4 July 2008

Mr Johan Scheffer MLC
Chair
Parliament of Victoria
Law Reform Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

Re: Parliament of Victoria Law Reform Committee Inquiry into Vexatious Litigants

Thank you for your letter concerning the Inquiry into Vexatious Litigants. I am pleased to have the opportunity to respond to your Issues Paper, April 2008. I have had a long standing interest in this topic arising from my experiences as a member of various tribunals from 1990 and, in particular as President of the Mental Health Review Board Vic (1992-1997) and in my current role as Health Services Commissioner. In 2004 I co-authored an article which was published in the *British Journal of Psychiatry* (2004), 184, 352-356 entitled “The unusually persistent complainant.” A copy is attached for your information. Subsequently, Dr Grant Lester, one of the co-authors and a psychiatrist, has developed a workshop to assist agencies of accountability like mine to deal with people who might fit into the category of what psychiatrists call “querulant” and lawyers call “vexatious litigants.” While your Inquiry deals only with the experiences of the courts, vexatious people are also attracted to tribunals and other agencies of accountability. My responses to your questions are therefore relevant to my experience. As Dr Ian Freckelton has noted:

> "With the development of the new administrative law during the last two decades, it is no longer the courts that bear the brunt of the activities of the querulent paranoid. It is government instrumentalities, and their watchdogs such as Ombudsmen and Quasi-Ombudsmen, as well as law reform commissions and tribunals, that have to develop strategies to handle such people."

**QUESTIONS AND ISSUES**

Vexatious litigants in Victoria

- How common are vexatious litigants in Victoria’s courts and tribunals?

While the number of people who could be described as being vexatious is relatively small, they nonetheless cause our officers a great deal of work and stress. I estimate that vexatious complainants to my Office would be no more than four per year.

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• Are vexatious litigants more common in some courts or tribunals, or in some types of legal disputes, than others?

All agencies of accountability as well as the courts and tribunals attract vexatious litigants. If a person has been declared a vexatious litigant by the courts they may try to pursue their cause in an agency such as the Office of the Health Services Commissioner (HSC) or with the Ombudsman. Where the courts have already dealt with the matter it would not be further pursued by my Office.

• Why do you think some people become vexatious litigants?

There are various opinions about why some people become vexatious litigants. Some researchers have seen them as having a mental disorder while others believe they become vexatious because of the way that various agencies treat them. My personal view is that it is a mixture of both of these things. That is, a person has a predisposition towards being highly sensitive with a strong sense of justice or injustice and agencies do not always respond well to them so the problem escalates. An early literary account of vexatiousness appears in Heinrich von Kleist's, Penguin Classics, *The Marquis of O- and Other Stories*. My edition is the 1978 edition. The story on page 114 is called "Michael Kohlhaas." This gives us a picture of what a vexatious litigant would have looked like in the 16th century. Professor Paul Mullen and Dr Grant Lester's published works give an account of the psychiatric perspective on the subject. I have also attached a bibliography that may be useful to the Inquiry.

• Do they try to solve their legal disputes in other ways before going to court?

The experience of HSC is that these people will have tried to get their issues resolved at the point of service and that has failed so they proceed to agencies of accountability like mine and/or the courts. I have had personal experience with several people who have been through my processes and then have proceeded to VCAT. One has gone to VCAT to say that I was discriminating against him. That complaint was dismissed. We have also had experiences with several people who I consider to be experiencing “abnormal grief reactions” following deaths of loved ones in hospitals. In some of these cases the Coroner could have provided an appropriate venue for complaint, however, there was strident resistance to having the matter investigated by the Coroner. In my view this is because some people were unable to cope with the knowledge of the deaths. A Coronial Inquest was too confronting for them and they continued to contact my office for many years.

• If so, are there features from their previous attempts to solve disputes that contribute to them become vexatious litigants?

Opinions vary on this but in some of the cases I have dealt with services including hospitals have tried very hard to get the issues resolved but because of the person's own emotional state (it may be that they are experiencing an abnormal grief reaction) the complainant is not able to accept resolution. The complaint will then escalate and be dealt with by my Office. Attempts to conciliate with vexatious people are usually not successful because the redress they are seeking will change because they have an emotional "attachment" to the complaint. Resolving the complaint might mean having to accept the fact that someone they love has died so they will keep "changing the goal posts." Eventually I make a decision to close the complaint even though the person is often angry about this. I am advised by psychiatric experts that if all doors are closed to vexatious people then some of them will become violent. In some cases I allow them to call me on (say) a three monthly basis even after the file has been closed. They usually comply and then eventually contact ceases.
• Do vexatious litigants have any common characteristics?

The experience of HSC is that there are definitely some similarities. Very often the person will be orderly but very sensitive, they believe in justice and the “principle of the matter.” They write many, many pages in their complaint, often using asterisks and other punctuation marks to emphasise their point. Coloured highlighters or coloured pens tend to feature a lot. They send frequent messages to the agency that is dealing with their complaint and they turn up without appointments. They are very demanding and often want to engage in long argumentative conversations. Frequently they will seek to have their complaint dealt with by the Commissioner personally rather than other officers.

• In 2007 the Victorian Law Reform Commission suggested that the Victorian Parliament Law Reform Committee should consider the relationship between mental health and vexatious litigation. What is the relationship, if any, between mental health and vexatious litigation?

The psychiatric literature was robust until it became unfashionable (with the rise of the consumer movement) to label people as vexatious or querant. My personal view is that there is a definite link between mental health and vexatiousness and it is distressing to witness these people deteriorating as their quest overwhelms them. Most do not receive psychiatric assistance until they have harmed someone they consider has not treated them fairly and they are then taken into custody. I am advised that psychiatric treatment will not “cure” them but may reduce the querant behaviours.

The effect of vexatious litigants on the justice system

• What effect do vexatious litigants have on courts and tribunals in Victoria? What are the costs for courts and tribunals?

I am unable to give you details in response to this question, except to say that in my experience vexatious litigants tend to take up a great deal of our Officers' time. They make frequent contact through email, mail or telephone calls and turn up without appointments demanding to be seen. There are also emotional costs to the Officers trying to deal with them. They can be extremely frustrating because they will not conciliate or compromise and they frequently change the goal posts. These experiences are common in all agencies of accountability and are one reason why so many were very keen to participate in our research on the unusually persistent complainant.

• What effect do they have on judges and tribunal members, court staff, lawyers and witnesses?

I refer to the study published in the British Journal of Psychiatry which is attached.

The effect on individuals and agencies who are victims of vexatious litigants

• What effect do vexatious litigants have on the individuals or organisations who are victims of their conduct?

As noted above it can be extremely frustrating dealing with querant complainants. Our officers are trained to assist parties to a dispute to reach resolution. The querants do not want resolution. They seek unrealistic outcomes, sometimes because they cannot come to terms with the death of a loved one.
In my Office a single officer is never left alone to deal with them because of the impact they can have. We try to share the responsibility and assist officers as much as possible. Officers are also advised that if they feel they are getting nowhere then it is perfectly legitimate for them to bring the complaint back to the Commissioner. This is never seen as a failure on the part of the officer. When we did our research for the *British Journal of Psychiatry* it was clear that officers in agencies of accountability were very well aware of complainants who fitted the category of vexatious or querulous and they were extremely keen to participate in the research to try to find ways of managing persistent and difficult people.

- **If you think you or your organisation has been the victim of a vexatious litigant, describe the impact on you. What were the financial costs? Were there other costs?**

For emotional impact please see the report from the *British Journal of Psychiatry*. It is difficult to estimate costs but querulous people do take up a lot of staff time. In the past, prior to being involved with the research project on unusually persistent complainants, HSC staff were reluctant to close files because the subject was not well understood. This meant these cases were taking years longer than other files and many more contacts were made. Following our involvement with the research project and with better training we identify the querulous sooner and we close the file sooner. However, complaints received under the *Health Records Act 2001* cannot be closed in this way because of legislative restraints.

**Applying for a declaration under Victoria’s vexatious litigant laws**

- **Are there people in Victoria’s courts and tribunals who are vexatious litigants, but have not been the subject of action under the vexatious litigant laws? If so, why do you think no action has been taken?**

There have certainly been people dealing with my agency who could be described as vexatious or querulous. Interestingly they sometimes do not want to take their problems to the law but insist that my Office keeps the file open for a long time. Sometimes I have no choice but to close the file anyway. I will always give a written and oral explanation to the person when this occurs. People who are familiar with this topic know how the courts are understandably reluctant to declare someone a vexatious litigant.

- **If you think you or your organisation has been the victim of a vexatious litigant, did you take any action to have the person declared a vexatious litigant? If not, why not? What other action did you take?**

Where we have had to deal with people who are vexatious or querulous we do everything that we can to try to resolve the case and to give clear explanations to the person. Sometimes we have to set boundaries limiting them to the number of telephone calls we will take and other times we just close the file. All people whose files have been closed when they are not satisfied are notified of their avenues of appeal. I do not have the power to declare someone a vexatious litigant, however under my legislation I can refuse to entertain a complaint on the grounds that it is vexatious. I do not do this very often even though I may “suspect” when the first letter comes in that the person may be vexatious. I usually give them the opportunity to have their complaints resolved, however this is often not possible because of their difficult behaviour.
• Does the community know enough about the fact that a person can be declared a vexatious litigant, and how? How could community awareness be improved?

The community does not know enough about the fact that a person can be declared a vexatious litigant and similarly psychiatric knowledge about them needs to be further explored. Unfortunately it has become “politically incorrect” to “label” someone as vexatious or querulous and this has limited the research. There was much more literature on this subject up until about the 1950s and then it died out with the rise of consumer awareness movements. Community awareness can be improved through education and publicity given to particular cases. We need to include the psychiatric knowledge in our discourse along with the legal information.

• Should the Attorney-General be the only person who can apply to have a person declared a vexatious litigant? Who else should be able to apply, e.g. senior court staff or other parties to the litigation?

It is a very serious matter to deny access to the courts to any person and this has been recognised in the Issues Paper. However, given the cost, both financial and emotional, to our system of justice that can be caused by these people, I think the ability to ask the courts to declare someone a vexatious litigant should be broadened to not only the Attorney-General. I see no reason why senior court staff or other parties to the litigation and tribunals should not be able to do this. At the end of the day it will be the Supreme Court which makes the final decision and I think that is a sufficient safeguard.

• Should courts and tribunals other than the Supreme Court have the power to declare a person a vexatious litigant?

I think this jurisdiction should remain with the Supreme Court, or, if it was extended to tribunals such as VCAT, there should be a right of appeal to the Supreme Court. Frankly I think a person who was declared vexatious by a tribunal would appeal to the Supreme Court in any event.

