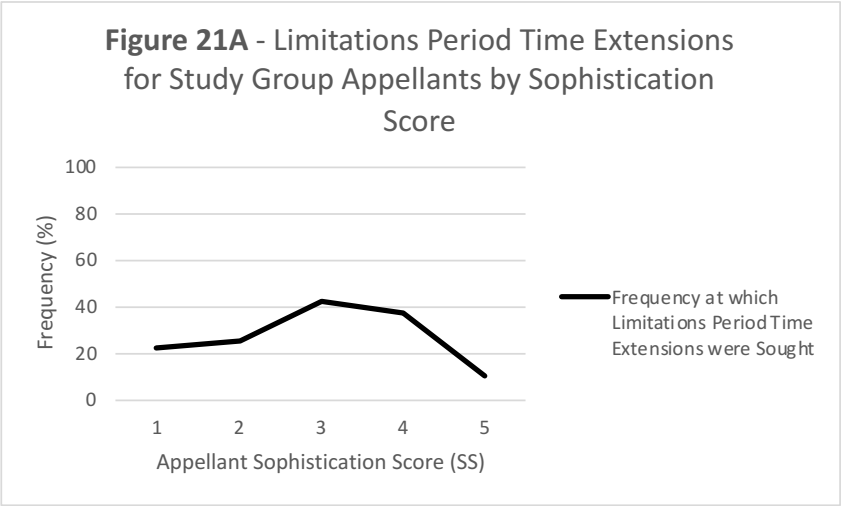
1. common aspects of SRL SCC litigation activity,
2. problematic litigation and court responses to litigation misconduct,
3. mental health factors, and
4. whether the Study Group Appellant exhibited a Querulous Litigation Pattern.

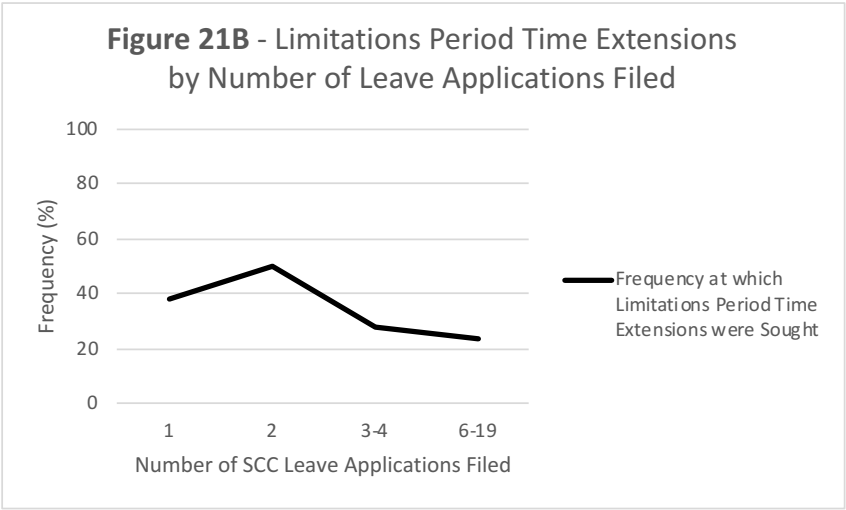
a. Study Group Appellant SCC Activity

As previously indicated, SRLs are rarely successful at the SCC. Only two of the 299 total leave to appeal applications filed by the Study Group Appellants were granted leave.
A substantial portion (30.4%, n=91) of the leave applications brought by the Study Group Appellants were not filed in a timely manner and required a limitations period time extension. Most (73.6%, n=67) of those time extension motions were granted. The frequency at which Study Group Appellants sought limitations period extensions showed a significant relationship to

SS (x^2(4, N=291)=12.1, p=0.0163) and litigation volume (x^2(3, N=299)=11.7, p=0.00853), but not whether those applications were successful (SS: x^2(4, N=88)=6.36, p=0.174; application number: x^2(3, N=94)=0.904, p=0.824).

Figures 21A and 21B illustrate the relationship between the incidence and success of SCC limitations period time extension applications, and Study Group Appellant SS and litigation volume:





Figures 21A and 21B - Frequency at which Study Group Appellants sought an extension to the 60 day limitations period to serve and file their SCC leave to appeal applications, distributed by Study Group Appellant Sophistication Score (SS) rating (Figure 24A) (N=289), or by the number of leave to appeal applications filed by the Study Group Appellant (Figure 24B) (N=299).

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

Somewhat over half (54.5%) of the 299 leave to appeal applications filed by the Study Group Appellants resulted in an unfavourable costs award. The probability of an individual unsuccessful leave application resulting in an unfavourable costs award exhibits a significant association to SS (x^2(4, N=289)=14.7, p=0.00533), but not to litigation volume (x^2(3, N=299)=0.723, p=0.868). Figure 22 illustrates the former relationship:

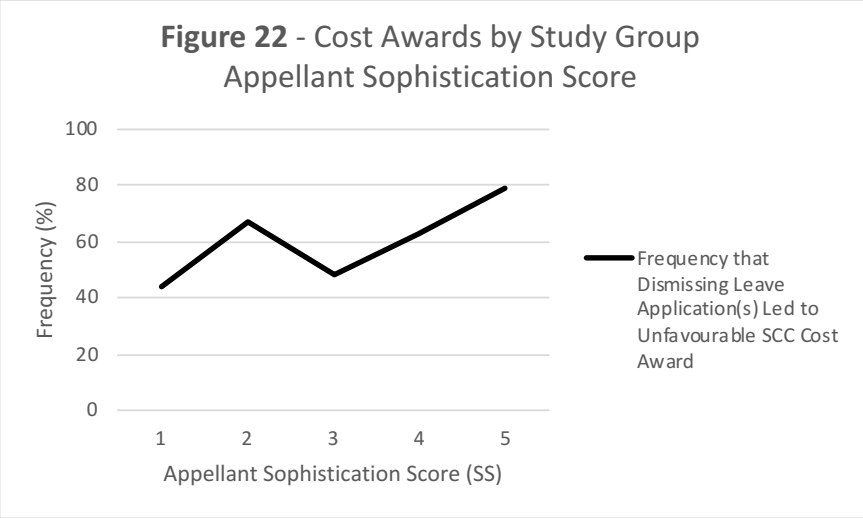


Figure 22 - Frequency at which an unfavourable costs award was ordered when any individual leave to appeal application by a Study Group Appellant was dismissed distributed by Study Group Appellant Sophistication Score (SS) rating (N=289).

Similar to Figure 13, SS=1 Study Group Appellants were the least likely to receive unfavourable costs awards, and did so at a much lower frequency that high SS Study Group Appellants.

The probability that a Study Group Appellant was subject to at least one cost award was significantly linked to litigation volume (x^2(3, N=122)=14.0, p=0.00291), but not SS (x^2(4, N=118)=3.51, p=0.476). Figure 23 illustrates the former relationship:

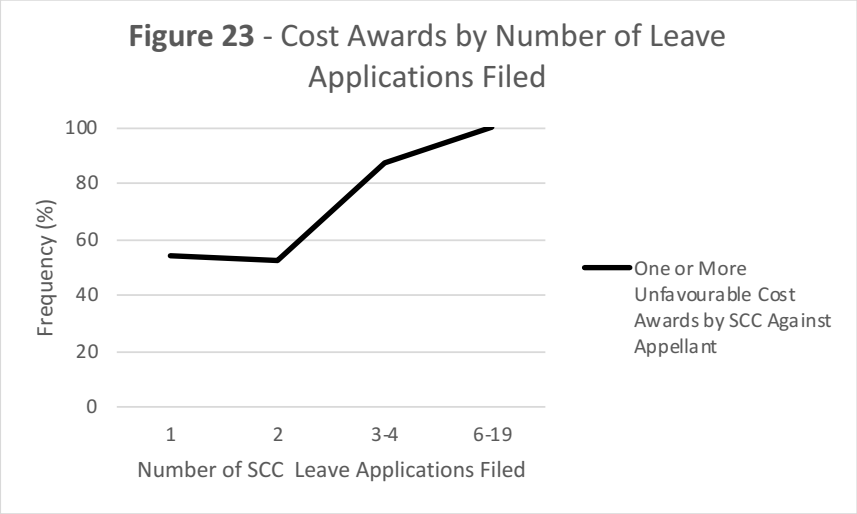


Figure 23 - Frequency at which a Study Group Appellant had been the subject of one or more unfavourable cost awards distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

While the probability that any single unsuccessful SCC leave to appeal application would lead to a cost award is not linked to litigation volume, the cumulative effect of repeated interaction with the SCC meant almost all Study Group Appellants who had filed 3-4 leave applications had at least one unfavourable cost award. All Study Group Appellants who filed six or more leave to appeal applications were the recipient of at least one unfavourable cost award.

b. Problematic Litigation Conduct by Study Group Appellants

The Study Group Appellants exhibit a number of attributes that suggest this population is disproportionately engaged in problematic litigation. 76.2% (n=94) of the Study Group Appellants were identified by lower courts or tribunals as having engaged in abusive litigation. 23.0% (n=28) were subject to some form of court access restrictions. Neither characteristic exhibits a statistical association with SS: abusive litigation - $x^2(4, N=118)=5.83$, $p=0.212$; court access restrictions - $x^2(4, N=118)=1.41$, $p=0.842$. Both are associated with litigation volume: abusive litigation - $x^2(3, N=122)=22.2$, $p=0.000096$; court access restrictions - $x^2(3, N=122)=7.98$, $p=0.0465$. Figure 24 illustrates the relationship between problematic lower court litigation and SCC activity volume:

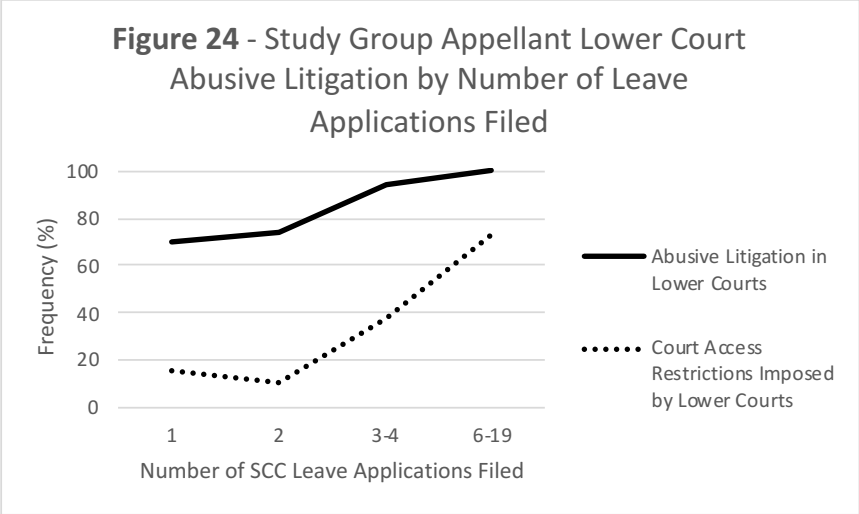


Figure 24 - Frequency at which a Study Group Appellant was: 1) identified by a lower court or tribunal as having engaged in abusive litigation conduct, and 2) subject to a court access restriction order, distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

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

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

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

Of these three characteristics, SS was only significantly linked (x^2(4, N=118)=35.6, p=0.000000352) to problematic litigation indicia in a SCC leave application (OPCA litigation: x^2(4, N=118)=3.82, p=0.430; *SCC Rule* 67 cannot calculate x^2). Similarly, litigation volume only exhibits a significant linkage (x^2(3, N=122)=14.4, p=0.0024) to the SCC imposing *SCC Rule* 67 orders (leave applications that exhibit abusive litigation indicia: x^2(3, N=122)=0.278, p=0.964; OPCA litigation: x^2(3, N=122)=2.44, p=0.487).

