


# Rogue Courts in Canada Trample Self-Represented Litigants

by Denis Rancourt / September 29th, 2014

> There is a crisis of access to justice in Canada. It is a crisis of systemic judicial partiality against ordinary citizens who cannot afford brand-name "justice".[1]

**Purpose and Methods for this Article**

In this article I describe the phenomenon in Canada of systemic and often egregious judicial and legal system bias against self-represented litigants.

In a next article, I will give my interpretation about the causes of this phenomenon, in the broad context of judicial and legal-system bias, by describing the different types of circumstances in which extreme judicial bias is most likely to occur, and the systemic devices that are used to cover-up judicial bias. I have already written several preliminary articles about judicial and legal-system bias.[2],[3],[4],[5]

My conclusions about the phenomenon itself are based on:

- many first-hand reports from victims of legal-system bias
- a review of specialized web-site discussions
- my discussions and interviews with community organizers against legal-system bias
- an expert report from an academic legal researcher, and my discussions with that researcher
- media reports
- published practitioner commentary, such as on lawyer's blogs
- my experience as the volunteer coordinator of the Self-Represented Workgroup of the Ontario Civil Liberties Association
- my in-court observations of several cases unrelated to me
- my own extensive experience as a self-represented litigant in Ontario, Canada

**The Crisis is Real**

Chief Justice Beverley McLachlin frequently warns of a crisis of "access to justice" in Canada. [6]

This crisis involves a large and growing number of self-represented litigants who cannot afford lawyer's fees, which are inflated by corporate clients.

The Facebook group "Canada Court Watch" is focused on self-represented litigants and has over 4,000 members. Self-represented litigants regularly picket outside courthouses and lawyers offices across the country.[7] Researchers, such as law professor, Julie Macfarlane, have described a widespread disillusionment and distrust of the legal establishment by ordinary self-represented litigants from all walks of life.[8]

Beyond what is acknowledged by the chief justice and the legal establishment, there is a widespread conviction among self-represented litigants that the courts are biased against them.[9] I am the coordinator of the Self-Represented Litigant Workgroup of the Ontario Civil Liberties Association, and I have experienced this bias directly as a self-represented defendant.

**Egregious and Sustained Judicial Bias**

In a single case of alleged defamation for words on a blog, I have been required to go before 17 different judges, at all courts up to the Supreme Court of Canada, in over 30 open court hearings and a trial, over more than three years — in the trial, motions, appeals of motions, and case conferences in the action against me.[10],[11] I have prepared thousands of pages of legal documents, and I have been ordered to pay legal costs of the suing party, the unpaid portion of which totals more than seven hundred thousand dollars to date, prior to the appeal that has been filed. (See Footnotes 10 and 11)

In light of my recent experience as a self-represented litigant, it is difficult for me to believe that the pleas of the chief justice are authentic. I tend to think that the chief justice means only that lawyers should be affordable and available for ordinary persons, and that she wishes that the legal processes were less wasteful. However, access to lawyers alone does not provide access to justice, and neither does strong-handed case management by judges.

I feel like I have seen it all in terms of the behaviour of judges, in terms of the tremendous systemic bias against self-represented litigants, and that is described by legal researchers and commentators. This bias exists irrespective of my level of education (PhD) and irrespective of my ability to present an argument (former university professor), [12] and so I believe what I have heard about what it is like for a single parent navigating issues of child custody.

In my case, the potential for systemic bias is increased by the fact that the plaintiff is a high-status lawyer within the legal establishment, and two of the lawyers who oppose me have formerly represented Canadian prime ministers. In addition, the private plaintiff is funded without a spending limit by a non-party using public money, a situation that has been denounced by the Ontario Civil Liberties Association. [13]

At the mandatory mediation I was not allowed an accompanying person (because he was not a lawyer) even though I faced five lawyers on the side suing me. But obvious asymmetries of means are not the only problem.