• Should they be able to make a declaration on their own motion, i.e. without an application from another person?

Yes, I think they should be able to make this declaration on their own motion, again with the safeguard of an appeal to the Supreme Court.

Yours sincerely

Beth Wilson
Health Services Commissioner

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QUERULENT PARANOIA AND THE VEXATIOUS COMPLAINANT

I. Freckelton

Introduction

The costly impact of vexatious complainants upon government funded public access bodies and of vexatious litigants upon our legal system warrants greater recognition than it has as yet received. The new administrative law with all its appellate and review processes has provided a wide forum encouraging significant abuse by those suffering from the psychiatric illnesses that cause them to lodge baseless allegations with public access bodies and courts. Too little attention as yet has been given to the disturbing phenomenon that gives rise to the incidence of such complaints and to the ways in which those who have occasion to deal with them should respond.

This paper addresses the general context in which vexatious complaints and litigants interact with "the system" and explores the nature of "querulent paranoia", the broad psychiatric affliction long recognised as giving rise to the propensity to make vexatious allegations. It explores traditional and current legal responses to the difficulties posed by the litigious paranoid and, using the experience of Victoria's Police Complaints Authority, looks at the way in which a public access body should meet the challenge of the vexatious complainant.

The General Context

The word "vexatious" has traditionally been applied to the troublesome client who makes dubious but oft-repeated complaints or desires to institute litigation which in fact is groundless. Its origin is in the Latin "vexo, vexare", to molest, annoy, distress, harass or torment. Psychiatry has long recognised the phenomenon of the "vexatious paranoid" but has often failed to recognise the broader category of the "querulent paranoid", the person who has an obsession to draw the attention of others to some alleged wrong suffered.

Lawyers, though, have long been conscious of the detrimental impact on the functioning of the court system posed by the litigious paranoid. Our forefathers can be grateful for the fact that, until the advent of legal aid, financial constraints confined the population of litigious paranoids within manageable limits.¹ The legal response has evolved with the passing years. Early on the criminal law was invoked to prosecute those who brought vexatious or malevolent actions before the courts. By the close of the nineteenth century, though, the legal system responded to the difficulties posed by vexatious litigants by phasing out the imposition of

¹ Legal Aid Commissions, of course, do impose tests in an effort to filter out baseless attempts at litigation.
criminal penalties for their activities and concentrating, instead, on the creation of procedural impediments to the nuisance that they can cause.

However, those widely applauded initiatives of the 1970s and 80s to give individuals more "rights" and to make public officials "more accountable" have created a wide variety of new and free means for querulent paranoids to wreak their mischief. Freedom of Information and applications under Administrative Decision Judicial Review Acts for reasons for decisions have furnished tantalising scope for such people to pursue their grievances beyond the traditional channels of the courts. The new administrative law has also seen the establishment of a multitude of tribunals and review bodies, not to mention community justice mechanisms, that provide alternative forums for the resolution of disputes. As well, the boom in law reform commissions and the institution of a plethora of ombudsmen and quasi-ombudsmen have provided to the disenchanted and the vexatious a godsend of public bodies bound by their charters to listen to the grievances and frustrations of members of the public. The opportunity is now greater than it has ever been for such people to lay siege to a captive audience and thereby indulge their obsessions and paranoias.

But at the heart of the difficulty posed by vexatious complainants is the difficulty in correctly identifying such people when they present. Frequently they seem quite plausible at first and to have a reasonable ground for expressing their grievances. It is often only when the surface is well and truly scratched that the nature of their perverse obsessions and fantasies becomes clear. There are many reasons why people make complaints that have no foundation. Their complaints can stem from an original grievance that at some stage had some basis but was never satisfactorily resolved, from some form of mental illness, from a misplaced propensity to meddle, from a malevolent desire to injure or retaliate against a particular target of their obsessions or a need to hide some criminal or embarrassing episode. Distinguishing these reasons from those that motivate the genuinely aggrieved person, though, may be no easy task.

2 Stafford-Clarke acknowledges this, noting that:

"Some people become quarrelsome and even litigious and waste a great deal of their own and everyone else's time in pursuing outside themselves grievances whose origin is often within the structure of their own personality. The barrack-room lawyer forms an example. There is, however, no absolute dividing line between people of this kind and those who are sensitive to and detest injustice or inhumanity of any kind, and who will spare no effort to denounce and oppose it."

The legal system when dealing with such people has the option of declaring them officially to be "vexatious litigants" and thereby barring them from bringing future actions in the courts. In part because of the realisation that this can be a task fraught with the potential for arbitrariness, the legal system in this civil context generally shrinks from making such declarations. In nearly 60 years it has only had recourse to this means on eight occasions in Victorian legal history. In light of this sensitivity, then, it is not so surprising that the more heavy-handed legislative responses, such as those that provide for the imposition of criminal penalties for those who knowingly make false complaints to the police or public authorities, are seldom invoked. Firstly, it is difficult to prove that a person understands that the grievance that they are expressing, which is on any objective assessment utterly false, is in fact known by them to have no foundation. Second, there is a danger that the original grievance which led the vexatious complainant to approach the government instrumentality will render them into a martyr for their cause should they be prosecuted for pursuing their cause further. Finally, the line between a person who is knowingly persevering in a malicious course of conduct and the crusader for a cause believed by a minority group to be justified or a person who has been repeatedly wronged by "the system" is a thin one and frequently difficult for those receiving the information to judge accurately and dispassionately.

**Querulent Paranoia**

The psychiatric condition that is responsible for the phenomenon of vexatious complaint-lodging may be described as "querulent paranoia". One of its typical symptoms is a fierce determination to succeed against all odds. Institutional barriers and technicalities

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3 See below.

4 Research has revealed that 8 people have been declared vexatious by the Victorian Supreme Court since 1929 - Millane, 1980 (Mann, McArthur & MacFarlan J); Isaacs, 1941 (MacFarlan J); Collins, 1953 (Hudson AJ); Laszlfozy, 1963 (Sholl J); Bien Venu, 1969 (Gillard J); Cousins, 1977 (Starke J); Ben Hemi, 1981 (Starke J); Gallo, 1981 (Gray J) - and 2 by the High Court.

5 Justice Yeldham in *Hunters Hill Municipal Council v Pedler* [1976] 1 NSWLR 478, 484 commented: "[The events] clearly demonstrate a determination on the part of the defendants, and especially the male defendant, ... to pursue every conceivable avenue, whether in or out of time and heedless of the chances of success, to set those decisions aside or to evade their consequences. They clearly demonstrate that there has been extended to the defendants a considerable degree of indulgence and consideration by judges of this Court, yet they have pursued with paranoid-like persistance a great many applications.
that would normally be effective barriers become subsumed in the paranoid's mind into conspiracies that have been hatched to prevent the complainant from establishing his or her rights. Righting the imagined wrong becomes a cause, a moral crusade, into which all manner of people can be drawn if they are not watchful. Generally some kind of wrong has initially been perpetrated, whose redress becomes an obsession which evolves into a full-time occupation. A common tactic of the querulent paranoid is the "scatter-gun" approach by which a wide number of individuals and institutions are simultaneously blasted with letters of complaint. Generally, these missives will be pages long with the writing densely packed, covering almost all of the page and eschewing margins or spaces between paragraphs. There is likely to be a liberal use of capitalisation for especially virulent expressions of frustration. The appearance of multiple exclamation marks is also a distinguishing characteristic. The more artistically minded querulent paranoic are given to employing different coloured inks for emphasis and cutting out captions and quotes from newspapers to help make their points. Those using typewriters display a particular affinity with the star asterisk key.

When the querulent paranoid appears in an office, he or she will often express concern about its being bugged and will preface the conversation by exhaustively explaining that it will take "some time to put you into the picture". There is likely to be a long history of social dysfunction. They may refuse to supply their name and may well covertly tape-record the conversation. The person is likely to carry several pieces of paper and will probably also have a very old suit-case reminiscent of the kind used by children in primary school. That case will be a mine-field of jottings, pictures, diaries, cut-outs and legal documents. If the target allows it to be opened, hours of explanations and allegations lie ahead.

The best known species of the querulent paranoid is the sub-group whose preoccupation is the bringing of litigation. As long ago as 1959 Cameron described the "litigious paranoid" who "repeatedly hales opponents into court to demonstrate to all the world that he has been wronged." From observation alone it is clear that this disease

5 contd...and other proceedings which were clearly hopeless, and which in many cases amounted to an abuse of the processes of the various courts in which they sought redress. It would appear that the somewhat simple matter of the failure to obtain full approval of plans for the construction of a private dwelling has become an obsession for them."

has many causes and diverse manifestations. Often vexatious litigants were at some time exposed to an injustice or some form of improper conduct and after that experience have become obsessive either about the perceived wrongdoing and the difficulties that they have had in remedying it or about other incidents that they thenceforth view in a new light. A classic instance of this was recognised by Justice Sholl in R v Collins in which His Honour referred to a declared vexatious litigant as a man suffering from a "persecution complex". He outlined proceedings five and six years previous to the case, in which perchance the same judge had sat and been in dissent. The man had lost these proceedings and that experience, in His Honour's view, had "apparently led to the career of Collins as a litigant in these Courts".

I am of the opinion that Collins' resentment at those decisions lies at the root of all his subsequent offensive and eccentric behaviour in the Courts. He has also a habit of imagining all kinds of slights which are not intended, and is prone to impute the worst motives to those who are opposed to him or who have to adjudicate upon his cases.

Frequently litigious paranoids fall out with their lawyers when the legal advisers begin to exhibit signs of being unwilling to pursue with the necessary ardour and commitment the litigation proposed by their difficult clients. Acrimonious battles all too often ensue between lawyer and paranoid as the client refuses to pay for services rendered and advice given and the solicitor attempts to exercise a lien over the client's documents until bills are paid. Threats of negligence and disciplinary action against the solicitor are frequently made. Often a senior partner will in due course intervene and write the debt off as bad to forestall further vexatious litigation, this time against the firm, and the inevitable wastage of time and money that further contact with the paranoid will entail.