Figures 25 and 26 illustrate that problematic litigation characteristics in SCC leave to appeal applications decreases as SS increases, and that *SCC Rule* 67 orders are more common for Study Group Appellants who have filed six or more leave to appeal applications.

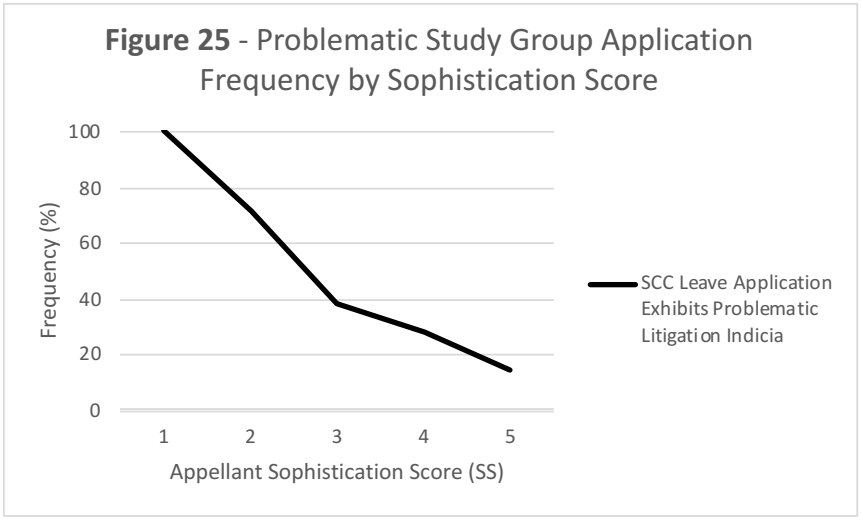


Figure 25 - Frequency at which a Study Group Appellant filed one or more Study Group Applications that included indicia of problematic litigation distributed by Study Group Appellant Sophistication Score (SS) rating (N=118).

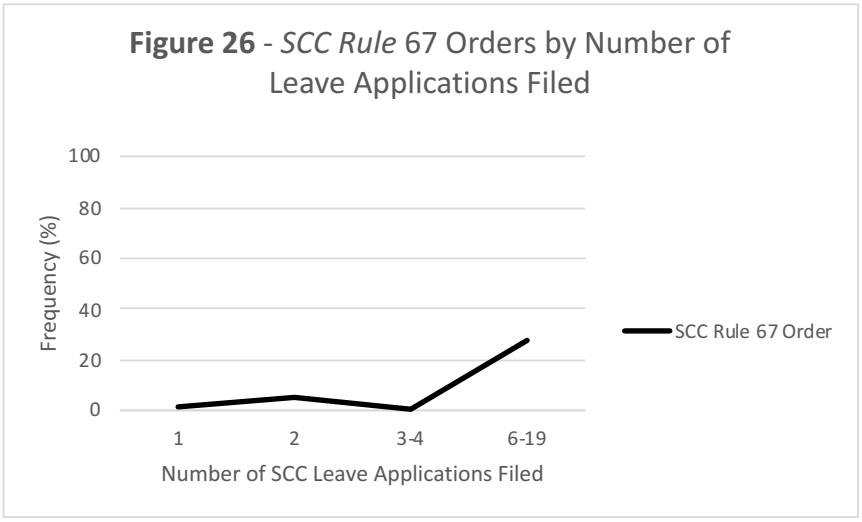
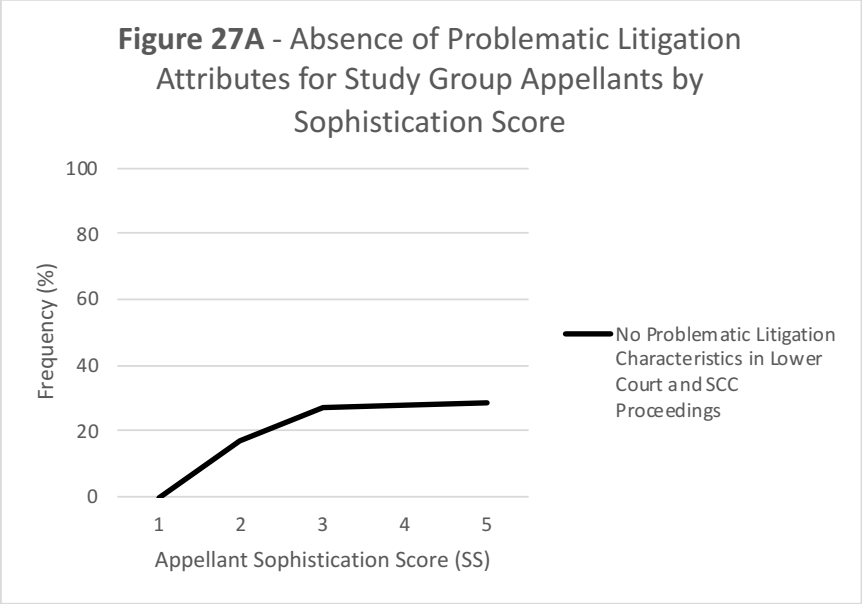
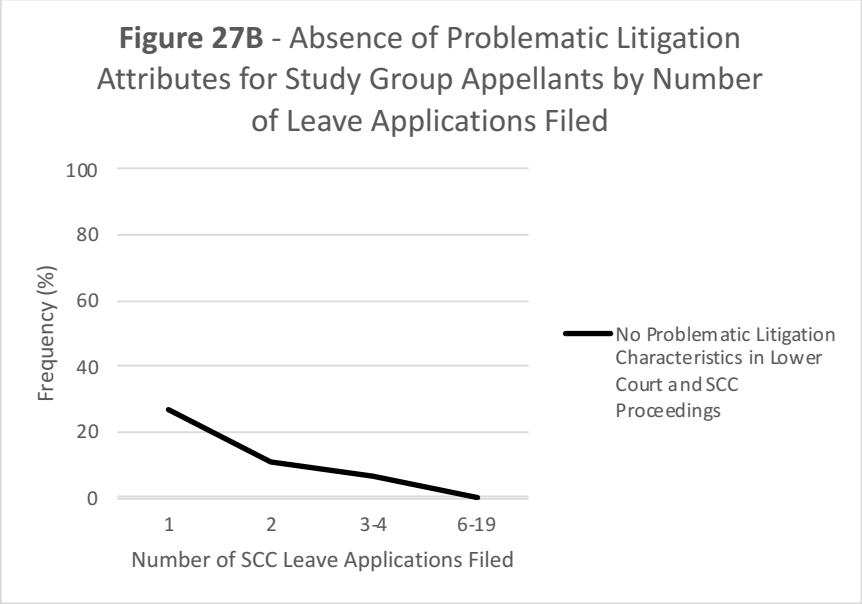


Figure 26 - Frequency at which a Study Group Appellant was subject to one or more *SCC Rule* 67 "vexatious litigation" orders, distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

Finally, Figures 27A and 27B combine all four litigation misconduct characteristics to illustrate what portion of Study Group Appellants exhibited none of the pre-SCC and SCC negative litigation characteristics:





Figures 27A and 27B - Frequency at which a Study Group Appellant had not engaged in any of the five categories of problematic litigation, distributed by Study Group Appellant Sophistication Score (SS) rating (Figure 27A, N=118), or by the number of leave to appeal applications filed by the Study Group Appellant (Figure 27B, N=122).

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

c. Study Group Appellant Mental Health

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

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

None of these characteristics exhibits a significant association with SS:

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

The same is true for litigation volume:

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

d. Querulous Litigation Pattern

The final Study Group Appellant characteristic is indirectly related to mental health. Some mental health professionals have identified an unusual pattern of dispute conduct associated with a specific psychiatric condition, querulous paranoia,[252] where a person exhibits an expanding cascade of litigation and complaint activity that originates from an initial seed dispute. Court, tribunal, and docket records were reviewed for this characteristic, the Querulous Litigation Pattern. The Querulous Litigation Pattern was identified in the litigation record of almost a

[252] See Part II(D)(2).

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

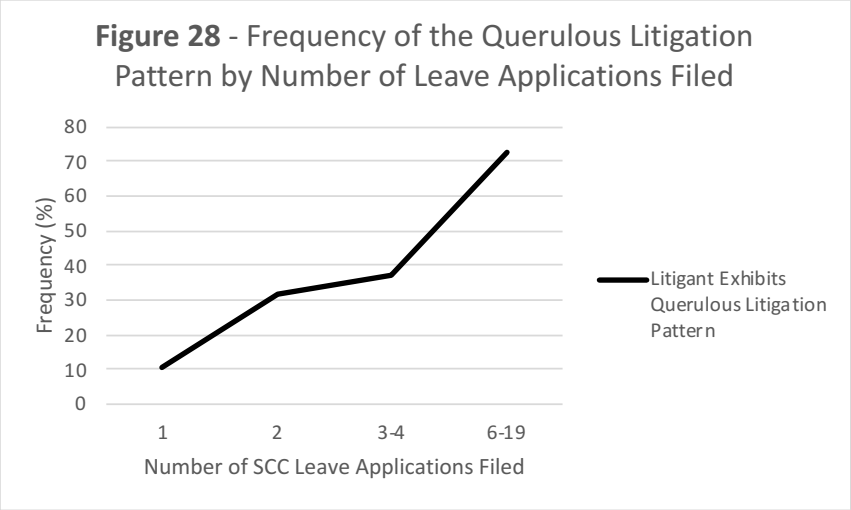


Figure 28 - Frequency at which a Study Group exhibits the Querulous Litigation Pattern, distributed by the number of leave to appeal applications filed by the Study Group Appellant (N=122).

V. Discussion and Analysis

The preceding information demonstrates that a detailed profile of a SRL population and its litigation activities may be developed using a document- and data-based methodology. These results will now be used to:

1. develop a "snapshot" of SRL leave to appeal activities at the SCC in 2017; and
2. evaluate the nature and relevance of certain aspects of the 2017 SRL appellant population.

A. Preliminary Conclusions

Two preliminary points are important to frame the deeper investigation of this study's data that follows.

1. Study Group Applications and Appellants are Diverse

Sometimes graphs and statistics mask other important facts. This investigation has uncovered a collection of litigation and litigants who have very different and often opposite characteristics. Their path to the SCC involved a diverse and varied range of legal (and non-legal) disputes: Table 1.

Some appeal subjects are obviously important to the SRL. For example, employment, a central focus of many peoples' lives and identities, was a common element underlying many Study Group Applications (22.0%, n=24). Candidate appeals challenged disciplinary processes that terminated employment for teachers,[253] an RCMP information clerk,[254] and a Canada Revenue Agency employee.[255] Accountant Anita Dunkers appealed her conviction for embezzling funds that crippled a non-profit social welfare organization.[256] Dunkers claimed her trial was unfair. Police investigators lost an allegedly critical box of accounting documents.