**Systematic and Habitual Judicial Bias**

The evidence for habitual judicial bias, as I see it, is overwhelming and includes:

> • the trial judge cancelling my main and pleaded defence, off-the-cuff and in the middle of my opening address to the jury,[14] which led to former US Congresswoman Cynthia McKinney's petition to the Canadian courts [15],[16]

- the trial judge, in the charge to the jury, instructing the jury that "there is no defence to consider", despite my having presented the fair-comment defence to the jury and despite ample evidence for the fair-comment defence having been admitted at trial — see Notice of Appeal[17]

- the trial judge refusing to recuse himself despite admitting that he has all his university degrees from the University of Ottawa and is an annual financial donor to that university, where the university is a partisan intervenor at trial and is funding the plaintiff's legal fees — see recusal motion factum, [18] and Notice of Appeal (See Footnote 17)

- judges refusing to consider or recognize (or admit supporting evidence for) the maintenous and champertous nature of the obviously improper and political funding of the private lawsuit using public money (See No. 13),[19] — see court documents for the champerty motion and its appeals (See Footnote 10)

- judges and lawyers disrespectfully referring to me in court as "he", and discussing me as though I were not present (until this behaviour was denounced on the Ontario Civil Liberties Association website)

- judges' frequent, repeated, and disorienting interruptions of me in court — see many court transcripts (See Footnote 10)

- allowing opposing counsel to make repeated and hyperbolic prejudicial comments, despite my objections — see many court transcripts and court submissions (See Footnote 10)

- not allowing me time to make my arguments, despite my good preparation and organization — see defendant's factum in appeal from judgment in champerty motion[20]

- refusals to hear evidence of misconduct by opposing counsel (that could be a separate article)

- refusing to acknowledge transcript evidence of opposing counsel leading his witnesses in out-of-court examinations

- allowing procedural dirty tricks by the lawyers, such as calling motions on one day's notice

- constructive barring of my evidence on motions and at trial, using both procedural technicalities and legal abstractions (another separate article)

- allowing the plaintiff to pick and choose which questions to answer in cross-examinations

- orders that I pay outrageously high costs, which, in effect, punish me for trying to defend myself, despite the known and proven fact that I have no money[21],[22],[23]

- two opposite orders by the same (trial) judge on exactly the same question of my inability to pay ordered costs; however, it benefited the other party[24]

- orders that I, rather than the opposing party, pay costs even in the cases where I won all or the majority of the points argued in the motions

- disadvantageous deadlines for document submissions and disadvantageous scheduling of court appearances, despite objections with reasons

**Contrived Reasons Make It Work**

These examples are in addition to the macro-evidence for actual bias that resides in the judges' "Reasons" for their decisions, in which judges allow themselves to:

- describe only the facts they choose to highlight to support their rulings
- redefine and recast the actual facts, thereby destroying facts and creating new facts
- make prejudicial and unnecessary comments that other judges will read
- make findings of credibility without direct evidence
- make strongly worded findings on matters that were not before the court
- or, simply not provide reasons for particular findings
- (not to mention a case of releasing such "Reasons" *after* the judge voluntarily recusing himself)

The only way to gauge the systemic bias that is expressed in judicial "Reasons" is to compare the Reasons with the actual evidence and arguments. Legal researchers virtually never do this work but, instead, content themselves with clever analyses limited to the tunnel-vision of the Reasons themselves. The only possible reviews arise from costly appeals, when appeals are allowed, and the appeal courts then write their own "Reasons"... The more less-represented a litigant is, the greater the possible gap between the "Reasons" and reality.

**Judges Close Ranks**

In fact, there appears to be no limit to what the court thinks it can get away with when dealing with a self-represented litigant.

In my own case, for example, some two years prior to trial, I discovered that a motions judge (in a motion to end the action — "champerty motion") had a blatant conflict of interest. In the middle of the proceedings, I learned that he had strong personal, family, emotional, and contractual financial ties to a party (University of Ottawa) intervening for the plaintiff in the case, and also to the law firm representing the party in court. He had not disclosed any of these ties. The judge's ties made it inconceivable that he would rule against the plaintiff.

When I presented the evidence of the judge's ties, the judge lost decorum, threatened me with contempt of court (a criminal judgment), and recused himself, but refused to rule on whether there was apparent bias, and continued to release decisions that stand to this day.

I raised the matter through available procedures with three more judges of the Superior Court, three judges of the Court of Appeal, and six judges of the Supreme Court (in two applications for leave to appeal), but all of them refused to allow bias as a ground for appeal.