This stage in the career of the paranoid can be a turning point. It is likely that money will be running out. Friends' support will be waning and further legal assistance will be hard to come by. Counsellors, professional or amateur, must be careful. In one case within my knowledge the vexatious litigant's wrath became focussed upon her psychiatrist whom she proceeded to persecute by a variety of increasingly bizarre ruses. Wreaths and prostitutes were despatched. His walls were painted with slogans, his car was set on fire and finally she was arrested by the police as she prepared to

7 See Fricke, op cit at 318ff.
9 Id, 57-8.
break into his house. She told police she was just tadpole hunting.

At this point, all too often vexatious litigants begin to act for themselves. I have met a number of people who have abandoned lucrative professional employment to devote themselves full-time to mastering the necessary legal skills to bring their actions themselves. Then they confront the difficulties of a legal system without the schooling to be able readily to deal with its complex procedures and rules. Extraordinary amounts of time can be spent trying to justify why they are out of time for actions or appeals that they want to launch into wrongs perpetrated years before. The result can be trying for all who come into contact with them, from clerks of court, to judges, to librarians, to legal centre lawyers asked for gratuitous legal advice. All too often the litigant will focus on documents such as the Magna Carta, the International Covenant on Civil and Political Rights or the Constitution, without any real understanding of how they fit into the overall legal framework. Often their knowledge is gleaned purely from secondary sources without ever seeing the context of the phrase or sentence favourable to the argument that they wish to bring before the courts.\(^\text{10}\) A most fertile field of pursuit has proved to be the concept of natural justice and all its subtleties.

They will search with extraordinary industry for loopholes in rules of practice and procedure that will ground their actions and will pursue abstruse decisions in mouldy law reports to justify their assertions of right. Once absorbed by pleadings and interrogatories, the true nature of the vexatious litigant's afflictions is liable to become manifest. It is by no means rare for his or her obsessions to transfer from the original grievance to the legal processes themselves or the particular personalities and practices in the legal world. What environment could be devised more ideal to feed the persecution complexes of a person newly stumbling into it than that of the litigation processes? It can all too easily seem Kafkaesque, an autocratic world, run by authoritarian rules, scarcely comprehensible at times, yet determinative of one's fate and peopled by strange individuals conscious from the lowest levels that their word is law.

When finally the court system has intervened to reduce the wastage of time, has made its ruling and determined that the vexatious litigant is to be accorded no further legal remedies, the scatter-frustrations of the litigious paranoid must needs be directed elsewhere. At this stage there are still many targets for the often increasingly disconsolate and desperate renegade from the court system. These vary from politicians, especially Ministers and Attorneys General, to Law Reform Commissions, Ombudsmen, Complaints Authorities, Discrimination Commissioners and even Chief Commissioners of Police. Commonly he or she will already have set processes with such bodies

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\(^{10}\) See the comments of Sholl J In \text{R v Collins} [1954] VLR 46, 58.
in train as part of the paranoid process of expressing grievances to
dweller that lend an apparently sympathetic ear. If not, this will
be the chance.

This paper will now outline the responses of the legal system to the
difficulties presented by the querulent paranoid and then will review
the experiences of the newly established Police Complaints Authority
of Victoria, using it as an example of the bodies which are
approached by those with bogus grievances "against the system".

Barratry

The legal system has long recognised the problem of the vexatious
litigant and has responded in a number of ways to the problem of
people making vexatious complaints and bringing frivolous and
time-consuming suits before the courts. It has always retained a
jurisdiction to declare a particular piece of litigation or a person
unworthy of consuming the public resource of the court system.

One of its responses has been to declare the criminal offence of
"barratry" a common law misdemeanour and punishable by fine or
imprisonment.\textsuperscript{11} A barrator was defined as:

A common mover and exciter, or maintainer, of suits and
quarrels either in the courts themselves or in the country,
as by a disturbance of the peace, or where the right to the
possession of land is in controversy in taking or keeping
possession by force, subtlety, or deceit, or by making false
inventions and sowing calumnies, rumours, and reports
whereby discord and disquiet may grow among
neighbours.\textsuperscript{12}

This mechanism provided a criminal sanction for the bringing of
litigation by those adjudged chronically querulent and stirrers-up of
malcontent. No-one was adjudged a barrator in respect of one act
only and the indictment charging such a person had to declare the
defendant to be a "common barrator",\textsuperscript{12} that is to say, a
persistent bringer of vexatious actions. However, by the late
nineteenth century, prosecutions for barratry had become extremely

\textsuperscript{11} Hawk PC c 27(9), s14. Note also that the quasi-criminal
offence of contempt could in some circumstances be
relevant if a vexatious litigant entered upon conduct
calculated to dissuade a party, criminal or civil, from
availing itself of its legal rights - see Attorney
General for New South Wales v Solomon (1987) 8 NSWLR 567,
674 per Young J. See also R v Collins [1954] VLR 46.

The word "barrator" derives from the Latin "prattare", "to
cheat" and the Old French "barateor", "cheat, trickster".

\textsuperscript{13} Hawk PC c 27(9), s5.
and the offence was abolished in England by the Criminal Law Act 1967, s13(1)(a).

Vexatious Litigation

Although the criminal offence of barratry has fallen into disuse, the courts have retained a tight hold to prevent a plaintiff proceeding with a cause of action, if there is reason to think that its prosecution will be "useless and futile". In the case of civil action which is "manifestly groundless" or "hopeless" or "would involve useless expense", the court has a discretion to strike out the statement of claim initiating the action. Courts are regarded as having an inherent power to regulate their own procedure so as to avoid wastage of time and are expressly given such a power by many rules of court.

The fundamental principle was stated by Justice O'Connor of the Australian High Court in 1908:

"Prima facie every litigant has a right to have matters of law as well as of fact decided according to ordinary rules of procedure, which give him full time and opportunity for the presentation of his case to the ordinary tribunals and the inherent jurisdiction of the court to protect its process from abuse by depriving a litigant of these rights and summarily disposing of an action as frivolous and vexatious will never be exercised unless the plaintiff's claim is so obviously untenable that it cannot possibly succeed."

It is clear that the summary intervention of the court is permissible to stop abuses of its process, when faced with groundless claims. The fact that a transaction is intricate will not of itself disentitle the court to examine a cause of action alleged to grow out of it for the purpose of determining when the proceeding amounts to

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14 See, however, R v Bellgrave (Guildford Assizes, 1889, quoted at vol 10, p630 in Halsbury's Laws of England).

15 De V Victorian Railways Commissioners (1948) 78 CLR 72, 84 per Latham CJ.

16 See Wentworth v Rogers (No 5) (1986) 6 NSWLR 534, 536; General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125, 128.

17 See Mayor of the City of London v Horner (1913) 111 LT 512; Hubbuck and Sons v Wilkinson [1899] 1 QB 86.

18 Burton v Shire of Bairnsdale (1908) 8 CLR 76, 92.
an abuse of process or is vexatious. Once it appears that there is a real question to be determined, whether of fact or law, and that the rights of the parties depend upon it, then it is not for the court to dismiss an action as frivolous or vexatious or an abuse of process.

Legislative Intervention

Declaration of Vexatiousness. Supreme Court rules of the different States provide for a person to be declared a "vexatious litigant". A typical example of this legislation is to be found in s21 of the Supreme Court Act 1986 of Victoria which provides that the Court may, after hearing or giving a person an opportunity to be heard, make an order declaring the person to be a "vexatious litigant". It must be "satisfied" that the person has "habitually, persistently and without any reasonable ground instituted vexatious legal proceedings in a court "against the same person or different persons". The result of such a Supreme Court determination is that a vexatious litigant is not able, except with the leave of the Court, to commence or continue any legal proceedings in any court. Although the English legislation, the Vexatious Actions Act 1896, on which the Victorian provisions are based, was interpreted not to

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19 Dey v Victorian Railways Commissioners (1948) 78 CLR, 72, 91 per Dixon J.

20 Ibid.

21 This legislation, formerly to be found in s33 of the Supreme Court Act 1958 (Vic), has a long history in England, being traceable to the Frivolous Suits Act 43 Eliz c6.

22 Section 21 (2) Supreme Court Act 1976. Section 84, Supreme Court Act 1970 (NSW) is in very similar terms. Order 63, r61(1) of The High Court Rules provides:

Upon the application of a Law Officer, or The Crown Solicitor of the Commonwealth or of the Principal Registrar of the Court, the Court or a Justice, if satisfied that a person, or another person in concert with that person, frequently and without reasonable ground has instituted vexatious legal proceedings, may, after hearing that person or that other person or giving him an opportunity of being heard, order that he shall not, without the leave of the Court of a Justice, begin any action appeal or other proceeding in the Court.

Compare Vexatious Proceedings Restriction Act 1930 (WA), s3; Supreme Court Rules (Qld), s60A, rr1 & 2; Supreme Court Act 1935 (SA) s39.
See also Note, "Vexatious Litigation" (1943) Australian Law Journal 9.
refer to criminal actions, in Victoria and New South Wales the legislation has been interpreted to cover the declaration of a person to be a vexatious litigant in the criminal context.

Section 21 (4) of the Victorian Act provides that:

Leave must not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court.

In New South Wales the Supreme Court must also be satisfied that there is a prima facie ground for the proceedings which the declared "vexatious litigant" proposes to bring. The Supreme Court may at any time set aside or revoke an order made in relation to declaring a person a vexatious litigant if it considers that to be an appropriate course of action. In Victoria the Attorney-General must cause a copy of any order declaring a litigant vexatious to be published in the Government Gazette.

The Victorian Aetiology. As so often with the enactment of legislation, the Victorian provisions were provoked by a specific case. Between June 1926 and August 1929 Rupert Frederick Millane issued 56 legal proceedings against the Shire of Heidelberg, or its servants, agents or members of the Shire Council. During the same period 60 other proceedings were instituted by Millane in the Melbourne Court of Petty Sessions against the Shire of Heidelberg, the Corporation of Melbourne, the proprietors of leading daily newspapers and others. So much administrative and court time was wasted by these frivolous actions that the government considered it had no option but to intervene.