However, some disputes that underpin Study Group Applications were trivial. A student sued a university about a ten-year-old "D" grade in undergraduate English.[257] A landlord sought leave to appeal over a dispute about property line cedar hedge trimming.[258] The trial damages and costs were around $6,000. The SCC was asked "to determine the distance from a cedar tree hedge trunk or roots that is acceptable to plant a garden or install a fence, so as not to disrupt or affect the roots."[259] Some disputes started small but got out of hand. A condo owner's dispute over less than $150 in fees escalated into a foreclosure proceeding and a $80,000 judgment.[260]

Other candidate SCC appeals arguably involve less important subjects, but, nevertheless, the emotional basis for why a person would pursue those matters is understandable. Binnersley 37440 involved SPCA seizure of a man's pet dog. Interpersonal conflicts are the underlying emotional foundation for certain disputes. Childs 37808 was an intense conflict between children of an elderly parent over payments to the children for care of that parent. Lubecki 36721 is the latest stage in a 13-year long dispute between a brother and sister over their mother's will.

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[253] See Appendix A: Abi-Mansour 37455; Hiamey 37519; Lanigan 37717.1; Lanigan 37717.2.
[254] See Appendix A: Bergey 37657.
[255] See Appendix A: Fevrier 37583.
[256] See Appendix A: Dunkers 37618.
[257] See Appendix A: Amrane 38599.
[258] See Appendix A: Malhotra 37651.
[259] *Ibid* at 31.
[260] See Appendix A: Goertz 37399.

Sometimes a broader agenda is in play. John "The Engineer" Turmel, filed a candidate appeal to challenge Elections Canada's policy to reimburse the costs of mandatory election accounting reports. Turmel is famous (or infamous) as the world's least successful political candidate, having lost 99 Canadian municipal, provincial, and federal election bids.[261] Most of the 16 unsuccessful SCC leave to appeal applications filed by Turmel since 1980 involve election-related issues, but Turmel has also appealed to the SCC his lawsuit against the CBC and the "Dragon's Den" program when Turmel's scheme to replace money with poker chips was ridiculed by that program's "Dragons".[262]

Green 37407 is the fifth of seven SCC leave to appeal applications filed by Martin Green. All relate to Green being expelled from a University of Winnipeg teaching practicum. Green in 2018 uploaded a YouTube video of himself performing an accordion song that describes his "extended pissing match" with the University.[263] The final stanza: "They spent half a million bucks on lawyers' fees, won't they ever get tired of fighting me?"

Certain Study Group matters elicit deep sympathy from the courts. Robert Thomson, a civilian Department of National Defence employee paralyzed and frostbitten in a military aircraft crash, did not receive the same legislated benefits as military personnel who were injured in the same incident.[264] The Federal Court of Appeal denied Thomson's *Charter* s 15 argument, but observed this differential treatment was probably "simply an oversight", and hoped that Thomson's pleas would "be favourably received by the Governor in Council."[265]

A small Montreal startup high-end cigar manufacturer was raided, shut down, had its assets seized, and was ultimately driven into bankruptcy. The trigger was a missing $50 licence fee.[266] The trial court complained it was difficult to understand why the RCMP and other government actors had not advised the startup's owner, "an honest businessman launching a legitimate business", of the missing licence, and instead waited for the business man "to hang himself" by

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[261] Jonathon Gatehouse, "The biggest loser: John Turmel is making his 99th try for office this fall" (9 September 2019), online: *CBC* <www.cbc.ca/news/politics/election-record-biggest-loser-1.5264087> [perma.cc blocked].
[262] See Appendix A: Turmel 34482.
[263] Martin Green, "Marty vs the U of Winnipeg" (18 October 2018), online (video): *YouTube* <www.youtube.com/watch?v=U7KHEr8TciI> [perma.cc blocked].
[264] See Appendix A: Thomson 37351.
[265] *Thomson v Canada (Attorney General)*, 2016 FCA 253 at para 44.
[266] See Appendix A: Orsini 37364.

commencing operations.[267] The Federal Court subsequently concluded the response of state actors to this "honest citizen trying to comply ... by operating his business with complete openness ... was, to say the least, a questionable, if not reprehensible, way to proceed."[268]

Other Study Group Appellants are instead condemned. When Carolyn Hagan[269] attempted to resist collection of nearly $1 million in "loans" extracted from a woman with serious health conditions, including a brain tumour, the Court denounced Hagan's "orchestrated fraud" against a "very naïve" and "excessively vulnerable" target.[270] Hagan's credibility was "totally nil" and her documents were "the most complete rubbish".[271]

Some candidate appeals are excellent examples of legal drafting and argument, but include a critical flaw. Lyson 37520 expertly challenged the standard of review for a tribunal interpreting legislation. However, the tribunal in question was the Alberta Land Surveyor's Association, and Lyson argued that body lacked any expertise to interpret the technical surveying-oriented language used in the Alberta *Surveys Act*.[272]

A second such example is an application by Elizabeth Bernard, one of the exceptional SRL appellants who have obtained leave and then (unsuccessfully) argued a full appeal before the SCC.[273] Bernard 37575 involved a judicial review of two labour board decisions that denied two government workers a total of 8.25 hours of paid leave. Bernard identified defects in the decision-maker's geographic residence location and that the decision was made out of time. Both issues appear to be valid complaints, grounded in legislation. However, this otherwise very well drafted and argued leave to appeal application had a fatal defect - Bernard had absolutely nothing to do with the two decisions she had challenged,[274] and instead intruded into otherwise completed disputes on a purely "busybody"[275] basis.

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[267] *R c Orsini*, 1999 CanLII 10169 at paras 19-20 (QCCQ).
[268] *CC Havanos Corp (Re)*, 2002 FCT 941 at para 72.
[269] See Appendix A: Hagan 37747.
[270] *Van Nostrand c Hagan*, 2015 QCCS 2509.
[271] *Ibid* at paras 61, 65.
[272] *Surveys Act*, RSA 2000, c S-26.
[273] *Bernard*, *supra* note 250.
[274] *Close and Stevens v Treasury Board (Department of Citizenship and Immigration)*, 2016 PSLREB 18.
[275] *Unrau #2*, *supra* note 110 at para 664.

Futile litigation is commonplace, but in many different ways. Mental health factors are sometimes in play. The appellant in Chowdhury 37677 states he is the "victim of government action ... The appellant was subjected to torture of electronic & microwave harassment for the purposes of mind control (interference of the mind), human experimentation and surveillances".[276] Abebe Tilahun makes similar complaints; he is the target of "remotely controlled wireless Quantized laser electromagnetic radiation".[277]

Maria Ranieri "with the most unmistakeable immortal red lit diamond eyes" challenged her criminal prosecution. She is the "Roman Empress" and is outside Canadian law "by virtue of her sole exclusive birthright, the sole owner of the "Triple Crowns" which represent the sole authority exclusive ownership and control of planet Earth in it's entirety."[278] Ranieri's other Study Group Application rejects her being diagnosed as a schizophrenic, and instead complains of a conspiracy between the RCMP and hockey player Paul Coffey, the latter who "displayed serious romantic interest in the applicant".[279]

Other allegations are extremely implausible. The appellant in Chen 37522 argued that trial and appeal judges conspired to alter court transcripts and audio records. Sometimes the remedy sought is impossible or excessive. Husband and wife Mohamedali and Parin Hirji sued their condo corporation, alleging that failure to address water leaks subverted a currency trading business, and, on that basis, demanded over a billion dollars in damages.[280] Must 37675 claimed $5 billion in costs.[281]

OPCA litigants challenged the conventional legal, legislative, and governmental order. OPCA-based demands ranged from more limited claims of an absolute right to use motor vehicles without any restriction,[282] to reworking Canada as we know it, transforming it into a universal welfare state.[283]

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[276] See Appendix A: Chowdhury 37677 at para 17.
[277] See Appendix A: Tilahun 37448 at para 17.
[278] See Appendix A: Ranieri 37830 at 24.
[279] See Appendix A: Ranieri 37796 at 53.
[280] See Appendix A: Hirji 37420; *Hirji v The Owners Strata Corporation Plan VR 44*, 2015 BCSC 2043 at para 12.
[281] See Appendix A: Must 37675 at para 86.
[282] See Appendix A: Barens 37656.
[283] See Appendix A: Dove 37487, see also *Bursey v Canada*, 2015 FC 1307.

Succinctly, there are neither stereotypical SCC SRL applications nor appellants. These populations are complex. That said, certain characteristics and patterns are more or less common. What should be kept in mind while teasing out those broader conclusions is exceptions exist to most rules or patterns.

2. The Study Group Appellants are Not Likely Representative of Canadian SRLs as a Whole

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

First, the Study Group Appellants have followed a comparatively unusual litigation trajectory. While tens of thousands of SRLs enter trial courts every year to pursue small claims litigation, dispute traffic and bylaw tickets, dissolve their marriages and divorce, and complete the probate of estates, only 122 in 2017 continued that litigation through two or more court tiers to reach the SCC. What motivated this small minority of SRLs to pursue their disputes to Canada's final court is hinted at by some of the data collected in this study. That is discussed below in more detail. Beyond that, it seems fair to conclude the combination of the time and expense involved in intervening processes, and the rarity at which SRLs arrive at the SCC, at least implies that the Study Group Appellants have different motivations and/or characteristics from the more common trial-level SRL.

Second, the litigation subjects that bring SRLs into trial and SCC proceedings are plausibly different. For example, statistics of new action types in the Alberta Court of Queen's Bench between 2012 and 2017[284] show that 27.2% of civil proceedings were divorce or family actions, and 10.4% involved probate or administration of estates (N=67619). However, these litigation categories were uncommon in Study Group Applications: 6.4%, and 2.4%, respectively (N=125). To be fair, the Alberta Court of Queen's Bench statistics do not identify what fraction of those new actions were initiated (or conducted) by SRLs, so to a degree this exercise is "comparing apples to oranges". Nevertheless, the SRL narrative says Canadian SRLs are primarily family law litigants.[285] At the SCC that is not the case.

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[284] Court of Queen's Bench of Alberta, *The Court of Queen's Bench of Alberta Annual Report 2016 to 2017* [*ABQB 2016-2017 Report*], online (pdf): *Alberta Court of Queen's Bench* <albertacourts.ca/docs/default-source/qb/2016-2017-annual-report-with-appendix-jan-19-2018.pdf> [perma.cc/HK9P-WM8H].

[285] E.g. Macfarlane, "Report", *supra* note 9 at 25-26.

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

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

B. SRLs at the SCC in 2017 - a Snapshot of Appellate Activity

The SCC,[286] the SCC Registrar,[287] and the Supreme Court Law Reports[288] publish annual reviews and reports that include statistics that document SCC activity. These sources do not report on SRLs as a separate population. That fact, and the uncertain manner in which categories and classes are defined, means these data sources are only relied upon with caution.

The Study Group Appellants made up a substantial portion of appellants who sought to access the SCC in 2017.[289] In total the Study Group Appellants submitted 24.7% (N=507) of the leave applications filed in that year. Whether this rate is typical is unclear since no source has regularly published SRL activity information since 2010.[290] However, other investigations by the author[291] that applied the same methodology used to identify the Study Group Applications determined that the proportion of SRL applications at the SCC in 2015 and 2016 was higher: 26.8% (N=545) and 34.2% (N=568), respectively.