In my first attempts, I was not even allowed to access the Supreme Court. It is a demonstration of apparent systemic judicial bias at the highest level that the Registrar of the Supreme Court refused to accept my duly prepared application — and then refused to accept my motion to denounce his refusal to accept the application. This was resolved only because the Ontario Civil Liberties Association made a request, directly to the Chief Justice of Canada, that the Registrar's conduct be investigated.[25] The Ontario Civil Liberties Association complained to the chief justice about an apparent systemic Registrar's bias against self-represented litigants — see OCLA's letter to the chief justice.[26]

That whole bias episode with the motions judge (champerty motion), involving 13 judges from three courts, shows the degree to which the entire judicial structure will tolerate a judge's apparent bias, at least when the bias complaint is brought by a self-represented litigant being sued by prominent members of the legal establishment.[27]

The only remaining remedy in the matter resides in international law. I am preparing a complaint to the UN Human Rights Committee for violation of the International Covenant on Civil and Political Rights,[28] which guarantees an impartial court to every litigant in signatory countries, including Canada. Few self-represented litigants can defend themselves this effectively, and there are far too few resources among civil rights organizations to address the gargantuan need.

**The Higher One Goes, The Worse It Gets**

All of this has only been repeated at the trial itself, which started on May 12, 2014, and ended on June 6, 2014. Prior to trial, I had asked then Regional Senior Judge Charles Hackland (who resigned on May 8, 2014) to name a case judge who had no connection with the University of Ottawa, and I had made a formal motion for the trial judge to recuse himself because of the judge's shared interests with the University of Ottawa [18]. None of this mattered and the trial judge refused to recuse himself. This, and the judge's in-court actions, led to my walking out of the trial,[29] which was reported in the media. (See Footnotes 14, 15, and 16)

In a May 20, 2014, email to the court, I explained among other things that "In the interest of justice, I have withdrawn my presence from the trial in order not to be used as a prop that would make it look to the jury as if I were being allowed to defend myself." I returned to the trial on June 3, 2014, immediately after the jury retired to consider its verdict, to argue post-jury-verdict trial motions. A Notice of Appeal from the outcomes of the trial was served on July 4, 2014. (See Footnote 17)

**The Myth Of A Fair Court Cannot Be Salvaged**

My case, the ordeals of countless others, and academic research show that there is a systematic bias against self-represented litigants. Such evident, overt, and pervasive bias proves that the judges are not impartial, but rather are significantly influenced by the social status and power of the litigant. Corporate and government litigants know this well, and count on it. It is the elephant in the courtroom for self-represented litigants.

For self-represented litigants the crisis in "access to justice" is really a crisis in access to an impartial court, a court that is not influenced by social status. This crisis will not be solved by increasing access to lawyers and reducing court backlogs. The solution will require that litigants themselves and civil rights organizations insist on and monitor impartiality of the courts.

In my case, high-profile American political activist and former US Congresswoman Cynthia McKinney launched a petition demanding that the chief justices of Canada allow a new trial with a trial judge having no ties to the University of Ottawa — which is funding the lawsuit without a spending limit — and this has been reported in the media [15][16]. Only this type of protest-application of the open court principle, in combination with media exposure and civil society association pressures, has any chance of catalyzing a reform in a system that has now degraded itself beyond self-repair.

This must be accompanied by formal appeals to the courts, which have been known to make judgements towards correcting undemocratic and unjust systemic trajectories of the legal system.[30] Even when there is a right to appeal, however, the phenomenal costs of the court transcripts,[31] which the appellant must buy and provide to the

appeal court, is itself a significant systemic barrier to access the appeal court. In my case, the lawsuit washed out my life savings long before I accumulated ordered and unpaid costs totally more than $700,000.00, and a funding campaign was launched by academic colleagues just to collect enough for the court transcripts. (See Footnote 23)

There is indeed a crisis, and it is of the legal establishment's making. It is a crisis of systemic barriers and judicial partiality against ordinary citizens who cannot afford brand-name "justice".