Judicial Interpretation. The Australian and English legislation setting up the mechanism for declaring litigants "vexatious" is distinctive for its vagueness of definition and the potential for different interpretations of the bona fides and quality of actions brought by litigants at risk of being regarded as vexatious. Following the intervention of the legislature in the different jurisdictions, the view has emerged that the Supreme Court does not have a general jurisdiction to prevent the commencement of actions by declaring them an abuse of process. The inherent jurisdiction of the

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25 In England in 1896 it had been the case of Chaffers who had brought some 48 actions - see Ex Parte the Attorney-General; Re Alexander Chaffers (1897) 76 LT 351, 45 WR 365.
Court is limited to controlling a proceeding which has actually commenced.\(^2\)

Chief Justice Barwick of the Australian High Court in 1971 rejected the submission that the question whether proceedings were vexatious was a subjective one to be decided by considering whether the person instituting the proceedings was acting maliciously or otherwise than in good faith.\(^2\) He held that proceedings may be vexatious whether or not the person who institutes them believes they are justified. His Honour held that the three proceedings with which he was dealing were vexatious

... not only because they sought to treat as null and void the bankruptcy notice and the sequestration order, notwithstanding that earlier attempts to have them set aside had failed, but also because in three separate proceedings instituted within a short period similar claims were repeated; because there were joined as defendants or respondents a large number of persons who could not have been regarded upon any reasonable view as having acted in concert; and because serious charges of conspiracy and fraud were made indiscriminately against all those persons, although there could not have been the slightest foundation for those charges against some of the persons named.\(^2\)

He also held that a proceeding may be described "in some circumstances" as a vexatious proceeding instituted without reasonable ground if it includes a separate claim or claims "that obviously cannot be supported and which ought not to be joined with the other claim or claims made in the proceedings".\(^2\)

Justice Young of the New South Wales Supreme Court has also held that in deciding whether multiple proceedings brought by a litigant are vexatious, the Court is obliged to have regard to detail and so examine each action to see if it is vexatious. In so doing, the Court must bear in mind that, if there is a pattern of vexatious proceedings being habitually and persistently instituted\(^2\), an order declaring them vexatious may be justified even though

\(^2\) See *Commonwealth Trading Bank v Inglis* (1974) 131 CLR 311, 315, and the discussion reviewing the history of legislation and the statements of principle relating to courts' inherent power to prevent abuse of their process.

\(^2\) *Bienvenu v Hutchison*, unreported, High Court, 5 October 1971, affirming *In Re Vernazza* [1960] 1QB 197, 208.

\(^2\) Ibid. See also *Attorney-General for New South Wales v Solomon* (1987) 8 NSWLR 667.

\(^2\) Ibid.

\(^2\) See *Re Chaffers* (1897) 45 WR 365.
an order declaring them vexatious may be justified even though there were reasonable grounds in initiating particular cases when viewed in isolation.\textsuperscript{31} So far as what constitutes "vexatiousness", in an aside His Honour commented that "it must be remembered that very often the words 'oppressive and vexatious' are very close if not synonymous with an abuse of process".\textsuperscript{32} In making an assessment about the quality of conduct that potentially could be described as vexatious, it is not the manner in which proceedings are conducted that will be looked to but whether "having regard to their nature and the substance of them"\textsuperscript{33} they properly bear that description. Whether or not legal representatives had a role in advising the proceedings will also be a relevant, but not determinative, factor.\textsuperscript{34}

It is clear that the courts will regard it as a "gross abuse of process" for a person to commence proceedings in a court for a collateral purpose.\textsuperscript{35} Not only will it be an abuse of process and probably a contempt of court,\textsuperscript{36} but also a vexatious act to commence actions when carrying out a strategy to distract a person prosecuting so that he or she might be induced to leave off the prosecutions. Thus, if a company director himself and in concert with others launches a range of civil and criminal actions pursuant to a policy of thereby dissuading the Corporate Affairs Commission from enforcing the law, he may well be declared a vexatious litigant.\textsuperscript{37}

\textsuperscript{31} Attorney-General for New South Wales v Solomon (1987) 8 NSWLR 667, 673.

\textsuperscript{32} See also Director of Public Prosecutions v Humphrys [1977] AC 1, 46; Bosch v Ministry of Transport [1979] 1 NZLR 502, 509; Miller v Ryan [1980] 1 NSWLR 93, 109.


\textsuperscript{35} See Attorney General for New South Wales v Solomon (1987) 8 NSWLR 667, 674; Re Septimus Parsonage & Co [1901] 2 Ch 424; Gaskell & Chambers Ltd v Hudson Dodsworth & Co [1936] 2 KB 595, 603; D Ltd v K, Supreme Court of NSW, unreported, 29 April 1985, per Young J.

\textsuperscript{36} See Australian Law Reform Commission, Contempt, AGPS, Canberra, 1987, para 191.

\textsuperscript{37} Attorney-General for New South Wales v Solomon (1987) 8 NSWLR 667.
It has elsewhere been held that the jurisdiction to grant leave to a vexatious litigant, once declared, to return to the courtroom should be "very carefully and sparingly exercised" and only where there is a case or an appeal of some substance to be argued. In considering an application the court looks only to proceedings in the Supreme Court or inferior state courts. The nature and substance of the previous proceedings are considered, not merely their form or the manner in which they are conducted.

Regulation Via Lawyer Control

In the United States a further tactic has been developed in order to reduce the incidence of vexatious and frivolous litigation in the federal courts. Rule 11 of the Federal Rules of Civil Procedure provides that lawyers must sign pleadings, motions, and "other papers" submitted in a federal court. It means that lawyers must make a "reasonable enquiry into the facts and law of a case". The signature of an attorney or party constitutes a certificate by him or her that they have read the pleading, motion or other paper and that to the best of their knowledge, information and belief formed after reasonable enquiry, it is well grounded in fact and is warranted by existing law or a "good faith argument" for the extension, modification or reversal of existing law. The attorney's signature constitutes a declaration that the suit is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The rule has been the subject of considerable recent controversy with some arguing that the rule is productive of needless antagonism and courtroom argument. Not surprisingly, defence lawyers have

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Becker v Teale [1971] 3 All ER 715.


There have even been attempts to tax attorneys' fees against counsel who have abused the processes of the courts. See Roadway Express, Inc v Piper, 447 US (June 23, 1980); "Legal Profession ... Vexatious Litigation" (1980) 66 American Bar Association Journal 1002.

P Marcotte, "Rule 11 Changes: Blessing or Curse?" (Sept 1986) 72 American Bar Association Journal 34. See also, B Winter, "Doctors' Aims to 'Cure' Frivolous Lawsuits" (June 1982) 68 (6) American Bar Association Journal 660; C Frank, "On the Merits; Frivolous Suits Targeted" (July 1984) 70 American Bar Association Journal 28.
sought Rule 11 sanctions by a 3-1 margin over plaintiffs' lawyers and the motions have been brought in a disproportionate number of civil rights cases. Its positive aspect is that in the United States, where contingent fees mean that there is an incentive for lawyers to solicit work, it clearly imposes upon lawyers being encouraged by their clients to enter into litigation, the duty to assure themselves that they are not being manipulated into bringing vexatious or frivolous actions. Somewhat analogous assurances are demanded by a number of Australian jurisdictions in applications for legal aid when these are filled out by clients' legal representatives. There has to be a declaration by the solicitor that the intended action has legal merit and is made in good faith. This seems to be a positive development.

False Reporting to Police

Section 53 of the Summary Offences Act (Vic) provides for it to be an offence for a person to make a false report to police if they have knowledge of the falsity of the report and if it is voluntarily made or caused to be made to a member of the Police Force. The report must cause an investigation to be undertaken by a member of the Police Force.3 Unusually, the section provides for the court upon conviction to order the defendant to pay to the informant "a reasonable amount" for any expenses incurred by members arising out of or incidental to the commission of the offence.44 This is the major weapon in the police armory to prevent or punish vexatious complainants but is subject to the difficulty that an accused person may opt to be tried by a jury rather than before a court of summary jurisdiction. This creates a cumbersome and potentially time-consuming procedure.

Another enactment to similar effect is Section 86K (b) of the Police Regulation Act 1958 (Vic) which provides that any person who:

wilfully makes a statement which the person knows to be false or misleading in a material particular or misleads or attempts to mislead the [Police Complaints] Authority or any other person in the exercise of his or her powers under this Act - is guilty of an offence.

The penalty imposed is $1,000 or imprisonment for twelve months or both. Unfortunately, it is unclear whether the police themselves are able to bring a prosecution for the giving of false information to their Internal Investigations Unit and if so how, or whether it is only the Authority which, by some contrivance, can bring the

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3 The penalty is 15 penalty units or imprisonment for three months.

44 Section 53 (6A).
prosecution. A problem of any 'criminal' sanction is that the criminal standard of proof of 'beyond reasonable doubt' must be met. Many is the case, especially in allegations of assault by police where the Police Complaints Authority has very strong suspicions that the complainant well knows the allegation to be false but the essential degree of proof is lacking. The danger is that the taking of an unsuccessful action for false reporting would leave the complainant very much the winner and more than ever the martyr.

A Statutory Body's Experience

The Police Complaints Authority of Victoria is one of those bodies that comes into contact with querulent paranoids while they are engaging in litigation, particularly while accused by police of a criminal offence, or at the conclusion of legal proceedings when they have been unsuccessful. The Authority was established in July 1986 by statute. Its functions include the monitoring of complaints against members of the Victoria police force, on occasion investigating those complaints and also recommending changes, where appropriate, to police practices and procedures.

Our work at the Authority involves us in the receipt of a large number of complaints from members of the public as well as relatives of police officers. In the 1986/87 financial year we officially tallied 1,168 complaints. This was considerably fewer than the number estimated by the Internal Investigations Department of the police force for the previous financial year. One of the main reasons for this is the policy of the Police Complaints Authority that it filters many of the representations made to it and directs people to appropriate bodies, refuses to deal with some complainants because their allegations are vexatious or trivial and assists in conciliating many of the misunderstandings that occur because of lack of information or poor communication.

A significant amount of time is spent by all members of the staff receiving inquiries or complaints either in person, in writing or on the telephone. It has been one of the surprising aspects of the work of the Police Complaints Authority that such a large number of the

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45 It may well be that because of the context, 'any other person' should be construed as referring only to an agent of the Authority. Notably, the section is to be found in Pt IVA, Division 1 of the Act which refers only to administrative details pertaining to the Authority.


representations made to it are by people suffering from a recognisable psychiatric illness or exhibiting manifest social dysfunction. Part way through 1987 this led us to include on our databank a special "field" in order to warn members of the Authority of the experience of another member that a complainant had a major psychiatric problem and that his or her complaints needed to be treated with caution. After only eight months we had over 80 people on our warning list. This enables staff to be wary of those complainants who have already been adjudged to be problematical or outright dangerous and to be appropriately probing when a complainant has a history of false, malicious or vexatious complaints. We have found this to be most useful.

Nonetheless, all members of staff have found that a significant portion of their time is taken up by those people who are ultimately classified as vexatious complainants. They slip through our filters in a variety of ways. First of all, a number of them appear extremely plausible when they first present to a member of the Authority either in person or on telephone. In part this is because there is often a grain of truth in that they are complaining about and the difficulty is to sort the truth from the fantasy. We are acutely aware that it is a temptation to dismiss out of hand an apparently vexatious series of complaints without adequately investigating their substance.