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[286] E.g. *Statistics 2007-2017*, *supra* note 67.
[287] E.g. Registrar of the Supreme Court of Canada, *Office of the Registrar of the Supreme Court of Canada 2017-2018 Departmental Results Report* at 10 [*2017-2018 Report*], online (pdf): *Supreme Court of Canada* <www.scc-csc.ca/about-apropos/rep-rap/dpr-rmr/2017-2018/report-rapport-eng.pdf> [perma.cc/G3D9-Q9RV].
[288] E.g. Estabrooks et al, "2016-2017", *supra* note 107.
[289] What fraction of the overall 2017 SCC appellants the Study Group Appellants represent could not be calculated since this investigation did not conduct a "head count" of represented 2017 SCC appellants.
[290] See Netolitzky, "Limitations", *supra* note 64 at I.
[291] Donald J Netolitzky, "Repeat SCC SRL Appellants" (in preparation) [Netolitzky, "Repeat SRLs"].

One Study Group Appellant was granted leave in 2017, a success rate of 0.8% (N=125). The SCC granted leave to 10% (n=50) of all applications filed in that year.[292] Combined, the successful leave to appeal application rate for represented SCC appellants was 13.1% (N=382). This difference is statistically significant: $x^2(1, N=507)=15.3$, p=0.00009.

No SRL leave to appeal application was granted in 2015 and 2016.[293] In those years 10.8% (N=399) and 13.4% (N=374) of represented candidate appellants were granted leave to appeal.[294] This data supports Wagner CJC's report that a successful leave to appeal application by a SRL is an exceptional event.[295]

The geographic origin of non-Federal Courts Study Group Applications generally corresponds to Canada's population distribution: Figure 3. Other reports on overall SCC activity in 2017 exhibit the same pattern.[296] SCC SRL activity appears unrelated to source provincial jurisdiction. The frequency at which Study Group Applications emerge from Federal Court disputes (18.4%, n=23) was significantly higher than that observed for represented litigants (11.5% (n=44)):[297] $x^2(1, N=507)=3.89$, p=0.0486.

Available information suggests a very large majority of SRLs complete the leave to appeal process whenever the SCC Registrar opens a docket record. In 2017, all Study Group Applications completed the leave to appeal process. The broader significance of that observation depends in part on how the SCC Registry records incoming appeals that do not complete the application process. Sometimes the SCC Registry returns SRL SCC appeal materials,[298] or requests additional materials,[299] prior to opening a file. No evidence is available to evaluate how often in 2017 a SRL contacted the SCC Registry with the intent of making a SCC appeal, but no docket was ultimately ever opened.

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[292] Supreme Court of Canada, *2018 Year in Review Supreme Court of Canada* at 12 [*2018 Year*], online (pdf): *Supreme Court of Canada* <www.scc-csc.ca/review-revue/2018/yr-ra2018-eng.pdf> [perma.cc/4XJF-8KLG].
[293] Netolitzky, "Repeat SRLs", *supra* note 291.
[294] *Ibid*; *2018 Year*, *supra* note 292 at 12.
[295] Wagner, *supra* note 76.
[296] *Statistics 2007-2017*, *supra* note 67 at 9; Estabrooks et al, "2016-2017", *supra* note 107 at 118-19; Matthew Estabrooks et al, "Annual Report on Applications for Leave to Appeal to the Supreme Court of Canada: The 2017-2018 Term" (2019) 89:2 SCLR 71 at 84-86.
[297] *Statistics 2007-2017*, *supra* note 67 at 9.
[298] E.g. Appendix A: Lin 37377.
[299] E.g. Appendix A: Pierce 37530.

However, the SCC docket records do report instances where:

1. a candidate SCC appeal was terminated after an unsuccessful *SCA* s 59(1) motion to extend the time to serve and file limitations period, but where no leave to appeal application was actually filed;[300]
2. a SCC leave to appeal application was dismissed as abandoned;[301]
3. *SCC Rule* 67 was employed to terminate a candidate SCC appeal proceeding without submitting the leave to appeal application for review to determine whether leave should be granted or refused, or[302]
4. a candidate SCC appeal was discontinued.[303]

None of the Study Group Applications were terminated in these ways.

The SCC Registry is not the Court's gatekeeper. Most SRL SCC leave applications are evaluated by a three-justice panel and on their merit. All 21 fee waiver applications sought by Study Group Appellants in 2017 were granted. Highly irregular SCC leave to appeal filings were accepted.[304] In four instances a SCC appeal docket was opened, and while something was submitted to the SCC justices, nothing that matched the description of an "application" was on the file.[305] The SCC Registry accepted applications that exceeded the 20-page memorandum of argument limit,[306] even where no motion for an over-lengthy leave to appeal memorandum of argument was received. All motions for an over-lengthy memorandum of argument were, apparently, granted.

The SCC says it takes a "generous approach" to limitations periods,[307] which is clearly supported by the high success rate in 2017 (82.6%, N=46) for SRL time to serve and file limitations period extensions motions.[308] Time period extensions are important for SRL appellants. Few 2017 SRL criminal subject leave to appeal applications were filed within the 60-

[300] E.g. Lindsay 27223; Fabrikant 28391; Ayangma 29168; Nagel 34032.
[301] E.g. Parker 31245.
[302] E.g. Aletkina 36521.
[303] E.g. Fortier 36729.
[304] E.g. Appendix A: Pierce 37530; Placid 37558; Oh 37649.
[305] See Part III(B).
[306] See Appendix A: Tilahun 37448; Hiamey 37519; Pierce 37530; Février 37583; Dunkers 37618; Figure 4.
[307] *Roberge*, *supra* note 77 at para 6.
[308] Netolitzky, "Limitations", *supra* note 64.

day limitations period; all SRL criminal subject limitations period extension motions were granted.[309] 46 Study Group Applications that sought a *SCA* s 59(1) limitations period time extension had that motion evaluated when leave to appeal was determined. The SCC ruled on both leave and time extensions together.[310]

Combined, these observations strongly suggest that the SCC Registry takes a "file everything, filter later" approach to candidate SRL appeals. If so, the principle gatekeeping step for SCC SRL leave to appeal applications is when those applications are evaluated by the three-justice leave to appeal panel.

The SCC's 2017 statistics report indicates on average 3.8 months elapsed "between the filing of a complete application for leave to appeal and the Court's decision on whether leave should be granted or denied".[311] This interval is similar to the 4.24 month average for a Study Group Application to complete those steps. No identified source examines the time required for a candidate SCC appellant to complete a leave to appeal application, though, as illustrated in Figure 1, the time involved in that step may be substantial. That said, nearly half (48%, n=60) of Study Group Applications were complete or had a docket assigned within one month of when the Study Group Appellant first contacted the SCC Registry.

Figure 1 illustrates that the SCC justice panels usually came to a decision on whether to grant leave to a Study Group Application within two months after application materials were submitted for review. In the one outlier case, Sahyoun 37581, 458 days elapsed between when the SCC justice panel received the docket materials and a decision was issued. However, the Sahyoun 37581 docket indicates an external event complicated this process: the appellant had died.

No other source examines cost awards by the SCC. Costs were usually awarded against unsuccessful Study Group Appellants, however elevated costs were very uncommon.[312] Cost awards were markedly less common in relation to SS=1 Study Group Applications: Figure 11. This outcome is counter-intuitive if no costs indicates a case had potential merit or involved

[309] *Ibid* at III.
[310] *Ibid*.
[311] *Statistics 2007-2017*, *supra* note 67 at 3.
[312] Only in Appendix A: Belway 37708. Netolitzky & Warman, *supra* note 111 at 737 also only identified one elevated SCC leave to appeal cost award.

novel issues.[313] SS=1 applications had serious and fatal pleadings deficiencies. Many are essentially indecipherable. One possible explanation for the low incidence of unfavourable SS=1 cost awards is the Court is sympathetic to Study Group Appellants whose applications demonstrated they were "out of their depth", or who were affected by a mental health condition.

The SCC only rarely applied its *SCC Rule* 67 authority to terminate SRL candidate appeals. When it did, that only occurred after the Study Group Appellant had already exhausted his or her legitimate steps at the SCC, but still persisted with unmeritorious and problematic communications. *SCC Rule* 67 was not applied as an "application management" tool, but instead to close down files.

In conclusion, this investigation detected no structural or institutional barriers for SRL access to the SCC in 2017. Instead, the SCC leave to appeal process is an open one, given:

1. the SCC Registry's procedures,
2. all fee waivers were granted,
3. acceptance of non-compliant and irregular SRL application materials,
4. generous limitations period time extensions, and
5. problematic litigation management procedures were only deployed after a SCC justice panel already evaluated the substance of the leave application.

Each Study Group Application was the subject of a full leave to appeal review process by a panel of three SCC justices (and perhaps the entire Court). That review was the only gatekeeping process applied to the Study Group Applications.

SRLs rarely obtain a full appeal hearing before the SCC. The preceding observations reject that outcome is the result of structural bias or procedural obstacles that preempted SCC appellate review. The observed pattern of SRL failure has something to do with the leave to appeal applications and/or how those applications are evaluated by the SCC. That suggests two not necessarily exclusive alternatives: the adjudicators are bad, or the leave to appeal applications are bad. Evaluation of those two options is, however, outside the scope of this investigation.

C. Broader Characteristics of Study Group Appellants

This investigation now examines four larger Study Group Appellant patterns:

[313] *Hubley v Hubley Estate*, 2012 PECA 17 at paras 25-27.

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

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

With that caveat, there probably are substantial differences between SRL vs non-SRL SCC litigation. The fact that over the past two decades SRLs almost never receive leave to appeal is a strong indication these two candidate appellant populations are in some ways dissimilar. A direct comparison of late SRL applications to represented litigants also identified significant differences.[314]

1. Study Group SCC Litigation is Rights-Based and Rejects Canadian Law and Courts as Illegitimate

While this investigation is the first true population study of SRLs active at the SCC, a recent paper by Netolitzky & Warman described characteristics of another subset of SCC appellants: persons who had a record of applying pseudolaw in their court proceedings.[315] Most of these individuals were SRLs.[316] OPCA litigants stereotypically challenge the conventional social order and government authority, and often reject court jurisdiction.[317] Many OPCA processes are

[314] Netolitzky, "Limitations Period", *supra* note 77.
[315] Netolitzky & Warman, *supra* note 111. The methodology employed to identify this population almost certainly guarantees the study population was incomplete: at 737-38.
[316] *Ibid* at 752.
[317] Stephen A Kent, "Freemen, Sovereign Citizens, and the Challenge to Public Order in British Heritage Countries" (2015) 6 Intl J Cultic Studies 1; 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, 3 May 2018) [unpublished], online: *researchgate* <www.researchgate.net/publication/325053635_A_Pathogen_Astride_the_Minds_of_Men_The_

highly ceremonial, and perhaps are better described as a kind of ritual or magic, rather than any form of (conventional) rational behaviour.[318]

Netolitzky & Warman detected something unexpected. They concluded that despite the OPCA communities' dismal litigation record, a large majority of the OPCA SCC candidate appellants presented their ideas and arguments "in a serious, careful, and conventional manner." These individuals "were at the [SCC] to argue their ideas, rather than attempt to impose some kind of extraordinary unorthodox judicial or magical authority."[319] "Spell-casting" and sympathetic magic documents were all but absent.[320] None of the SCC OPCA litigants raised judicial bias as the basis for their appeals.[321] The authors concluded this pattern meant OPCA litigants demonstrated real confidence in the court apparatus and judiciary; they would receive a fair hearing of the matters they brought to the high court of Canada on appeal.[322] These OPCA litigants accepted Canada's judicial system is (in some ways) valid, and tried to work inside it, by arguing their concepts of (pseudo)law. In doing so, this group of SCC SRLs engaged the SCC's "law-making" function.