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1. A judge of the Ontario Superior Court of Justice cited the author (Denis Rancourt) in criminal contempt of court for among other things publishing an earlier version of this article, and stated in open court that the author could consequently be sent to jail following a "show cause" hearing that the judge ordered the author to attend. The judge then (some three months later, prior to the hearing) dropped all his charges when he realized on further reflection that he had not followed the accepted procedure for criminal contempt of court: The judge never told the accused to not do what the judge wanted to jail him for if he did it! The judge's dropping of the changes is at paragraphs 47 to 50 of this ruling: *Joanne St. Lewis v. Denis Rancourt*, 2014 ONSC 4840 (CanLII). This all occurred despite judges having been given detailed instructions by the Judicial Council about the correct procedures and fairness principles for making criminal contempt charges. [↩]
2. "Reflections of a self-represented litigant as an old man", by Denis G. Rancourt, *Activist Teacher*, February 17, 2012. [↩]
3. "Self-represented litigant discovers the truth about the 'justice system'", by Denis G. Rancourt, *Activist Teacher*, December 15, 2012. [↩]
4. "David W. Scott on self-represented litigants", by Denis G. Rancourt, *Activist Teacher*, January 4, 2013. [↩]
5. "Made in Canada legal system costs policy precludes access by design", by Denis G. Rancourt, *Activist Teacher*, November 30, 2013. [↩]
6. "Access to justice a 'basic right'", *Toronto Star*, August 12, 2007;
   "Access to justice becoming a privilege of the rich, judge warns", *Globe & Mail*, February 10, 2011;
   "For many, access to justice means actually getting to court", *Vancouver Sun*, March 7, 2011;
   "Canadian courts not accessible enough, says chief justice", *CBC News*, August 12, 2012;
   "Why people representing themselves in court are clogging the justice system", *Macleans Magazine*, February 4, 2013;
   "Ontario courts 'only open to the rich,' judge warns", *Globe & Mail*,July 2, 2013;
   "Access to justice in Canada 'abysmal': CBA Report", Toronto Star, August 18, 2013;
   "Access to justice in Canada 'abysmal' and 'radical reforms' need to be made to legal system, report says", *National Post*, August 18, 2013;
   "Too rich for legal aid, too poor for lawyers" (original journalist's title, later: "Legal help beyond the financial reach of many Ontario residents"), *The London Free Press*, October 25, 2013.
   "How to improve access to justice", School of Public Policy, uCalgary, November 5, 2013;
   "Chief justice celebrates pro bono work with students", Canadian lawyer Magazine, March 17, 2014;
   and many more such reports, starting in 2007. [↩]
7. "We Won't Back Down: CFFLR (video)", by Canadians For Family Law Reform, *YouTube*, June 9, 2012. [↩]
8. "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants, Final Report", by Dr. Julie Macfarlane, May 2013, pp 147; and media articles about the report, such as: "Ian Mulgrew: Access to justice is a fairy tale, self-represented litigants conclude", *Vancouver Sun*, May 7, 2013 [↩]
9. "Self-represented litigants 'treated with contempt' by many judges, study finds", *Ottawa Citizen*, December 31, 2012. [↩]
10. Links to virtually all the court-filed documents of all parties and all interveners in *St. Lewis v. Rancourt* are listed here. All the *U of O Watch* reports about the *St. Lewis v. Rancourt* case are here. [↩]
11. Most of the court rulings in the case are listed on CanLII here. [↩]
12. My ability to understand and make legal arguments (and to design those arguments in view of the systemic bias against me) steadily improved in the lawsuit, but my first document, the Statement of Defence,shows that even my starting ability was reasonably high. [↩]
13. "Public Money is Not for Silencing Critics – University of Ottawa must end its financing of a private defamation lawsuit", Ontario Civil Liberties Association campaign, August 2013. [↩]
14. "Denis Rancourt boycotts his own trial for libel, citing 'kangaroo court'", *Ottawa Citizen*, May 16, 2014. [↩]
15. "Give a Fair Court Hearing to Denis Rancourt", on-line petition by Cynthia McKinney, former Congresswoman of the USA, *Change.org*, May 21, 2014; over 1100 signatories at the time of this writing. [↩]
16. "U.S. activist Cynthia McKinney seeks new trial for Denis Rancourt", *Ottawa Citizen*, May 22, 2014. [↩]
17. "Notice of Appeal", appeal C59074 from verdict and judgements at trial, *St. Lewis v. Rancourt*, at Court of Appeal for Ontario, July 4, 2014. [↩]
18. "Defendant's motion for recusal of the trial judge (all documents)", *St. Lewis v. Rancourt*, motion heard and decided on May 7, 2014. [↩]
19. "University of Ottawa paying for pointless legal battles (video news report)", Prime Time, Ezra Levant, *SUN Media*, May 23, 2014. [↩]
20. "Factum of the Appellant", appeal C56905 (from judgment in champerty motion), *St. Lewis v. Rancourt*, at Court of Appeal for Ontario, May 9, 2013; and court transcripts and other documents at Footnote 10). [↩]
21. "All court documents, submissions, and transcripts regarding costs of the trial", *St. Lewis v. Rancourt*, June 20, 2014, costs claim to Endorsement on Costs dated August 21, 2014 (10 documents). [↩]
22. "All court documents about requesting that trial judge reconsider his August 21, 2014, Endorsement on Costs", because of apparent factual and procedural errors, *St. Lewis v. Rancourt*, August 25, 2014, to August 28, 2014 (4 documents). [↩]
23. The first (now closed) Indiegogo.com funding campaign for the "Denis Rancourt Legal Defence Fund" was HERE. The active funding campaign page is HERE. [↩]
24. At trial, on June 6, 2014, when the plaintiff argued that I had no way of paying the ordered costs and damages and therefore that I deserved to be gagged with a permanent injunction, the trial judge, in his oral Reasons from the bench ordered:

