

# The Responsibility of the Tribunal to Accommodate Users with Mental Health Issues

CIAJ / ICAJ National Roundtable on Administrative Law: Promoting Mental Health  
in the Justice System for Both Professionals and Users

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Donald J. Netolitzky

Complex Litigant Management Counsel

Alberta Court of Queen's Bench

The views expressed in this seminar are those of the author, and not those  
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# Language is Problematic

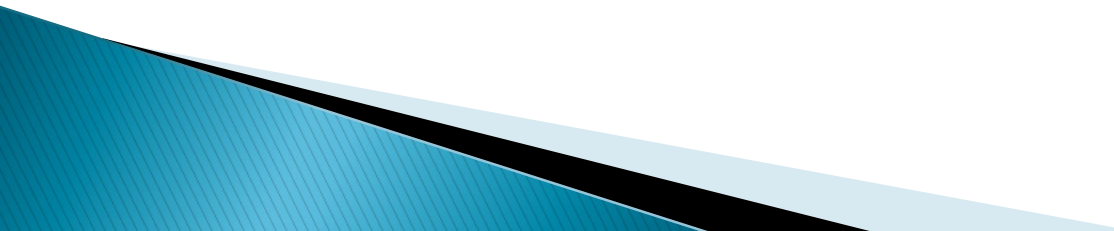
- ▶ When persons with mental health issues are described as problematic in a dispute context, two terms are usually used:
  - “Vexatious”
  - “Frivolous”
- ▶ Language distorts the nature of the issue.
- ▶ Most persons with mental health issues see themselves as “fair dealers”, engaged in necessary processes.
- ▶ Their participation is ineffective because of a mismatch between intent and actual effect – “Abusive”.

# Who are Abusive Litigants?

- ▶ Abusive litigants are not all the same.
- ▶ May be organized into several general categories.
  - Each has its own characteristics.
  - Motivations vary.
  - Some are easier to manage.
- ▶ Understanding abusive litigants helps tailor strategies to better manage their future litigation activity.
- ▶ *Unrau #2*, 2019 ABQB 283 - extensive and detailed review of abusive litigant subtypes.

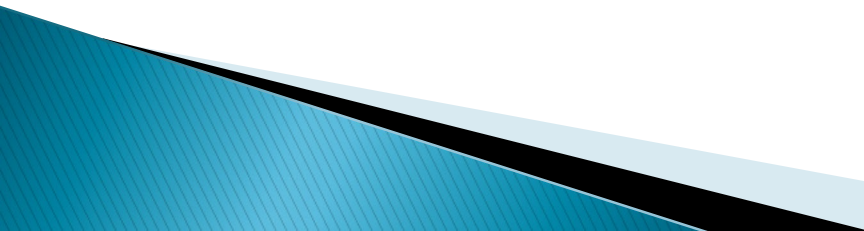
# Who are Abusive Litigants?

## 1: Psychiatric Impairment Leads to Litigation

- ▶ Abusive litigant is afflicted with a psychiatric condition that distorts perceptions.
  - ▶ Distorted perceptions are the basis for the abusive litigation.
  - ▶ No “bad intent” – this is honest but misdirected litigation.
  - ▶ Court and tribunal proceedings offer no benefit, instead reinforce distorted perceptions and extend self-injury.
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# Who are Abusive Litigants?

## 2: Querulous Paranoia

- ▶ Comparatively normal individual exhibits pattern of persistent, escalating complaints.
  - ▶ Psychiatric condition induced by litigation.
  - ▶ Starts with a discrete, sometimes minor, failure.
  - ▶ Perceived as unfair.
  - ▶ Triggers a cascade of litigation, complaints, appeals.
  - ▶ Absolutely confident they are right.
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# Who are Abusive Litigants?

## 2: Querulous Paranoia

### ▶ Characteristics:

- Abusive litigant is a crusader who misidentifies a minor issue as of public and legal importance.
- Seek more than equity, but retaliation, unreasonable remedies, public exposure and humiliation of “enemies”.
- Dispute expands through every avenue.
- Want to be social leaders, but instead alienate everyone.
- “If you are not with me, you are against me.”

# Who are Abusive Litigants?

## 2: Querulous Paranoia

- ▶ Worst case outcomes are common – extremely self-destructive.
- ▶ Continues until the abusive litigant is exhausted.
- ▶ Psychiatrists indicate no treatment but recommend:
  - early intervention
  - firm, constant limits.
- ▶ Some violence risk, but usually directed to selves.

# Who are Abusive Litigants?

## 3: Abusive Litigants Motivated by Ideology

- ▶ Abusive litigation is a consequence of beliefs or philosophy.
- ▶ Political motivation.
- ▶ Organized Pseudolegal Commercial Argument [OPCA] litigants are the most common form.
  - A social phenomenon - Freemen-on-the-Land, Sovereign Citizens, Detaxers, Moors.
  - Believe in a true hidden law, which trumps ‘conventional law’, and gives special advantages – “**pseudolaw**”.



# Who are Abusive Litigants?


## 3: Abusive Litigants Motivated by Ideology

- ▶ Some are “mercenaries” looking for easy benefits.
- ▶ Others are “true believers” who belong to conspiratorial fringe communities.
- ▶ Despite their fierce reputation, OPCA litigants are the abusive litigants who are the easiest to manage – they inevitably fail in court.
- ▶ Solution? Get them to court ASAP.
- ▶ Is this really “political”, or “politics flowing from extraordinary, distorted belief?”

# The Distillation Effect

- ▶ The “Distillation Effect” hypothesis – abusive litigation is over-represented or “concentrated” in appellate tribunal and court bodies.
- ▶ Distillation Effect driven by abusive litigants appealing and re-litigating disputes.
- ▶ Confirmed at Supreme Court of Canada and Federal Court of Appeal.
- ▶ Amplifies frequency of litigants with mental health issues. In 2017, 40% of self-represented appellants at SCC had mental health issue indicia.

# What Steps Can Assist?

- ▶ For Canadian courts and some tribunals, participation by persons with mental health issues is a no-win situation. Best solution is non-participation.
  - ▶ Common law tradition is maladapted to exercise of rights that cause everyone harm.
  - ▶ Intervene early. Intervene aggressively. (If possible.)
  - ▶ Document-based processes are better. Avoid hearings.
  - ▶ Divert to triage processes.
  - ▶ Centralize problem litigants with specialist decision-makers and support staff.
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# Thank you!



Ambassador and Postmaster General  
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