In contrast, many Study Group Appellants reject the authority of Canadian courts and judges. Nearly half (48.7%, N=117) of all the Study Group Applications denounced Canadian dispute decision-makers as biased. 29.1% (N=117) of Study Group Applications went further, and accused lower court judges *of illegal and/or criminal activity*. The frequency of these allegations is startling. This data indicates that many SCC SRLs were not merely dissatisfied with the result

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Epidemiological_History_of_Pseudolaw> [perma.cc/3X65-E4K5]; Donald J Netolitzky, "A Rebellion of Furious Paper: Pseudolaw as a Revolutionary Legal System" (Paper delivered at the CEFIR Symposium Sovereign Citizens in Canada, 3 May 2018) at 15-16 [unpublished] [Netolitzky, "Rebellion"], online: *researchgate* <www.researchgate.net/publication/325053364_A_Rebellion_of_Furious_Paper_Pseudolaw_as_a_Revolutionary_Legal_System> [perma.cc/LFE5-VWSB]; Colin McRoberts, "Tinfoil Hats and Powdered Wigs: Thoughts on Pseudolaw" (2019) 58:3 Washburn LJ 637; Spencer Dew, *The Aliites, Race and Law in the Religions on the Noble Drew Ali* (Chicago: University of Chicago Press, 2019); Florian Hartleb, *Lone Wolves: The New Terrorism of Right-Wing Single Actors* (Cham: Springer Nature Switzerland AG, 2020) at 138-41.

[318] Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments ["OPCA"] as Magic and Ceremony" (2018) 55:4 Alta L Rev 1045.

[319] Netolitzky & Warman, *supra* note 111 at 749.

[320] *Ibid* at 747-49.

[321] *Ibid* at 732-36.

[322] *Ibid* at 766.

of their lower court decisions. The bias and criminality complaints indicate a deeper, more fundamental rejection of Canadian courts and processes as illegitimate. Study Group Appellants repudiate the Canadian court apparatus as a fair and valid mechanism to resolve social conflict. These SRLs do not accept Canadian judges honour their professional obligations and oaths.

If the justice system is denounced, then what do these SRLs believe in? Their "rights". 71.8% (N=117) of Study Group Applications identified one or more "rights" that were breached or implicated in their dispute. Rights were usually expressed via reference to the *Charter* (89.3%, N=84). However, the *Charter* was not usually "argued", but "invoked" (Figure 15), and often "invoked" simply by name alone (Table 2: 26.7%, N=75). Study Group Appellants frequently advance the *Charter* in instances where the *Charter* appears to have no possible application (46.5%, N=75).

Morissette JA identifies a focus on "individual rights" such as "those found in charters and in human rights legislation" as a "fertile ground" for "looping behaviour" and mental health issues that are a driver of problematic litigation.[323]

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

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

The following excerpts retain the formatting of the originals.

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[323] Morissette, "Disorder", *supra* note 109.

MacRae 37378

> There has been a shift in law enforcement towards "guilty until proven innocent" involving false allegations against men. **It is clear that fathers and their children have NO *Charter* Rights and NO Human Rights**. Fathers are subject to illegal imprisonment and their children are being abducted and abused for months or years, while these matters move slowly through the courts.[324]

Labouthier 37350

> The Court of Appeal also leaves me without treatments recommended by my doctors since 2008, and without compensation for my wages and for all the hell they made me live. It is criminal to let animals suffer while I, these supposed professionals let me suffer from ATM since June 2008, a dislocation in the jaws since 2010 and since 2012, an infection in a badly made crown by Hemi Thériault.
>
> They only do this to me because I am a woman who represents herself alone, and they only want to punish me because I have taken my case in hand and that I denounce all the hell they have subjected me since 2004. A big question arises: What are the benefits of doing this to victims, and taking advantage of insurance?[325]

Hok 37624

> And while I have been **forced into deliberate-destitution** - by having been collusively ***forced out*** of my elite perio/dental-hygiene career (a career that I had thoroughly loved; and that I had pioneered perio-hygiene subgingival-treatment for the general-practicing dentists way back in the fall of 1979); AND by banking-embezzlements; et al - I have the fundamental RIGHT to have access to justice, along with procedural fairness as well; et al. The governing concepts are that of "***equality before and of the law***", and *the Rule of Law*; etc./et al. "**Access to Justice** is therefore a democratic safeguard guaranteed by various Charter prerogatives in line with ***principles of Fundamental Justice*** which ***the courts cannot deny*** for reasons involving ***budgetary concerns***." And so - while I have been deliberately forced into destitution et al [right facing arrow with two heads] I have A RIGHT to have access to ethically competent proceedings / JUSTICE et al!!! BUT know that instead, our mighty governments blatantly want me totally CRUSHED-DOWN / DESTROYED et al. However — exactly *WHO* is in the wrong; *WHO* is at fault et al??? Exactly WHEN did it ever become ethically correct to FALSELY DENY the innocent victim (me) their GUARANTEED basis fundamental RIGHTS et al [right facing arrow with two heads] deliberately and corruptly done by the use of ***unethically false*** *court-proceeding judgments / findings* et al? And so - this application of mine (to the *Supreme Court of Canada's Registry* for "leave to appeal" (appeal of that erroneously misleading+

[324] See Appendix A: MacRae 37378 at para 7.
[325] See Appendix A: Labouthier 37350 at 13.

alleged "decision" of madam-judge/ Veldhuis) is in regards to yet another falsely misleading / damaging / obstructing of justice (et al) FALSE DISMISSAL of absolutely meritful me [right facing arrow with serpentine shaft] committed by the high-and-mighty court-systems' bigotry-judges+.[326]

Haimey 37519

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

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

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

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

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

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

I do not sleep anymore. I am traumatized by all the problems that the respondents have created for me. For a while, I have felt the need to go to a psychologist. I am afraid that this trauma will follow me for life. But, I can't afford it.[327]

Parsons 37610

Whatever righteous movement this court had in R v. BEAULAC seems to have evaporated by the time we appeared at your court; it seems the cancer has anastomosed, but that was to be expected. Those appointed to the Supreme Court of Canada come from the very societies that have been violating these regulatory statutes. When the BC Law Society and the judges of BC sent their very clear message to this court, this SUPREME COURT OF CANADA backed away from the precipice and turned a BLIND EYE to the criminal conspiracies of the BC Law Society and the judges of BC. Any ruling in favour of Eric Claude L'Espinay would have condemned the criminal organization pretending to be the law in British Columbia and would have lead to chaos. Again; do not pardon my language; the judges and the law societies of BC sent a very clear message to the Supreme Court of Canada and the people of Canada;

"GO FUCK YOURSELVES"

we have never made any records or transcripts and we never will and there's nothing you can do about it. This was the ultimate display of brinksmanship by the criminals pretending to be "THE LAW" in British Columbia. They sent the

[326] See Appendix A: Hok 37624 at para 2.
[327] See Appendix A: Haimey 37519 at 56.

> very clear message to the Supreme Court of Canada that you don't dare condemn us for our criminal acts and criminal conspiracies because you will cause the implosion of the criminal justice system in British Columbia. The Supreme Court of Canada Backed down from them.[328]

DM 37392

> The patriarch of the family is a child survivor of the holocaust. He has already ONCE in his lifetime watched a German Nazi government machinery destroy his entire extended family in the 1940s, AND where he is now? Yet AGAIN, watching a government machine destroy the family he cocreated. ONLY, this time, it is a 21st century Canada, Alberta government new Nazi-type machinery doing the wittingly systemic, systematic destroying of his family. He is watching his younger son being 'crucified' with false allegations, and the grandchildren this son co-created, 'arrested and incarcerated into government custody' by government child welfare and protection civil servants, as a corporate-ass cover-up to protect the poor decision making, and lack of sound judgement by the Executive Manager/Director of this government entity for this area. This person **IGNORED** the warning that the birth mother's biological father is a documented sexual predator, and the children would be "at risk' for maltreatment by him. See document "A Story of Corruption Affecting Many Alberta Families".[329]

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

The broad rejection of Canada's law and its legal apparatus is plausibly linked to the capacity of Study Group Appellants to operate inside those systems. The "rights-based perspective" is much reduced within the SS=5 subpopulation: Figures 14, 15. Similarly, complaints about court and tribunal decision-makers are much less common in high SS vs low SS applications: Figures 12, 13. This correlation is particularly noticeable for allegations that judges have engaged in criminal and/or illegal activity. 62.5% (N=24) of SS=1 Study Group Applications made that allegation. No SS=5 application (N=8) exhibited this characteristic.

One hypothesis that would explain this pattern is that when SRLs are unsuccessful, then their understanding of the role of judges and the rules-based operation of the courts influences how a SRL interprets failures. Justice Robertson of the New Brunswick Court of Appeal linked automatic allegations of decision-maker bias to a lack of familiarity with, or knowledge of, law

[328] See Appendix A: Parsons 37610 at para 15.
[329] See Appendix A: DM 37392 at para 8.

and legal processes.[330] SRLs who do not really understand how law works are the ones who blame the system, rather than accept a negative outcome as having a reasoned basis. Put another way, if the result feels "unjust", then "my rights" were wronged.

This "rights-based", rather than "rules-based" perspective, and rejection of Canadian courts and judges as illegitimate, are two of the few broad patterns identified among Study Group Appellants. These conclusions turn some of the usual assumptions about SRLs on their heads. The traditional view is that OPCA litigants seek to "break" legal processes,[331] but that does not usually apply to OPCA litigation at the SCC. However, the opposite is true for many "conventional" SRLs. Pseudolaw litigants commonly approach the SCC in a "law-making" context, and seek to discuss and develop the substance of Canada's law. However, "conventional" SCC SRL appeals are driven by emotion, and a rejection of Canadian law and courts. These SRLs point to a higher authority - their "rights" - and demand to be heard.

2. Many Study Group Appellants are Unusually Active SCC Litigators

Most Study Group Appellants only initiated one proceeding at the SCC, but a substantial number, 37.7% (N=122), have filed two or more SCC leave to appeal applications, in any year, up to May 1, 2020: Figure 17.

The long 'tail' of high activity Study Group Appellants in Figure 17 shows a surprising number of Study Group Appellants have repeatedly engaged the SCC. Statistics and profiles of litigant activities in Canada are, at best, scarce. That leaves open the question of just where the Study Group Appellants fall in the overall landscape of SCC litigant activity, as a whole. Table 5 attempts to put some context on Study Group Appellant court activity, and compares the number of times the thirteen most active Study Group Appellants appeared as appellants and respondents at the SCC, in relation to SCC appellant and respondent docket appearances of Canada's largest thirteen companies,[332] as ranked by Fortune Magazine:

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[330] *Murray v New Brunswick Police Commission*, 2012 CanLII 34210 (NBCA) at para 10, see also *Zed v White*, 2019 NBCA 86 at paras 27-28.
[331] *Meads*, *supra* note 39 at paras 69, 598.
[332] Online: *Fortune* <fortune.com/global500/2019/search/?hqcountry=Canada> [perma.cc/7W6U-5ENX]. These rankings are for 2019.