Sometimes, though, recognition is easy. We have at least two complainants, for example, who are complaining that the police helicopter keeps them under constant surveillance wherever they go. One believes that the helicopter is shooting down rays through his roof and repeatedly rings us up suffering from the torment of those rays. A recent arrival at our office bailed up the secretary to explain how she had been "computer-striped" by the police and given a red mark above her head so that the constabulary at all times knew where she was and what she was doing.

Another of our less welcome complainants is a middle-aged alcoholic lady who has a vendetta against a well-known private school in Melbourne and protests by jumping into the middle of the road to express her frustrations. More irritatingly, so far as we are concerned, as we are a 24-hour access organisation with someone from the staff always on call, she has taken to ringing us at two or three o'clock in the morning during her alcoholic episodes and ranting totally irrationally about what we and the police force have not done to help her. Her record is 60 recorded calls to Hawthorn Police Station in one night. Under the new mental health legislation, it is not even a simple exercise for the police surgeon to commit her as she is not really a danger to herself or anyone else except for the disturbance which she is causing to members of the Police Complaints Authority's sleeping patterns and the Hawthorn Police.

Another of our complainants has forsaken the usual means of recording complaints on our database and now inscribes his frustrations on his fence in three-foot-high letters. Another is convinced that the police are making holes in her underwear, are throwing lemons at her house and are moving her ornaments around to try and upset her.
Dozens more simply are convinced that the police are harassing them out of some desire to persecute for reasons that they cannot understand.

Another interesting complainant, typical of a number who make their way to our notice, is Mr H, whose criminal career was interrupted some 15 years ago when he apparently forgot to remove galeignite stored in his chimney before lighting a fire. Police arson squad investigations hindered a speedy insurance payout and from that time onwards, perhaps before, relations with police have deteriorated and every time that the police visit his junkyard or any form of interaction take place between him and the police, a fight breaks out. Once officers filed writs against him for making malicious complaints but in spite of a court judgment, they were absolutely unable to collect any money from him and simply found themselves involved in further altercations and filing more charges of assault against him.

The Police Complaints Authority, though, has many advantages over the Police in its capacity to deal with querulant paranoiacs. It is explicit under the legislation setting up the Police Complaints Authority, The Police Regulation Amendment Act 1985 (Vic), that the Authority may determine that a complaint made to it does not warrant investigation if

In the Authority's opinion -
(1) the subject-matter of the complaint is trivial; or
(2) the complaint is frivolous or vexatious or is not made in good faith.

Or

If the complainant had knowledge for more than a year of the conduct complained of and fails to give a satisfactory explanation for the delay in making the complaint.48

A delay in reporting reflects upon the bona fides of the complainant and indicates that his or her complaints may be vexatious. The Authority does not hesitate to exercise its discretion to refuse to investigate or further investigate a complaint if it is convinced of any of the matters in this section. It has encouraged the police to make use of the Authority's capacity to make a final decision about whether a complaint to it or the Police Force should be investigated. It has the advantage of being a small and cohesive organisation whereas the police present a much wider face to the public allowing the potential for a complainant to chip away at various parts of the Police edifice without those different parts effectively communicating one with the other.

Some complainants even try to avoid one or more members of our staff in the hope of convincing a more "sympathetic" staffer. The small size of the office and the existence of our computer has so far

48 Section 86N (1).
foiled these attempts. In addition, as the Authority is an entirely independent organisation responsible only to Parliament, its exercise of the discretion not to investigate or reinvestigate complaints cannot be impugned as self-interested, as may be the case when the police exercise a similar discretion not to investigate complaints about members of the Force.

It is essential to have an office such as the PCA where the responsibility to decide that inquiries shall continue or close is clearly vested. Dissatisfied complainants go from our office to those of the Ombudsman and the Minister for Police. They can be told by the Ministers' office that the matter has been closed by the PCA and cannot be re-opened. Due to a legislative oversight they may have better luck with the Ombudsman as he is able to review the exercise of discretion of any government body unless specifically precluded. To have yet another avenue of appeal is an unnecessary bestowal of privilege upon the vexatious. The loophole of his jurisdiction over the PCA, however, will in due course be shut off.

Nonetheless, the buck has to stop somewhere and there are occasions when the Authority has to stand by a determination unpalatable for the complainant that allegations are vexatious or simply not able to be proved. There is the occasional individual who will stop at nothing to misrepresent our words in order to bring political pressure of one kind or another to make us change our mind about investigating or further investigating complaints. On occasions, they summon the well meaning assistance of a range of people and organisations, including politicians, journalists and legal centres, to help them pressure us. In such circumstances our independence is our greatest asset. Someone has to make the final decision and live with the consequences. That is our role.

Concluding Thoughts

With the development of the new administrative law during the last two decades, it is no longer the courts that bear the brunt of the activities of the querulous paranoid. It is government instrumentalities, and their watchdogs such as Ombudsmen and quasi-Ombudsmen, as well as law reform commissions and tribunals, that have to develop strategies to handle such people.

What is necessary is concentration on techniques to identify such people and to deal with them quickly, and humanely, but firmly. It is our view at the Police Complaints Authority that the disproportionate number of querulous paranoids who plague our data system and our sleeping and waking hours is explicable in terms of their very make-up. It is these sorts of people who have the obsessive determination to find out where we are and what our role is in the administrative hierarchy when others might tire of the challenge. When we were almost uncontactable by telephone and when we were being shunted from office to office by administrative bungles, it was these people who had the determination to find us and air their grievances. In a situation where the members of the public most likely to know about us are those who read about our trials or occasional expostulations to the media, as we have not yet made our
presence known by advertisement, perhaps it is not so surprising that we find such a surprising number of our "clients" to fit within the umbrella term "quarrelsome paranoia".

In response to the undeniable existence of a significant cross-section of complainants who approach the Police Complaints Authority out of less than ideal motives, we have tried to adopt a pro-active role in relation to complaints. In practice this means encouraging police to use us as a resource where they feel our intervention or advice may be of assistance in dealing fairly but firmly with a difficult person making complaints about members of the Force. As an independent body responsible only to Parliament, we have the advantage of being able to classify a person as vexatious without attracting the accusation of being partial to our own cause or in some way emotionally interested in our determination.

At times we have been criticised for giving short shrift to some complainants. But, we make no apologies for utilizing our independence on the basis that the buck stops with us. It is important that police be able to get on with the job they are paid to do. Ombudsman type bodies must not be seen solely as instruments of criticism; they must also where appropriate be seen to be supportive of the efficient functioning of bodies that they monitor.

There is no denying that lessons can be learned by government bodies from the experience of the courts from the time of Elizabeth I. Heavy handed measures such as prosecuting those deluded individuals who waste the community's time and money have a place in regulation of the problem but this should not be a front-line strategy. It has the disadvantage that it caters perfectly to the persecution complexes of many vexatious complainants, adding one more blow to their masochistic search for injury from the world at large. It risks transforming them into martyrs for their causes. Criminal prosecutions, when they are brought, cannot afford to fail.

However, the corollary of this is not that public access bodies should be transformed into pseudo-social workers prepared to listen with endless patience to the fantasies and trivialities of many of those who approach them. To adopt this approach is to betray the trust of the community and to waste a great deal of time and money. It can only result in unfortunate allocation of time and resources so that those with legitimate grievances will not have the necessary time devoted to them. To be sure, the quarrelsome paranoia of this world have a right to expect to be dealt with humanely and politely, but it is also the case that public officials have a responsibility to acknowledge that they are paid in part to make decisions that will be unpalatable to some. Such institutions need to develop the courage that the courts have exhibited and refuse forthrightly to deal further with vexatious complainants where they have persistently shown evidence of their quarrelsome paranoia.

(The author acknowledges the assistance of Simon Smith of the Springvale Legal Centre and Hugh Selby and Brian Hardiman of the Police Complaints Authority, but accepts all responsibility for errors and omissions, as well as views expressed.)
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VEGXATIONS COMPLAINANTS: A LAWYER'S DILEMMA

S. Zifcak

I thought it appropriate to begin this paper by taking you into the mind of one prominent litigant of my acquaintance.

Many years ago I had a most unsatisfactory law case. My solicitor referred to it as a miscarriage of justice and towards the end entered court with several others and indicating to me to do the same, stood facing the judge in disapproval of his conduct....

The judge, after submitting me to lengthy and to some extent repetitive cross examination on what must only have been contractual considerations excused the defendant from examination. I settled as a means of withdrawing from the court because justice wasn't done and the point had been passed beyond which it could be done.....

My petition of right was rejected it seems on the crown solicitors advice, which, after excising recitations from the petition (8 pages) says "we don't like the idea" without authority or argument (2 pages). One only reference is scarcely an authority at all and in fact construes if anything in my favour....

In a subsequent action for declaration that the fiat should go after first trying to belittle me as a frivolous litigant the judge tried several successive talks to defeat the hearing, which I answered. He then just blurted out that he was dismissing the summons. On two occasions it appeared he would have liked to get me for contempt. On one simply because I produced information of which he was unaware in a case unreported....

On a motion for adjournment the Chief Justice said I should be in the Full Court apparently wanting to keep me locked up in the Supreme Court and perhaps put me before the Court without adequate notice or preparation. When I first applied for leave the Judge wanted to know why I wanted to go to the Privy Council and seemed unaware of the procedure.

Perhaps it can be understood why I consider there was gross bias involving what amounts to a conspiracy to protect the establishment. It has come down to an undisguised game of just blocking any move without any pretence of justification.

These extracts from public submissions by "Mr Falk" evoke considerable sympathy at one level. Mr Falk's bewilderment and embitterment with the law are manifest. On the other hand, this is a man who has waged war with lawyers, complaints authorities and the courts at all levels for over 40 years. At some stage, in the interests of its effectiveness, the legal system must call a halt.
Yet the question of how to effect a proper balance between according effective legal rights to individuals on the one hand and ensuring finality in legal proceedings on the other is not one capable of easy resolution. This paper, and the one by Ian Freckleton which follows it, is a contribution to discussion on what is becoming an increasingly troublesome issue.

The paper focuses, in the first instance, on the phenomenon of litigious paranoia which is the technical term to describe those who play out their psychological disturbance through the legal system. However, it cautions against attributing the label too readily. Then, on the basis of some knowledge of the phenomenon, it suggests practical steps which individual lawyers might take to enable them to deal more effectively with the difficult individuals which they will inevitably strike during the course of their practising lives.