"[…] The possibilities of payment of the costs or the compensation or the award — the costs or the award of damages — that the defendant suggests are exist (sic) are frankly pure fantasy, there is no reasonable prospect he will be able to pay. Moreover, […]" [Emphasis added]
—-Then, after trial, when the plaintiff argued that I had the ability to pay large costs, on August 21, 2014, the same judge on the same question, in his Endorsement on Costs, at paragraph 41, ordered:
"The defendant's evidence that he is impecunious is self-serving at best. At his cross-examination he failed to answer most questions put to him preventing any meaningful analysis of his allegation that he has absolutely no asset to pay any portion of the costs award."

(This, after the judge refused to let me make responding submissions to the plaintiff's submissions about the said cross-examination — only one party was allowed to make submissions about the cross-examination about my inability to pay costs.)
The judge refused to reconsider his Endorsement in order to reconcile this contradiction by finding that he was suddenly "*functus*" (see all documents on this matter 22). [↩]

25. See the full chronology and links to all the documents of this particular saga here: "On-going story of an application to the Supreme Court of Canada", *U of O Watch*, June 10, 2013. [↩]
26. OCLA's letter and attached documents to the Chief Justice of Canada, dated March 4, 2013: "We are writing to bring to your attention serious concerns about the conduct of the Registrar of the Supreme Court of Canada toward self-represented litigants, which deprives unrepresented parties from access to the Court." [↩]
27. The bias episode with the motions judge (champerty motion) affected the entire champerty motion and its appeals. The saga is reported in posts at *U of O Watch*, with links to court documents and media report, under the tags/labels: "Justice Robert Beaudoin", and "OCLA". [↩]
28. "Un ex-professeur de l'Université d'Ottawa fait appel aux Nations unies", *Ici.Radio-Canada*, March 14, 2014. [↩]
29. Read my May 16, 2014 in-court statement here: "Why I walked out of the trial in which I am being sued", *U of O Watch*, May 17, 2014. [↩]
30. One example, in Canada, are the recent rulings that apply the "principle" that there is no valid reason that a self-represented litigant who wins an action or motion cannot be awarded costs, where a represented litigant would be awarded costs. It is remarkable that the opposite largely continues to be the "logic", using glib judicial statements to the effect that self-represented litigants have no or little costs since they don't hire lawyers. See Footnote 9. [↩]
31. Court transcripts typically cost $1,000.00 or more per day of trial, which can easily amount to between $5,000.00 and $50,000.00, for a self-represented litigant who did not have the money to hire a lawyer in the first place. [↩]

*Denis G. Rancourt is a former tenured full professor of physics at the University of Ottawa, Canada. He is a researcher for the Ontario Civil Liberties Association. He has published more than 100 articles in leading scientific journals, on physics and environmental science. He is the author of the book* Hierarchy and Free Expression in the Fight Against Racism. *Denis can be reached at denis.rancourt@gmail.com. Read other articles by Denis.*

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