Table 5 - SCC Litigation by High Activity Study Group Appellants and Canada's Thirteen Largest Corporations

Study Group Appellants			Canada's Thirteen Largest Corporations		
Name	**Appellant**	**Respondent**	**Name**	**Appellant**	**Respondent**
Gilles Patenaude	19	0	Brookfield Asset Management	0	2
Valery Fabrikant	18	0	Alimentation Couche-Tard	2	0
Ade Olumide	17	0	Royal Bank of Canada	40	135
John C. Turmel	16	0	Toronto-Dominion Bank	25	87
Katherine Lin	14	0	Magna International	0	2
Robert Lavigne	12	1	George Weston Limited	0	1
Raynald Grenier	11	0	Power Corporation of Canada	0	0
Elizabeth Bernard	9	0	Enbridge	2	7
Paul Abi-Mansour	7	0	Bank of Nova Scotia	20	74
Martin Green	7	0	Suncor Energy	1	4
Gandhi Jean Pierre	6	0	Manulife	2	5
Hachmi Hammami	4	0	Onex Corporation	1	1
Lubov Volnyansky	4	0	Bank of Montreal	47	98

Table 5 - Number of SCC appellant and respondent appearances by the thirteen Study Group Appellants who had filed the most leave to appeal applications, and the thirteen largest Canadian corporations, as identified by Fortune Magazine for 2019. The Study Group Appellants are ranked by number of SCC leave to appeal applications. Canada's thirteen largest corporations are ranked in order of corporation size.

The high activity Study Group Appellants listed in Table 5 filed more SCC appeals than any of Canada's thirteen largest corporations, except for Canada's four largest banks. From 1875 onward, venerable Canadian institutions such as the Hudson's Bay Company and the Canadian Pacific Railway have filed six and 89 appeals with the SCC, respectively. Since its creation in 1981, Canada Post is named as a SCC appellant or candidate appellant 16 times.

That one individual, such as Ade Olumide, in somewhat over 3.5 years has filed nearly as many SCC appeals as Canada's third largest bank did over 137 years[333] illustrates that the high activity Study Group Appellants identified in this investigation are a different and unique class of appeal court participant. Not even very large corporations whose business activities mean the corporation is regularly involved in substantial litigation approach the intensity of appeal court activity exhibited by this group of SRLs.

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

[333] The first SCC proceeding involving the Bank of Nova Scotia appears to be *Smith v Bank of Nova Scotia* (1883), 8 SCR 558, 1883 CanLII 48.

3. Study Group Appellants are Disproportionately Problematic Litigants

Preliminary data collected at the start of this investigation raised the possibility that the Study Group Appellants may exhibit a disproportionately high incidence of problematic litigation characteristics. If so, that might confirm Morissette JA's "Distillation Effect" hypothesis:[334] problematic litigants are over-represented in appellate courts because many problematic SRLs persistently pursue appeals and re-litigate otherwise settled issues. Persistent litigation and re-litigation is also one of the defining characteristics of querulous paranoia.[335]

Certain observations suggest the Distillation Effect hypothesis is correct:

1. the high observed frequency (61.2%, N=121; Table 3) at which Study Group Applications exhibit problematic characteristics;
2. the large portion (23.1%, N=121) of Study Group Applications that fail the *Rule in kisikawpimootewin*[336] criterion and are no basis for a meaningful legal response; and
3. the high frequency at which lower courts and tribunals concluded Study Group Appellants:
   a) engaged in abusive litigation (76.2%, n=94), and
   b) ought to be subject to court access restrictions (23.0%, n=28).

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

1. reported court and tribunal decisions,
2. the detailed Federal Court and Federal Court of Appeal online court docket records, and
3. indexes of persons subject to court access restrictions, which were only available for the Alberta[337] and Quebec Courts.[338]

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[334] Morissette, "Disorder", *supra* note 109 at 285, 306, footnote 26; Netolitzky, "Comment", *supra* note 124 at 257.
[335] See Part II(D)(2).
[336] *kisikawpimootewin*, *supra* note 157.
[337] See note 166.
[338] See note 167.

The "oral tradition" that English common law court decisions are delivered by speaking directly to litigants means that many court-ordered directions and the reasons for those directions are never captured in a written, publicly accessible, "reported" form. Even courts, such as the Federal Courts,[339] that systematically gather documentary orders into a single resource, do not make those records publicly available. In contrast, the US PACER[340] apparatus provides electronic access to complete court docket and document records for all Federal US courts.

Thus, while Canadian case law databases contain very large numbers of "reported" court and tribunal decisions, those published records capture only a fraction of overall court decision-making activity. For example, the Alberta Court of Queen's Bench in 2016 reports it engaged in 75,266 litigation steps that would have resulted in a civil matter court order.[341] In that year, the CanLII legal information database recorded the Alberta Court of Queen's Bench issued 721 reported decisions.[342] At least 136 of those 721 reported decisions relate to criminal matters. That means at most 0.78% (n=585) of all 2016 Alberta Court of Queen's Bench civil litigation decision-making processes resulted in a reported court decision.

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

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

[340] Online: *Public Access to Court Electronic Records* <www.pacer.gov> [perma.cc/DGK5-LUL6].

[341] *ABQB 2016-2017 Report*, *supra* note 284 at 45, total of "Civil Trials Heard", "Divorce Judgments Granted", "Solicitor Client Taxations Heard" , "Justice Civil Matters Heard", "Masters Chambers Matters Heard", "Bankruptcy Matters Heard", and "Civil Appeals Heard" categories.

[342] Online: *CanLII* <www.canlii.org/en/ab/abqb/#search/type=decision&ccId=abqb&id=2016&origType=decision&origCcId=abqb> [perma.cc blocked].

The degree to which two of the four abusive litigation characteristics identified in this study are "distilled" in the SCC can be evaluated to some degree. 23.1% of Study Group Applications are abusive on their face due to their failure to provide legally relevant information and allegations (SS=1). In 2014, Ontario enacted *Rule* 2.1,[343] a document-based "show cause" procedure intended to capture and dismiss pleadings that are deficient to this degree. A recent detailed review of how Ontario courts have applied *Rule* 2.1 by Prof. Gerald Kennedy of the University of Manitoba concluded this procedure was used on average 63 times per year between 2014-2017.[344] The Alberta Court of Queen's Bench in 2018 issued Civil Practice Note No. 7 [CPN7],[345] which has the same function as *Rule* 2.1, and operates in an analogous manner.[346] In its first year of operation CPN7 was applied 23 times to terminate 38 lawsuits.[347]

Unreported and therefore unidentified decisions may mean that the frequency at which Kennedy reports *Rule* 2.1 was applied in 2014-2017 is an underestimate, however the CPN7 numbers do represent all applications of that procedure because of the Alberta Court of Queen's Bench's policy of publishing all decisions that impose litigation management steps on abusive litigants and litigation.[348] The frequency at which both *Rule* 2.1 and CPN7 have been applied are almost certainly only a portion of the instances where actions were struck out for failing to meet the *Rule in kisikawpimootewin* minimum pleadings threshold because other equally defective matters were very likely dismissed with oral reasons after court hearings of "striking out" applications.[349] That said, if the observed high incidence of SS=1 SRL applications at the SCC

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[343] *Ontario Rules*, *supra* note 168, s 2.1.
[344] Gerald J Kennedy, "Rule 2.1 of Ontario's *Rules of Civil Procedure*: Responding to Vexatious Litigation While Advancing Access to Justice?" (2018) 35 Windsor YB Access Just 243 at 258.
[345] "Court of Queen's Bench of Alberta Civil Practice Note No. 7" (4 September 2018) [CPN7], online (pdf): *albertacourts.ca* <www.albertacourts.ca/docs/default-source/qb/civil-practice-note-7---vexatious-application-proceeding-show-cause-procedure.pdf?sfvrsn=cb2fa480_6> [perma.cc/EF3E-WSPD]. The Alberta Court of Queen's Bench as a policy publishes all reported decisions, with narrow and sometimes temporary publication ban restrictions, for example for certain criminal pre-trial decisions, e.g. *R v Twitchell*, 2009 ABQB 644; *R v Twitchell*, 2009 ABQB 690; *R v Twitchell*, 2010 ABQB 692.
[346] *Unrau #1*, *supra* note 169; *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 347.
[347] Identified by cases citing *Unrau #1*, *supra* note 169, as reported via the CanLII service, up to November 1, 2019.
[348] *Unrau #2*, *supra* note 110 at paras 964-65.
[349] E.g. *Ontario Rules*, *supra* note 168, s 25.11; *Alberta Rules of Court*, Alta Reg 124/2010, s 3.68.

was also occurring in trial courts, then the annual frequency at which the Ontario *Rule* 2.1 and Alberta CPN7 procedures ought to have been applied should range in the hundreds, and perhaps thousands.[350] No evidence supports such deeply flawed SRL pleadings appear at these high frequencies in trial level courts. The high identified incidence of court access restrictions imposed against Study Group Appellants is an even stronger basis to conclude the Distillation Effect hypothesis is correct. Court access restriction orders imposed by lower courts were identified for one in four (N=122) Study Group Appellants. As previously explained, that understates the true rate. The court access restriction characteristic greatly increases as Study Group Appellants engage in additional SCC litigation: doubling after three or more leave to appeal applications (51.9%, N=27), and tripling after six or more leave to appeal applications (72.7%, N=11).

These Study Group values are an extremely high incidence of a rare form of court litigation management. Quebec courts reportedly have taken that step 310 times between 1993 and July 2019.[351] In the same period the Alberta Court of Queen's Bench issued somewhat over 250 analogous court access restriction orders.[352] If the frequency of vexatious litigant SRLs at the SCC and at trial was comparable, then the Alberta and Quebec court access restriction registries should have thousands of entries. They do not. Eleven Study Group Appellants challenged decisions of Alberta Courts.[353] Seven of those individuals are subject to court access restrictions imposed by courts of that jurisdiction.[354]

Given these observations there is little question the SCC SRL candidate appellant population includes a disproportionate number of vexatious litigants. However, these characteristics are not uniformly distributed within that SRL group. Pre-SCC abusive litigation characteristics are not linked to SCC leave to appeal application sophistication, but are strongly linked to the frequency

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

[351] Morissette, "Disorder", *supra* note 109 at 303, 311.

[352] See note 166.

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

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

at which Study Group Appellants repeatedly re-litigate at the SCC (Figure 24). Problematic conduct and applications at the SCC were strongly associated with less sophisticated Study Group Applications (Figure 25), but showed little variation between Study Group Appellants who engaged in one vs many attempts to access the SCC.

Combined, these observations imply that the more sophisticated Study Group Appellants learned from their prior court activities and only rarely filed leave to appeal applications which included problematic litigation characteristics. However, those Study Group Appellants who repeatedly attempted to access the SCC never "improved" their litigation conduct. Instead, as this group of SRLs continued their problematic dispute-related conduct, lower courts were increasingly likely to identify repeat SCC SRLs as engaged in abusive litigation, and then imposed court access restrictions (Figure 24).