Litigious Paranoia

Litigious paranoia is a phenomenon well recognised if sparsely reported in the psychiatric literature. (See further, Kraepelin, 1905; Astrup, 1984; Cameron, 1959a, 1974; Mayer Gross et al, 1960; Arieti, 1955) The behaviour of a litigious paranoid is generally characterised by considerable legal knowledge, a fanatical belief in individual rights, great intensity, manic energy, a total unwillingness to accept defeat, a derisory attitude towards settlement and often, substantial courage (Swanson et al, 1970).

In the mind of the Litigant, those involved in the law are joined in a community of conspirators whose principal purpose is the defeat of his or her legitimate rights and entitlements. "They are driven harried people who get a specific and agonising pleasure from their identification with a solitary cause" (Jaspers, 1959).

Litigious paranoia in turn forms a part of a cluster of personality disorders known as querulent paranoid disorders. There are three of these. First, there is the litigious disorder already described. Secondly, there are querulent disorders in which the subject is continually in conflict with bureaucratic authorities. Thirdly, there are reformist disorders which focus on religious, philosophical or political themes. These produce a wave of criticism against particular aspects of society.

Litigants of this kind tend to focus their attention in particular areas of the law which in turn reflect the nature of delusions common in the paranoid condition. Thus, for example, divorce actions attract those with delusions of jealousy. Medical negligence actions attract those with hypochondriacal beliefs. Defamation is popular with those perceiving political or bureaucratic persecution. Complaints against police and government inspectors of all kinds reflect a deep concern with agencies of social control.

In terms of its astiology, Freud (1911) hypothesised that paranoid symptoms might arise in individuals through the twin defence mechanisms of denial and projection. Thus, a person who is unable to cope with particular inadequacies and self distrust may suppress and then project these onto the outside world.
The onset of paranoid disorders may be swift. The predisposed person may meet with some significant setback which in turn overwhelms his or her adaptive or defensive strategies. Alternatively, gestation may be associated with a longer period of steadily increasing stress the culmination of which is the breakdown of systems of defence. From this point the dysfunctional behaviour becomes increasingly obvious and troublesome both to the individual and to the particular community against whom the person's anger and frustration are vented.

It is the irresistible necessity for a tangible target which quite literally forces the paranoid person to find culprits and uncover plots. The paranoid person begins to organise real and imagined persons into a community of plotters. The person organises a paranoid pseudo community with which to bind together their projected fears and wishes, to justify their own hostile aggression and to give it a tangible target. The paranoid pseudo community is a reconstruction of reality. It organises the observed and inferred behaviour of real and imagined people into a conspiracy with the person as its focus. (Cameron, 1959b).

Mr Falk's pseudo community is self-evident. It consists of judges, law makers (the Attorney General), parliamentary committees, government solicitors, barristers, private practitioners, complaints authorities, indeed anyone involved in the legal establishment conspiracy designed exclusively to defeat his "legitimate" claims. His world seems bitter, discordant, agonising.

Some Caveats

It is important that this analysis not be taken too far. There are risks with it. The main risk is that litigious paranoia may act as a convenient label to invalidate legitimate claims (see further, Bloch and Chodoff, 1984). Therefore, I enter the following caveats.

First, in my experience with vexatious complainants, there is usually more than a grain of truth in the initial grievance presented. The first legal setback may have been the factor which precipitated a person's subsequent fanatical behaviour, but, nevertheless, an injustice may well have been done.

Secondly, simply because a litigant has been prolific in correspondence and action and has in the main, been unsuccessful, it should not be assumed that an individual legal action in a sequence of actions does not have merit. In my experience, applicants have scored quite significant victories on the way to ultimate defeat. In addition, it should be remembered that their frustrating behaviour can have the effect of producing silly or excessive reactions from those to whom the litigant's complaints have been directed. These reactions in turn, can become the legitimate cause for complaint.

Given this, neither the lawyer nor the psychiatrist should be too quick to write off the driven complainant. His or her position should be examined sceptically but on its merits. Decisions about when and how to act should be made on clear legal or psychiatric grounds. They should not be based on personal dislike or on considerations of administrative convenience.
Thirdly, it is sobering to reflect that attitudes of trust and mistrust, belief and disbelief, hope and dismay, commitment and disappointment are integral parts of everyone's mood and thought. Each of us are subject to crises of confidence and credibility whether in other people or ourselves. Therefore, it is wise not to assume too readily the invalidity of similar feelings in those with whom we deal professionally (Fricke, 1978).

The Vexatious Litigant and the Lawyer

Having said this, it is clear that vexatious complainants do, nevertheless, create substantial problems, if not mayhem, in the legal system (see further, Goldstein, 1987). To take one example with which I am familiar. A woman who believed herself to have been dismissed unjustly from a tertiary college in Victoria took consistent action of all kinds to redress the perceived injustice. The resulting legal actions, in which the woman represented herself, extended for a period of eight years and cost the college over $200,000 in legal fees. In another example, a man believing himself to have been unjustly deprived of a mining title, created legal havoc for years within government and in the courts. Defeated on one issue, he would immediately petition on the next. Suffering further defeat, he would litigate again on the same matter. Warned by the court that his disruptive conduct would not further be tolerated, he filed his actions in an alternative jurisdiction. Not only this, but he caused substantial financial loss and mental anguish to the occupiers of the land which he now sought to mine.

The remainder of this paper is devoted to discussing how lawyers individually can deal with these clients and the problems they create.

A. Recognition

It goes almost without saying that the first step is for the lawyer to recognise that something is amiss. Whilst not going so far as one New York law firm which instructed its reception staff to turn away clients appearing for the first time with huge bundles of documents and wearing dark glasses, there are a number of rules of thumb to which the practitioner might usefully adhere. Thus, where there is -

- an accusation made with little or no evidence to support it;
- the attribution of devious or vicious motives to well recognised actors or forms of action;
- an accusation of grudges or conspiracies;
- the absence of any clear defendant to the generalised complaints being made;
- voluminous correspondence particularly with a succession of sacked lawyers or intransigent authorities; and
- a seemingly interminable and intense exposition

then the lawyer would do well to be on guard.
B. Case Handling

The validity of claims made should be examined and checked with independent individuals or authorities. This is a normal part of practice. Without such checking one would have no basis at all on which to accept or reject the validity of the claims being made. It is also important, in this context, to consider the client's cultural background. Certain cultural groups may share beliefs not commonly held in the remainder of society.

Thus, for example, a number of cultural groupings hold deep, enduring and, for them, legitimate suspicions about the motives of police forces. This is particularly the case where the police, in their home countries were used as instruments of state repression. The lawyer needs to be sensitive to these differences.

Complainants should be given a copy of all significant correspondence and offered ready access to their file. This reduces a potent source of tension and future misunderstanding. In parallel, interviews and action should be written up clearly and clients asked to authorise each new legal step in writing. This protects the practitioner against subsequent claims of malpractice.

Where there is disagreement about the law, the lawyer should make his or her position clear by reference to external standards. So, the practitioner might, for example, indicate that the client's arguments are unlikely to be accepted because they do not meet the standard of proof required or because there is little authority in the cases for the propositions advanced. This places the source of potential dispute outside the immediate relationship and thereby helps to preserve it.

C. Interviewing

Consistent with the caveats of which I spoke before, the first principle of interviewing must be that the complainant be treated with respect. What this means in practice is that the lawyer must make a conscious attempt to see past the walter and waves of accusation in order to determine whether a legitimate cause of action exists.

For example, in one case it was apparent to me that lawyers acting in divorce proceedings some 15 years ago had not acted effectively in protecting their clients interests. I became involved in the context of proceedings taken by the litigant under the Freedom of Information Act to determine whether or not complaints about the original lawyer's conduct and, in turn, complaints about the complaints authority's handling of the original matter, were handled adequately. These were actions far removed from the original proceedings. There was little which could now be done. But the acknowledgement that some injustice occurred originally certainly facilitated my negotiations.

Next, it is crucial that one should assert an independent attitude to issues but not to the extent of being unwilling to accept the legitimacy of particular observations. Thus, in the Freedom of
Information context. I was frequently in the position of denying the existence of a conspiracy to withhold documents, whilst at the same time acknowledging that some in government would have been quite happy if the Act was crippled. I found that by agreeing where possible, but disagreeing where necessary, the basis was laid for reciprocal respect if not trust.

Where there is a history of malpractice claims, it is wise, in my view, to ensure that interviews are conducted in the presence of a third party.

Finally, it is futile and potentially dangerous to argue about the validity of delusions. It is apparent from the psychiatric literature that the significance of the delusional system to the client should be clearly understood and respected. In the words of one psychiatrist:

It is essential to keep in mind that paranoid delusions may be indispensable protective devices, security operations that keep a person in some effective contact with his surroundings and allow him to reconstruct his conceptions of his social environment while providing a tolerable harmony with his conscious and unconscious inner desires, fears, hates and hopes. To attack delusions may be to precipitate an immediate sweeping regression into panic or some other undifferentiated state. (Cameron, 1974).

CONCLUSION

The lawyer's task is a very sensitive one. He or she should not be a therapist yet might usefully adopt the ideal therapist's attitudes of respect, acceptance and concern.

At the same time, hard judgements must be made about when to call a halt either in the complainant's interest, the opponent's interest or in the lawyer's own. When any of these are threatened sufficiently, the time has come to sensitively but firmly put the relationship and legal proceedings to an end.

It is worth noting that if one reviews the practice principles suggested in this paper, I think one finds that they are, or should be, characteristic of good lawyer-client relationships generally. As is so often the case, it is not the normal but the unusual and the unexpected case which demonstrates how effective or ineffective one's professional practice actually is.
I conclude with the following quotation:

There can be no doubt that behind all the actions of this court of justice, that is to say in my case, behind my arrest and today's interrogation, there is a great organisation at work. An organisation which not only employs corrupt warders, stupid inspectors, and Examining Magistrates of whom the best that can be said is that they recognise their own limitations, but also has at its disposal a judicial hierarchy of high, indeed the highest rank, with an indispensable and numerous retinue of servants, clerks, police and other assistants, perhaps even hangmen. I do not shrink from that word. And the significance of this organisation, gentlemen? It consists in this, that innocent persons are accused of guilt, and senseless proceedings are put in motion against them...

You will note that this quotation bears a striking similarity to that at the beginning of the paper. And yet it comes from quite a different source. It is from Kafka's great novel The Trial. This similarity should serve again to caution practitioners against the too hasty attribution of deviant motivations to difficult clients. The fact that Kafka's fictional description was made real in his own country reminds us vividly that what may appear to be a delusion in one context could be the expression of bitter reality in another.

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Unusually persistent complainants

GRANT LESTER, BETH WILSON, LYNN GRIFFIN and PAUL E. MULLEN

Background Querulous paranoia may have disappeared from the psychiatric literature, but is it flourishing in modern complaints organisations and the courts?