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

4. Study Group Appellants and Mental Health

Some legal academics claim established members of the legal community, such as judges and lawyers, unfairly link self-representation to mental health issues.[355] Countering this perspective is that the psychiatric profession has long recognized that sometimes mental health issues are an underlying cause of or a trigger for litigation, particularly abusive litigation.[356] Judges have, on a case-by-case basis, concluded the same.[357] Empirical investigation of SRLs in non-Canadian

[355] Julie Macfarlane & Megan Campbell, "Wrong Diagnosis, Wrong Strategy: Why More Restrictions on Self-Represented Litigants Won't Work and Aren't Justified" (4 June 2019), online (blog): *SLAW* <www.slaw.ca/2019/06/04/wrong-diagnosis-wrong-strategy-why-more-restrictions-on-self-represented-litigants-wont-work-and-arent-justified/> [perma.cc/R6ME-9PYR]; Macfarlane, "Report", *supra* note 9 at 32; Jonnette Watson Hamilton, "Three Leaves to Appeal the Claimed Jurisdiction of Queen's Bench Over Vexatious Litigants" (9 July 2019), online (blog): *ABlawg* <ablawg.ca/2019/07/09/three-leaves-to-appeal-the-claimed-jurisdiction-of-court-of-queens-bench-over-vexatious-litigants/> [perma.cc/4PW8-8GLX].
[356] See Part II(D).
[357] E.g. surveyed in *Unrau #2*, *supra* note 110 at paras 117-75.

jurisdictions does suggest that the SRL subpopulation who genuinely do face mental health issues may receive a disproportionate degree of attention from justice system participants.[358]

This study used four characteristics to evaluate the degree to which mental health issues are present in the Study Group Appellant population. Two characteristics flow from court findings, that the Study Group Appellant: 1) was made subject to a court order on the basis of mental health issues, and 2) litigated because of distorted or delusional thinking processes. The incidence of both of these characteristics was low: mental health orders - 6.6% (n=8); delusional thinking - 7.4% (n=9). As with the incidence of abusive litigation characteristics, these values very likely understate the true incidence of these characteristics due to "false negatives" where relevant findings were made but only in unreported court and tribunal decisions. That said, no data supports that these characteristics are commonplace or typical for the Study Group Appellants, or SRLs at the SCC as a whole. The third mental health characteristic was the Study Group Appellant self-identified as having a mental health condition, or brain or neurological injury. 12.3% (N=122) of the Study Group Appellants self-identified as having this characteristic. None of these three attributes exhibit a statistical association with either Study Group Appellant SS or litigation volume.

The previous three characteristics directly implicate mental health. The last characteristic, a Querulous Litigation Pattern, is a pattern of dispute conduct that some mental health professionals link to the querulous paranoia psychiatric disorder. Nearly a quarter (23.0%, n=28) of the Study Group Appellant population exhibit a Querulous Litigation Pattern, and that Pattern is linked to repeated Study Group Appellant activity at the SCC: Figure 28. Nearly three quarters (72.7%, n=8) of the SRLs who had filed six or more SCC leave applications exhibited a Querulous Litigation Pattern. That observation is not really a surprise, since persistent litigation and re-litigation are essential characteristics of a Querulous Litigation Pattern, and also are a part of the querulous paranoia pathology described by mental health experts.

The Querulous Litigation Pattern was identified by review of reported court and tribunal decisions. The observed frequency of this characteristic in the Study Group Appellants is also plausibly an underestimate. However, the "false negative" issue is likely much less of a factor for the Querulous Litigation Pattern characteristic because persons affected by querulous paranoia

[358] See text accompanying notes 61-63.

have a large "litigation footprint". That increases the probability that their problematic activity would be documented in a reported court or tribunal decision.

In conclusion, while a significant portion of Study Group Appellants were linked to one or more mental health factors, mental health issues do not appear to be a predominate feature of SCC SRL activity. 61.5% of the Study Group Appellants exhibited none of these four characteristics. The Querulous Litigation Pattern is associated with SRLs who repeatedly attempt to access the SCC, over and over.

5. Study Group Appellants - Conclusion

This investigation identifies some characteristics commonly encountered in SRLs who are active at the SCC. Many question or reject court and legal authority, and are instead oriented by their perceived rights. A significant portion of the Study Group Appellants repeatedly seek to access the SCC. That pattern of behaviour is associated with problematic litigation conduct in lower courts.

These observations raise the issue of whether the SCC and other appellate courts possess an adequate capacity to manage problematic litigants, however, further pursuit of that subject is outside the scope of this investigation.

VI. Conclusion

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

The traditional legal academic approach to issues is to read reported court decisions, and then draw conclusions from that. This process is fine, for example, when comparing how two different and novel solutions to a legal issue fit within the broader existing structure of Canadian legal rules and principles. One such example is the ongoing debate as to whether the sentencing starting point concept is compatible with Canadian criminal law.[359] However, this case law-centric approach provides little help to evaluate whether sentencing starting points have a

[359] *R v Friesen*, 2020 SCC 9 at paras 40-41.

meaningful positive or negative effect on rehabilitation and future re-offense. Whether starting point methodology works, *in a social sense*, involves a different kind of data. Arguably, that is not within the domain called "law", but instead falls into the bailiwick of criminologists and other social scientists. Nevertheless, one would hope that law would be validated via its actual social impact, and not merely approached as a kind of thought experiment. Sometimes the theory and philosophy of law is a poor match for the human reality of people.

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

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

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

A. Methodology

This study provides a detailed profile of how a SRL population operated in a Canadian court, the character of the population's disputes, and how the court responded. The methodology applied in this study is nothing more than what population investigators in biology, medicine, and the social sciences have been doing for over a century. In fact, application of this approach to a court-centered context was easy. Most science and social science investigators do not have the luxury of an existing public documentary record on which to base their inquiries.

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

There were no real logistical obstacles to this study. Data collection and document review required less than three months for a single researcher. The total cost to obtain documents from the SCC Registry was $906. The circumstances and environment that permitted this project are not unique. An investigation of this type could easily be conducted in any other Canadian appeal

court, particularly whenever that court makes records of its proceedings available online. The Federal Court of Appeal would be an ideal candidate for a parallel investigation.

Trial courts would be trickier since their proceedings follow a less structured or predictable path. At least four Canadian trial courts[360] provide detailed public information that could be surveyed using an approach similar to that followed with the 2017 SCC SRLs. The state of record-keeping in some courts would likely require a more "paper-based" approach and going through physical files. That is not an impossible task, and presumptive access to those records is guaranteed by law.[361]

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

B. Observations

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

The picture that emerges is not a terribly attractive one. Most Study Group Appellants had limited prospect of success due to a combination of their lack of ability to express the substance of their proposed appeal, the SRL asking the SCC to operate outside its function, and because most of these candidate appellants were not interested in "law-making", but rather exercise and enforcement of their "rights". Although there were noteworthy exceptions, most Study Group Applications were weak documents that exhibit little appreciation of the principles and rules of Canadian law, and what a SCC appeal actually involves.

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[360] The British Columbia Provincial Court (criminal matters) (online: *British Columbia* <justice.gov.bc.ca/cso/index.do> [perma.cc/2W6Z-P3BC]), Federal Court (online: *Federal Court of Canada* <www.fct-cf.gc.ca/en/court-files-and-decisions/court-files> [perma.cc/DE28-YHAN]), Manitoba Court of Queen's Bench (online: *Court Registry System* <web43.gov.mb.ca/registry> [perma.cc/8DQT-6VMR]), and Tax Court of Canada (online: *Tax Court of Canada* <www.tcc-cci.gc.ca/tcc-cci_Eng/Court_Files.html> [perma.cc/6H9K-YUEE]) have online docket record systems. Others may also exist.

[361] *Vickery v Nova Scotia Supreme Court (Prothonotary)*, [1991] 1 SCR 671, 124 NR 95.

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

Is SRL participation at the SCC then warranted, given the extremely low rate at which that Court grants leave? SRL SCC appeals involve substantial cost and very little benefit, including to the SRL candidate appellants themselves. This question is really one of legal philosophy, rather than economics. Lévy and Morissette JA observe some other jurisdictions do not really experience vexatious litigation, but their governments have placed litigation control in the hands of judges, not parties.[362]

Two commonplace themes that often appear when the SRL Phenomenon is discussed are that SRLs are unsuccessful because they are unrepresented, and that SRLs would benefit from better informational resources. Due to the nature of this investigation any comment on these points is restricted to only SRLs at the SCC.

In that limited context, the results of this investigation do call both themes into question. First, nothing suggests that SRLs require assistance to navigate SCC procedures as candidate appellants. All Study Group Applications completed the leave to appeal application process, including when appeals were made outside the limitations period. A large majority of Study Group Appellants used the appropriate forms. Most entered at least some useful information to guide the Court's response. Whatever else, the SCC Registry cannot be faulted, given its obvious efforts to facilitate access to that Court for as many persons as possible. Second, "a better spin" probably would have made little or no difference to many Study Group Applications. Could many Study Group Applications have been better drafted? For the SS=1-2 population, yes. That half of the 2017 SRL candidate appeals fail as pleadings.

However, there are other barriers. For example, an issue of fact remains an issue of fact, no matter whether an argument is drafted by a SRL or a lawyer. Some litigation is hopeless. Re-litigation remains re-litigation. An application made where the SCC has no jurisdiction will inevitably fail. SCC leave to appeal applications by targets of government mind control

[362] Levy, "History #1", *supra* note 130; Levy, "History #2", *supra* note 113; Morissette, "Disorder", *supra* note 109 at 286-91.

conspiracies,[363] or by the Empress of Rome,[364] would not likely benefit from the candidate appellant having a better understanding of the law, or from a lawyer standing at the candidate appellant's side. Many SRL candidate appeals were about "asserting rights", not "law-making". Whether a lawyer could assist in that context is questionable. Then there is the broad repudiation of Canadian courts and their decision-makers. Could a lawyer help with an application constructed off that foundation, such as where the SRL candidate appellant has concluded judges are criminals because they ruled against the SRL?

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

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

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

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

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[363] See Appendix A: Chowdhury 37677; Tilahun 37448.
[364] See Appendix A: Ranieri 37796; Ranieri 37830.

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

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- *Noddle v Canada,* 2016 FC 967.
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- *Noddle v Canada*, 2016 FC 969.
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- *Noddle v Canada (Deputy Attorney General)*, 2016 ONSC 4866.
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- *Zed v White*, 2019 NBCA 86.

Appendix A - Study Group Leave Applications

Docket Number	Appellant(s)	Civil or Criminal	SCC Bulletin New Application	Date Leave Dismissed	"No Application" Appeal	SCC Publication Ban
36721	Lubecki, Maria	Civil	26-May-17	26-Apr-18	N	N
36834.3	Bernard, Elizabeth	Civil	26-May-17	24-Aug-17	N	N
37332	Lin, Katherine	Civil	20-Jan-17	23-Feb-17	N	N
37346	Gagne, Louis	Civil	27-Jan-17	16-Feb-17	N	N
37350	LeBouthillier, Gemma A.	Civil	13-Jan-17	30-Mar-17	N	N
37351	Thomson, James Robert	Civil	06-Jan-17	30-Mar-17	N	N
37354	Diallo, Abdourahmane	Civil	06-Jan-17	06-Apr-17	N	N
37358	Dick, Rodney Daniel	Civil	13-Jan-17	13-Apr-17	N	N
37364	Orsini, Dino	Civil	06-Jan-17	30-Mar-17	N	N
37370	Naydenov, Krassimir D.	Civil	13-Jan-17	01-Jun-17	N	N
37371	Lin, Katherine	Civil	20-Jan-17	13-Apr-17	N	N
37377	Lin, Katherine	Civil	27-Jan-17	13-Apr-17	N	N
37378	MacRae, Allan M.R., MacRae, Amira Summer	Civil	17-Feb-17	06-Apr-17	N	N
37388	Fabrikant, V.I.	Civil	27-Jan-17	30-Mar-17	N	N
37391	Bloom, John Gregory	Civil	03-Feb-17	08-Jun-17	N	N
37392	D.M., M.M.	Civil	03-Feb-17	23-Mar-17	N	N
37394	Humby, Eli, Central Springs Ltd, A&E Precision Fabrication and Machine Shop Inc	Civil	10-Feb-17	20-Apr-17	Y	N
37399	Goertz, Robin James	Civil	27-Jan-17	27-Apr-17	N	N
37406	Kraljevic, Branka	Criminal	10-Feb-17	13-Apr-17	N	N
37407	Green, Martin	Civil	07-Feb-17	06-Apr-17	N	N
37408	Royer, Gilbert Joseph Raoul, Nadeau, Denis Joseph Adelard	Civil	03-Feb-17	27-Apr-17	N	N
37409	Kakoutis, Louis	Civil	10-Feb-17	27-Apr-17	N	N
37410	Rohleder, Ashley Michelle Lee	Civil	10-Feb-17	27-Apr-17	N	N
37412	Jian, Ming	Civil	10-Feb-17	20-Apr-17	N	N
37419	Gardezi, Shella	Civil	03-Feb-17	13-Apr-17	N	N
37420	Hirji, Mohd Ali, Hirji, Parin Mohd Ali	Civil	17-Feb-17	27-Apr-17	N	N
37426	Mullins, Michael	Criminal	17-Feb-17	23-Mar-17	N	N
37440	Binnersley, Earl	Civil	24-Feb-17	13-Apr-17	N	N
37442	Elmgreen, Jens Peter	Civil	17-Feb-17	13-Apr-17	N	N
37443	Wang, Gui Ying, Wang, Shao Jun	Civil	24-Feb-17	04-May-17	N	N
37444	Hojjatian, Hassan, Kermani, Mitra	Civil	17-Feb-17	27-Apr-17	N	N
37446	Hok, Shirley A.	Civil	24-Feb-17	20-Apr-17	N	N
37448	Tilahun, Abebe	Civil	24-Feb-17	27-Apr-17	N	N
37452	Ste-Marie, Richard	Civil	03-Mar-17	04-May-17	N	N
37455	Abi-Mansour, Paul	Civil	10-Mar-17	29-Jun-17	N	N
37457	Ellis, Francis Dean	Civil	10-Mar-17	20-Apr-17	N	N
37458	Keay, Dennis A.	Civil	10-Mar-17	18-May-17	N	N
37459	Reilly, Paul Duncan	Civil	10-Mar-17	04-May-17	N	N
37462	Volnyansky, Lubov	Civil	10-Mar-17	04-May-17	N	N
37464	Agostino, Tony	Civil	10-Mar-17	25-May-17	Y	N
37472	Clark, Alexander S.	Civil	17-Mar-17	04-May-17	N	N
37484	Thompson, Terry	Civil	31-Mar-17	25-May-17	N	N
37487	Dove, Wally, Dove, Jason, Bursey, Glenn, Bursey, Michael	Civil	24-Mar-17	01-Jun-17	N	N
37501	Hirschberg, Terry	Civil	07-Apr-17	15-Jun-17	N	N

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37507	d'Abadie, Luc Bernard	Civil	12-May-17	28-Sep-17	N	N
37508	d'Abadie, Luc Bernard	Civil	12-May-17	28-Sep-17	N	N
37511	Mosquera, Milena Gladys Segura	Civil	13-Apr-17	06-Jul-17	N	N
37517.2	Gonzalez, Gustavo	Civil	05-May-17	22-Feb-18	Y	N
37519	Hiamey, Godfred Kwaku	Civil	21-Apr-17	20-Jul-17	N	N
37520	Lysons, Jim	Civil	21-Apr-17	20-Jul-17	N	N
37522	Chen, Sidney	Civil	21-Apr-17	29-Jun-17	N	N
37530	Pierce, Lyle David	Criminal	26-May-17	29-Jun-17	N	N
37535	Eng, Edward	Civil	28-Apr-17	29-Jun-17	N	N
37541	Larochelle, Guy	Civil	12-May-17	20-Jul-17	N	N
37557	Volnyansky, Lubov	Civil	09-Jun-17	24-Aug-17	N	N
37558	Placid, Justin Thyssen	Civil	02-Jun-17	06-Jul-17	N	N
37559	Wissotzky, Alexander	Civil	26-May-17	24-Aug-17	N	N
37560	Patenaude, Gilles	Criminal	02-Jun-17	08-Feb-18	N	N
37561	Hojjatian, Hassan, Kermani, Mitra	Civil	09-Jun-17	24-Aug-17	N	N
37562	Holley, Jennifer	Civil	26-May-17	20-Jul-17	N	N
37567	Volnyansky, Lubov	Civil	09-Jun-17	28-Sep-17	N	N
37575	Bernard, Elizabeth	Civil	02-Jun-17	24-Aug-17	N	N
37581	Sahyoun, Antonias Nabil, Sahyoun, Sanaa Riad, Sayhoun, Nabil Riad	Civil	09-Jun-17	18-Oct-18	N	N
37583	Fevrier, Marie-Lourdes, Bois, Benedict	Civil	16-Jun-17	23-Nov-17	N	N
37589	Zubovits, Charles	Civil	16-Jun-17	21-Sep-17	N	N
37591	Prisecaru, Corneliu, Prisecaru, Lidia	Civil	16-Jun-17	27-Oct-17	N	N
37599	Amrane, Tahar	Civil	16-Jun-17	14-Dec-17	N	N
37600	Olumide, Ade	Civil	16-Jun-17	09-Nov-17	N	N
37602	Olumide, Ade	Civil	16-Jun-17	09-Nov-17	N	N
37603	Olumide, Ade	Civil	16-Jun-17	09-Nov-17	N	N
37604	Olumide, Ade	Civil	16-Jun-17	09-Nov-17	N	N
37605	Olumide, Ade	Civil	16-Jun-17	09-Nov-17	N	N
37610	Parsons, David Alexander	Civil	23-Jun-17	28-Sep-17	N	N
37611	Forgac, Pavol	Civil	23-Jun-17	14-Dec-17	N	N
37618	Dunkers, Anita Marianne	Criminal	23-Jun-17	05-Oct-17	N	N
37623	Holley, Jennifer	Civil	30-Jun-17	17-Aug-17	N	N
37624	Hok, Shirley A.	Civil	30-Jun-17	02-Nov-17	N	N
37629	Lin, Katherine	Civil	14-Jul-17	26-Oct-17	N	N
37631	Miracle, Andrew Clifford	Civil	14-Jul-17	19-Nov-17	N	N
37635	Grenier, Raynald	Civil	21-Jul-17	18-Jan-18	N	N
37638	Collins, R. Maxine	Civil	21-Jul-17	19-Oct-17	N	N
37639	Pierre, Gandhi Jean	Civil	21-Jul-17	07-Dec-17	N	Y
37642	Mazraani, Kassem	Civil	21-Jul-17	02-Nov-17 (leave granted)	N	N
37644	Martinez, Alex	Civil	21-Jul-17	23-Nov-17	N	N
37647	Turmel, John	Civil	28-Jul-17	23-Nov-17	N	N
37649	Oh, Serena	Civil	14-Jul-17	30-Nov-17	N	N
37650	Hordo, Diana Michelle Daniella	Civil	21-Jul-17	14-Dec-17	N	N
37651	Malhotra, Veena	Civil	14-Jul-17	14-Dec-17	N	N
37652	Hammami, Hachmi	Civil	28-Jul-17	02-Nov-17	Y	N
37654	Abernethy, Joan	Civil	21-Jul-17	01-Jan-18	N	N
37656	Barens, Norris	Criminal	21-Jul-17	05-Oct-17	N	N

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37657	Bergey, Valerie	Civil	01-Sep-17	15-Feb-18	N	N
37660	Olumide, Ade	Civil	28-Jul-17	09-Nov-17	N	N
37663	Hillman, Dawn	Civil	29-Sep-17	02-Nov-17	N	N
37667	Agudelo-Don&Can, Candelaria	Civil	01-Sep-17	09-Nov-17	N	N
37669	I.J.	Civil	01-Sep-17	16-Nov-17	N	Y
37673	Maillous, Pierre	Civil	08-Sep-17	09-Nov-17	N	N
37675	Must, Robert	Civil	01-Sep-17	2018-01-11	N	N
37677	Chowdhury, MD Ahasanullah	Civil	01-Sep-17	23-Nov-17	N	N
37678	Blair, Michael Finley Lawrence	Civil	01-Sep-17	23-Nov-17	N	N
37688	Peterson, Keith	Civil	01-Sep-17	30-Nov-17	N	N
37690	V.C.	Civil	01-Sep-17	14-Dec-17	N	Y
37693	Hu, Fang	Civil	01-Sep-17	18-Jan-18	N	N
37694	311165 BC Ltd.	Civil	01-Sep-17	11-Jan-18	N	N
37706	Noddle, Darren Ross	Criminal	15-Sep-17	30-Nov-17	N	N
37708	Belway, Brian Patrick	Civil	15-Sep-17	21-Dec-17	N	N
37717.1	Lanigan, E. Jo-Anne	Civil	22-Sep-17	08-Feb-18	N	N
37717.2	Lanigan, E. Jo-Anne	Civil	22-Sep-17	08-Feb-18	N	N
37719	Oommen, Paul	Civil	15-Sep-17	11-Jan-18	N	N
37720	Gagne, Jacques	Criminal	15-Sep-17	11-Jan-18	N	N
37721	Coulombe, Gilles	Civil	22-Sep-17	01-Feb-18	N	N
37730	Kègle, Réjean	Civil	22-Sep-17	12-Dec-17	N	N
37738	Lavigne, Robert	Civil	29-Sep-17	08-Feb-18	N	N
37747	Hagan, Carolyn, 6379800 Canada Inc.	Civil	29-Sep-17	30-Aug-18	N	N
37758	Martel, Pierre	Civil	06-Oct-17	14-Dec-17	N	N
37796	Ranieri, Mary	Civil	17-Nov-17	31-May-18	N	N
37800	MacNutt, Laura, Pier 101 Home Design	Civil	24-Nov-17	19-Apr-18	N	N
37803	Gill, Jaskarn Singh	Civil	03-Nov-17	05-Apr-18	N	N
37808	Childs, Peter	Civil	24-Nov-17	31-May-18	N	N
37830	Ranieri, Mary	Criminal	24-Nov-17	31-May-18	N	N