Aims To investigate the unusually persistent complainants who lay waste to their own lives and place inordinate demands and stress on complaints organisations.

Method Complaints officers completed questionnaires on both unusually persistent complainants and matched controls.

Results Persistent complainants (distinguished by their pursuit of vindication and retribution) consumed time and resources and resorted to both direct and veiled threats. Attempts to distinguish these people from a control group on the basis of the manner in which their claims were initially managed failed.

Conclusions Persistent complainants’ pursuit of vindication and retribution fits badly with complaints systems established to deliver reparation and compensation. These complainants damaged the financial and social fabric of their own lives and frightened those dealing with their claims. The study suggests methods of early detection and alternative management strategies.

Declaration of interest None.

The querulant and the paranoid litigant once occupied a privileged position among psychiatric disorders (Kräfft-Ebing, 1879; Katzelin, 1904; Kolle, 1931; Kretschmer, 1934; Heydt, 1952). Such people were regarded as inhabiting the borderline between delusional psychosis and the fanatical preoccupations of the psychopathic personalities (Jaspers, 1923; Schneider, 1958; McKenna, 1984). Gérinbault (1942) included them in his ‘psychoses passionnées’, and they found their way into both the ICD and DSM classificatory systems (Pichot, 1982). Although occasional studies of vexatious litigants continue to appear (Rowlands, 1988; Fricke, 1988; Caduff, 1995), the category fell into disrepute, undermined by criticisms that it was doing no more than pathologising those with the energy and commitment to pursue their rights (Stalsröm, 1980). Querulousness retreated into obscurity just as complaint was coming to occupy a central position in maintaining the social compact in Western culture (Douglas, 1992). The querulous, given the current neglect of this category, now pass largely unrecognised and unregarded by mental health professionals (Ungravi et al., 1997).

Complaints organisations and the courts continue to be plagued by a small group of unusually persistent people who consume enormous amounts of resources. This study addressed the nature of this group, whether its members resembled those described in the old literature on querulousness, and if there was evidence that the way in which their claims had been dealt with initially had launched them on this disastrous course.

METHOD

Study group

Experienced complaints professionals were recruited from six ombudsmen’s offices in Australia. These agencies of accountability receive secondary referrals following a failure to resolve initial complaints. They deal with many thousands of complaints every year, covering a range of governmental, business and professional activities. These complaints professionals completed a questionnaire on those they had identified as unusually persistent complainants from among their cases that were no longer active. A senior person in each organisation checked that there was no duplication and that no identifying information had been inadvertently included. For each case identified, the professionals selected as a control the next case on their register in which the person was the same gender and general age, whose complaint was broadly similar, and whose case was also closed. An identical questionnaire was completed for the control and again supplied without any identifying material.

The questionnaire

The questionnaire was compiled through consultation with focus groups of complaints officers and a review of the existing literature on the querulous (a copy of the questionnaire is available from the author upon request). The human research ethics committee of the Department of Human Services, Victoria, approved the study.

Statistical analysis

Fisher’s exact test (two-sided) with \( P < 0.05 \) as a cut-off was employed with the odds ratio to measure the size of the effect, and simple one-way analysis of variance (ANOVA) for the association or explained variance.

RESULTS

Ninety-six valid questionnaires were returned out of 110 distributed (52 persistent cases and 44 controls). Nearly three-quarters (72%) of the ‘persistent’ group were men. The control group was matched for gender, but the population of clients dealt with by the organisations had a 48:52 male-female ratio, suggesting a marked overrepresentation of men in the persistent group.

Factors defining persistence

The mean period of involvement with the complaint organisations for the persistent group was longer (35 months v. 8.3 months).
months, \( P < 0.01 \), and a significantly smaller proportion of the persistent cases were resolved at closure (23\% \( v. \) 87\%, \( P < 0.01 \)), compared with the control group. There was no significant difference between the two groups in whether the person registered the complaint by letter (persistent group 81\% \( v. \) control group 82\% \( v. \) telephone (90\% \( v. \) 77\%), or made an appointment to see someone personally (23\% \( v. \) 23\%). The persistent complainants were more likely to turn up without an appointment (31\% \( v. \) 4.5\%, odds ratio 9.3, 95\% CI 2.0–43.4; \( P < 0.01 \)) and to communicate by e-mail (19\% \( v. \) 4\%, OR 5.0, 95\% CI 1.03–24.2; \( P < 0.05 \)) and fax (56\% \( v. \) 32\%, OR 2.7, 95\% CI 1.2–6.2; \( P < 0.05 \)). In the persistent group, 71% used three or more methods to communicate, compared with only 34\% of controls (OR 3.43, 95\% CI 1.47–8.0; \( P < 0.01 \)). Persistent complainants communicated more frequently and at far greater length (Table 1) and demanded changes in case worker more often (52\% \( v. \) 9\%, OR 19.4, 95\% CI 4.5–88.8; \( P < 0.01 \)).

Nature and aim of the complaints

The persistent and control groups were equally likely to complain of specific losses and damage to finances (71\% \( v. \) 72\%; NS), relationships (25\% \( v. \) 18\%; NS) and physical functioning (15\% \( v. \) 5\%; NS). The persistent more frequently complained of damage to their overall social and economic functioning (35\% \( v. \) 9.5\%, OR 5.3, 95\% CI 1.6–17.2; \( P < 0.01 \)), self-esteem (40\% \( v. \) 14\%, OR 4.3, 95\% CI 1.5–11.9; \( P < 0.01 \)) and general health (44\% \( v. \) 23\%, OR 2.6, 95\% CI 1–6.6; \( P < 0.05 \)). The professionals, in contrast, judged the persistent group less likely to have incurred actual financial loss (39\% \( v. \) 59\%, OR 0.5, 95\% CI 0.2–1.01; \( P < 0.05 \)) and no more or less likely to have sustained damage to their health or relationships. Overall, the professionals judged some 31\% of the persistent group to have sustained no substantial loss compared with only 9\% of the control group (OR 2.8, 95\% CI 99–798; \( P < 0.05 \)).

Compensation, usually financial, was frequently sought by those in both persistent and control groups (61\% \( v. \) 58\%; NS), as were improved services (42\% \( v. \) 47\%; NS). Acknowledgement that they had been mistreated and some form of specific apology were more often sought by the persistent (67\% \( v. \) 32\%, OR 4.4, 95\% CI 1.9–10.4; \( P < 0.01 \)).

The differences between the two groups' objectives became clearer when issues of personal vindication and retribution were considered. The persistent sought acknowledgement of the wider social implications of their complaint (39\% \( v. \) 9\%, OR 6.3, 95\% CI 1.9–20.1; \( P < 0.01 \)) and public recognition of their struggles (25\% \( v. \) 0\%; \( P < 0.01 \)). Retribution, in terms usually of the dismissal or prosecution of those they held responsible, was sought more frequently by the persistent (43\% \( v. \) 11\%, OR 5.7, 95\% CI 1.9–16.9; \( P < 0.01 \)). More extreme forms of revenge, such as public exposure and humiliation, were demanded exclusively by the persistent (14\% \( v. \) 0\%; \( P < 0.01 \)). The persistent more often demanded justice for themselves based on claims of principle (60\% \( v. \) 18\%, OR 9.98, 95\% CI 3.7–26.8; \( P < 0.01 \)) and insisted on their 'day in court' (25\% \( v. \) 4\%, OR 7.0, 95\% CI 1.4–33.0; \( P < 0.01 \)). The professionals found that the persistent were more likely to vary the nature and grounds of their complaint over time (31\% \( v. \) 0\%; \( P < 0.01 \)).

Form of the complaints

The form in which the complaints were expressed showed more idiosyncrasies in the persistent group. Persistent complainants were more likely to use medical and legal terms inappropriately: legal, 42\% \( v. \) 2\%, OR 31.5, 95\% CI 4.03–246 (\( P < 0.01 \)); medical, 19\% \( v. \) 2\%, OR 10.24, 95\% CI 1.3–83.5 (\( P < 0.01 \)). The use of rhetorical questions, such as 'Should any reasonable person be made to accept such treatment?' in written communications was more common among the persistent: 56\% \( v. \) 7\%, OR 17.2, 95\% CI 4.7–62.8 (\( P < 0.01 \)).

The written material from the persistent complainants showed unusual methods of attempting to emphasise their words (Table 1). The use of highlighters to accentuate certain words occurred in both the persistent and control groups, but the use of several different colours to highlight words was significantly more common in the persistent group: 19.2\% \( v. \) 2.3\%, OR 10.2, 95\% CI 1.3–83.5 (\( P < 0.01 \)).

<table>
<thead>
<tr>
<th>Factor</th>
<th>Controls (%)</th>
<th>Cases (%)</th>
<th>Odds ratio (95% CI)</th>
<th>( P )</th>
<th>Correlation coefficients</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 10 letters</td>
<td>9</td>
<td>60</td>
<td>14.8 (4.6–47.7)</td>
<td>0.01</td>
<td>0.35</td>
</tr>
<tr>
<td>Letters of more than 100 pages</td>
<td>2.7</td>
<td>25</td>
<td>17.4 (2.2–138)</td>
<td>0.01</td>
<td>0.20</td>
</tr>
<tr>
<td>More than 10 telephone calls</td>
<td>7</td>
<td>64</td>
<td>23.7 (6.5–87.1)</td>
<td>0.01</td>
<td>0.32</td>
</tr>
<tr>
<td>Telephone calls over 60 min</td>
<td>9</td>
<td>60</td>
<td>13.6 (4.3–43.7)</td>
<td>0.01</td>
<td>0.24</td>
</tr>
<tr>
<td>Sends copies of other letters</td>
<td>9</td>
<td>35</td>
<td>4.8 (2.0–11.5)</td>
<td>0.01</td>
<td>0.15</td>
</tr>
<tr>
<td>Sends personal endorsements or references</td>
<td>2</td>
<td>25</td>
<td>14.3 (1.8–114.7)</td>
<td>0.01</td>
<td>0.18</td>
</tr>
<tr>
<td>Multiple capitals</td>
<td>9</td>
<td>50</td>
<td>10.0 (3.1–32.0)</td>
<td>0.01</td>
<td>0.15</td>
</tr>
<tr>
<td>Repeated underlining</td>
<td>10</td>
<td>56</td>
<td>12.6 (3.9–40.4)</td>
<td>0.01</td>
<td>0.16</td>
</tr>
<tr>
<td>Repeated inverted commas</td>
<td>11.4</td>
<td>40</td>
<td>4.5 (1.5–13.3)</td>
<td>0.05</td>
<td>0.15</td>
</tr>
<tr>
<td>Multiple comments in margins</td>
<td>11.4</td>
<td>32.7</td>
<td>3.8 (1.3–11.3)</td>
<td>0.01</td>
<td>0.20</td>
</tr>
<tr>
<td>Three or more forms of emphasis</td>
<td>11</td>
<td>57</td>
<td>10.6 (3.6–31.4)</td>
<td>0.01</td>
<td>0.31</td>
</tr>
</tbody>
</table>

1. The correlations provided are with the variable duration of this episode of complaining.
more traditional methods of emphasis were also employed significantly more frequently, including repeated underlining, using inverted commas and inserting marginal notes. Three or more of these typographical forms of emphasis were found in over half of the persistent (57% v. 11%). The professionals judged that the methods used by the persistent of expressing their written complaints, compared with the control group, were inappropriate lengthy and difficult to follow (95.5% v. 17%, OR 0.01, 95% CI 0.002–0.049; P<0.01); the various oddities of writing also on occasion rendered parts of the letters from the persistent group unintelligible (42% v. 2%; P<0.01). The persistent complainants showed a greater propensity to attach supporting materials to their written complaints, including copies of letters, almost invariably with added comments and copies of supporting documents (55% v. 9%; P<0.01). The enclosing of endorsements of their good character and personal diaries was confined to the persistent (15.4% v. 0%).

Behaviour of complainants
Complaints officers judged the persistent complainants to be more difficult and intimidating. Interestingly, only people from the persistent group were judged to have behaved in an overly ingratiating manner (42% v. 0%; P<0.01). Written threats against the complaints professionals were made exclusively by the persistent, 17% of whom made direct threats and 32% veiled threats, such as ‘I know where you live’ and ‘Careful you don’t find yourself losing your family like me’. Threats over the telephone or in person were also made exclusively by the persistent (52%). Similarly, only the persistent made threats to kill themselves (16%) if their complaint were not settled to their satisfaction. Overly offensive (22% v. 0%; P<0.01) and overly dramatic expressions (77% v. 7%, OR 45.5, 95% CI 11.9–173.6; P<0.01) were employed more frequently by the persistent, as were unnecessary repetitions (71% v. 11%, OR 19.2, 95% CI 6.3–58.2; P<0.01). In interviews only about 10% of the persistent group were found by professionals to be able to express their complaints in a coherent and rational manner (10.5% v. 82%, OR 0.03, 95% CI 0.003–0.21; P<0.01). Complaints officers experienced a positive rapport, or at least active sympathy, less frequently with the persistent complainants (12% v. 86%, OR 0.02, 95% CI 0.01–0.07; P<0.01). Professionals acknowledged attempting more frequently to avoid contact with these complainants (48% v. 0%; P<0.01) and seeking help from senior colleagues (52% v. 2%, OR 54.2, 95% CI 6.9–424.0; P<0.001). The persistent complainants themselves were more likely to involve other agencies as the complaints procedure progressed, with 77% contacting at least one other agency (v. 21%; P<0.001), and 37% contacting four or more (v. 0%; P<0.01).

Management of the initial complaint
The complaints professionals attempted to evaluate how the complaint had been handled initially. In their view, only about half of all the complaints from both the case and the control groups had been dealt with appropriately and reasonably by the agency, or individual, receiving the initial complaint (53% v. 46%; NS). Unreasonable delay had occurred on occasion for both persistent and control complainants (25% v. 30%; NS), and people in both groups had on occasion been met with overt hostility (8% v. 2%; NS), a blanket denial (23% v. 18%; NS) or suggestions they had only themselves to blame (8% v. 2%; NS). Subsequently there was not judged to be any significant difference in how often unreasonable expectations were fostered about the likely nature of the settlement (4% v. 2%; NS).

Impact on the complainants
Persistent complainants were reported as having a far greater investment in their claim, being far less likely to view a failure as ‘disappointing’ (19% v. 91%, OR 0.024, 95% CI 0.007–0.082; P<0.01) and more likely to describe the consequences as a ‘disaster’ (81% v. 9%, OR 42, 95% CI 12.1–144; P<0.01) or even ‘life-threatening’ (23% v. 0%; P<0.01), compared with the control group. By pursuit of their claim, those in the persistent category were more likely than controls to have damaged their close relationships (31% v. 2%, OR 19.1, 95% CI 2.4–15.1; P<0.01) and their social lives (25% v. 0%; P<0.01), and to have seriously impaired their financial position (29% v. 7%, OR 5.5, 95% CI 1.5–20.6; P<0.01).

Analysis of variance
The ANOVA demonstrated that 31% of the variance in the persistence of the claimants was predicted by variables related to the methods of expressing the grievance, including the style and language of the complaints, which was present from the outset, and the volume of materials, which accumulated as the complaints procedure progressed.

DISCUSSION
The unusually persistent pursued their complaints for longer, supplied more written material, telephoned more often and for longer, intruded more frequently without an appointment, and ultimately were still complaining when the case was closed or transferred. They differed from the control group as predicted in being motivated at least in part by desires for vindication and retribution, in the curious and dramatic forms in which they presented their claims, in how they behaved while pursuing their claims — particularly with regard to threats — and in how high a price personally and socially they paid for that pursuit.

Vindication and retribution
The persistent complainants focused on issues of personal vindication and retribution. This fits badly with the functions of complaints organisations, and even court-based litigation, which are geared to provide conciliation through reparation and compensation. These people are searching for outcomes that a modern complaints resolution process cannot deliver. A more formal orientation for complainants at the outset, reinforced if necessary over time, about what can (and what cannot) be provided in the complaints process might militate against the pursuit of such unrealistic goals.

Form of the complaints
The increased frequency and the voluminous nature of the material generated by the persistent group were to be expected. Less predictable were the dramatic differences in the form in which complaints were registered. Unusual methods of emphasis included multiple underlinings, putting words in capital letters, and the liberal use of exclamatory marks and inverted commas, as well as copious marginal notes.
Interestingly, exactly these types of emphasis are reported in descriptions of querulants in the 19th and early 20th centuries (Kraft-Ebing, 1879; Kraepelin, 1904). Emphasising words with multiple-coloured highlighting pens is a modern variant, which we have also seen clinically among our querulant patients, some of whom produce a riot of colour on every page of their voluminous complaints. Other features described in the earlier literature were the frequent misuse of technical legal and medical terms, and the attachment to the complaints of letters, reports of legal decisions, personal endorsements and diaries. These visible and easily quantifiable similarities between the forms in which today's persistent complainants and yesterday's querulants express their grievances is a strong argument for an overlap between the two groups. These peculiarities in the form in which the complaints are presented account for over a third of the variance between cases and controls in our study. As these idiosyncrasies are usually present from the outset, they potentially provide an early warning sign.

**Clinical Implications**

- Unusually persistent complainants not only seriously disrupt their social and financial functioning but also by threatening and intruding behaviour, frighten and distress those attempting to help them.
- These complainants, in addition to seeking compensation and reparation, are in pursuit of personal vindication and retribution, aims incompatible with modern complaints procedures.
- The manner in which the persistent complainants pursue their quest for justice and the form in which they express their complaints are clearly separable from the methods used by the vast majority of complainants and show a remarkable similarity to those described in the classic literature as characteristic of the querulous and vexatious.

**Limitations**

- The study method did not allow examination of the complainants' experiences and state of mind, which can only be surmised from the observations of the complaints officers.
- The study was limited to 52 cases and 44 controls.
- The study method could not distinguish between the people studied being at the extreme end of a continuum of complainants and their being a qualitatively different group.

**Threats and damages**

Over half of the persistent complainants made some form of threat of violence directed at the complaints professionals. Equally troubling was the frequency of suicide threats. These threats explain the apprehensiveness about personal safety expressed by many of the professionals when dealing with the unusually persistent. We had assumed the group we saw clinically differed from the vast majority of unusually persistent complainants in having resorted to threats and violence. The study indicates, however, that threats are very much a part of the behaviour of the querulant. Whether or not the person is prosecuted and referred to a forensic clinic is at least in part a function of the tolerance of the complaints officers. The fears expressed in the focus groups about the social and interpersonal damage suffered by the persistent complainants were also confirmed by the study. These findings underline the importance of complaints organisations both making strenuous efforts to protect and support their staff who deal with such cases, and doing all in their power either to prevent or to extract persistent complainants from their damaging progress.

**Creating the persistent complainant**

One of our hopes in conducting this study was to establish that inept and socially insensitive responses early in the progress of the complaint contributed to the chronicity and recalcitrance of the persistent group. If such provocations could be identified, they might be remediable. The failure to obtain direct evidence that persistent complainants were more likely to be subjected to hostile, rejecting or blaming responses may reflect our dependence on the second-hand, and potentially partial, impressions of the professionals. Had we been able to obtain direct access to the complainants' experiences of their initial contacts, a different picture might have emerged. This area merits further research.

**Assessing the risk of unusual persistence**

The behaviours that differentiated the persistent cases from the controls were nearly always apparent by the time the complaint reached an agency of accountability, although the severity often escalated over time, as the frustrations and distress mounted. Even on the basis of this preliminary study, it should be possible to identify at an early stage many of those at risk of becoming abnormally persistent. This capacity is worse than useless, however, unless it leads to a response that could decrease the damage suffered by the complainant—worse than useless, because in the absence of effective interventions then identification would amount to stigmatisation. The next phase of research.
needs, therefore, to include properly controlled trials of methods of complaint management aimed at preventing the emergence of these destructive forms of persistence. Better induction of clients into the complaints process is one possibility. Another is actively identifying and attempting to counter unrealistic and essentially unrealisable goals. The trial might be worthwhile using teams of professionals trained specifically for managing the abnormally persistent complainant. The conventional wisdom is that difficult clients should be managed by a single experienced professional, to avoid splitting and confusion. This conventional wisdom is probably correct for the difficult complainant, but not necessarily for the unusually persistent; here, a team of professionals who can share the load and protect each other from becoming the specific focus of the client’s ire might be more effective. These possibilities need proper evaluation.

Mental health professionals have, over recent decades, stepped back from involvement with those once viewed as querulous – or have been pushed back. There are good reasons for caution in introducing concepts of personal pathology into social processes such as complaining, but equally it is cavalier to ignore the possibility that knowledge and approaches developed in the mental health field might offer help to organisations and individuals in avoiding the damaging and distressing effects of unusually persistent complaining. Perhaps it is time to restore querulousness to a legitimate place among the problem behaviours that mental health professionals study and manage.

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