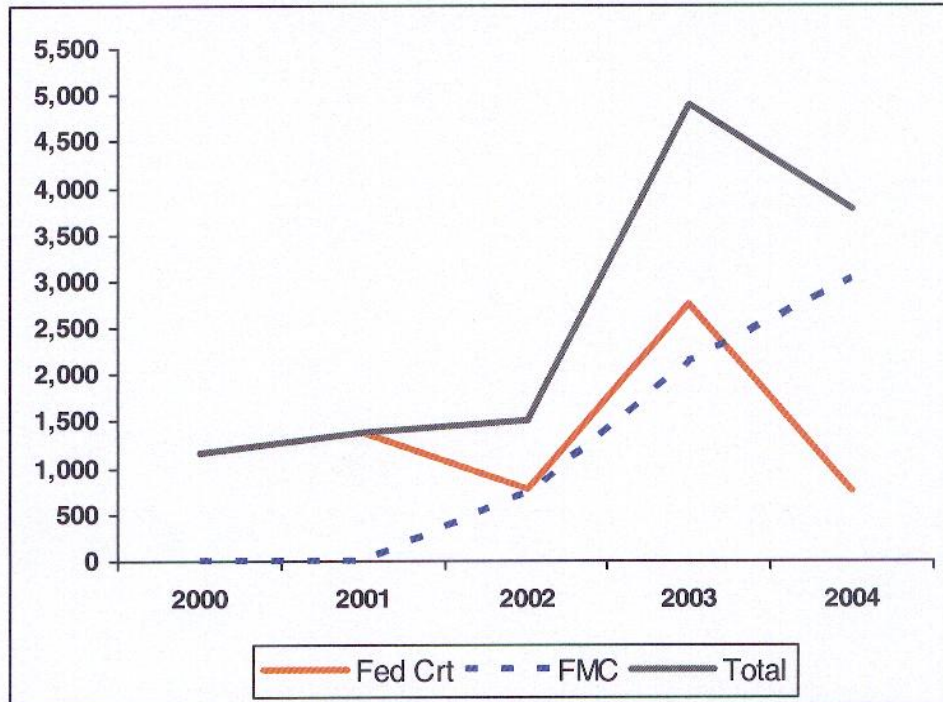


**Federal Court of Australia
Migration Workload**

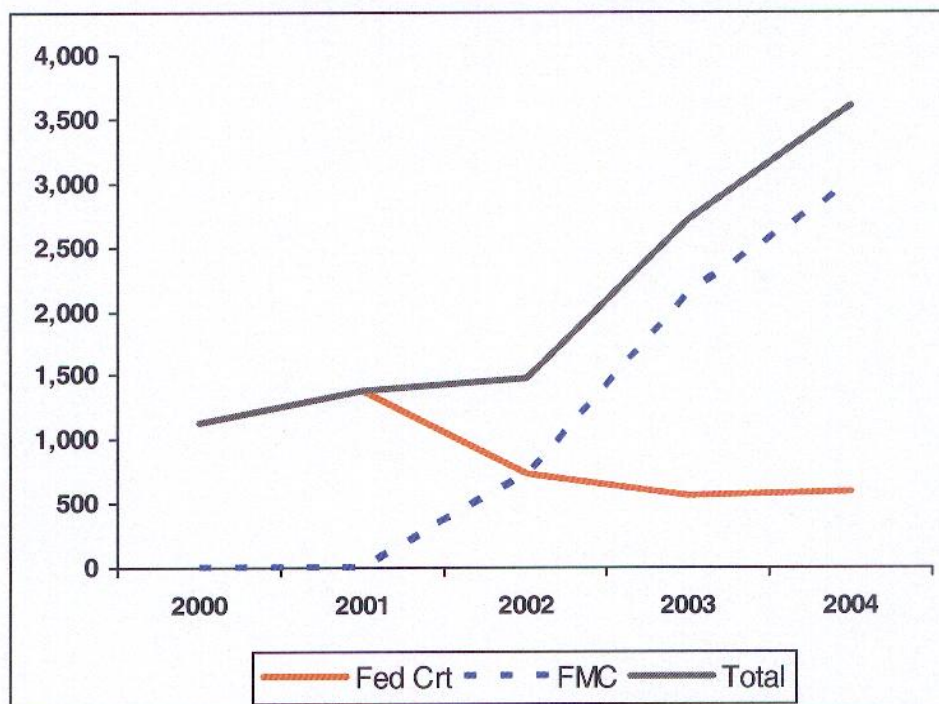
**Workload filings to 31 December 2004
Federal Court and Federal Magistrates Court**
(including applications remitted from the High Court)



Inc H/C remittals		Calendar Year					Notes
Migration Workload		2000	2001	2002	2003	2004	
Federal Court							
Filed		1,123	1,379	1,295	1,046	857	(a)
+ remitted from H/C		40	3	38	2,191	161	
Sub-Total		1163	1382	1333	3237	1018	
- transfers to FMC		0	0	563	480	258	
Workload		1163	1382	770	2757	760	
increase/decrease		30.50%	18.80%	-43.20%	234.50%	27.57%	
FMC							
Filed			2	175	1663	2752	(b)
+ transfers from FedCrt			0	563	480	258	
Workload		0	2	738	2,143	3010	
increase/decrease					190.40%	140.46%	
Fedcrt & FMC							
Workload		1163	1384	1508	4900	3770	= (a) + (b)
increase/decrease		30.50%	19.00%	10.00%	213.10%	76.94%	

**Federal Court of Australia
Migration Workload**

**Workload filings to 31 December 2004
Federal Court and Federal Magistrates Court**
(excluding applications remitted from the High Court)

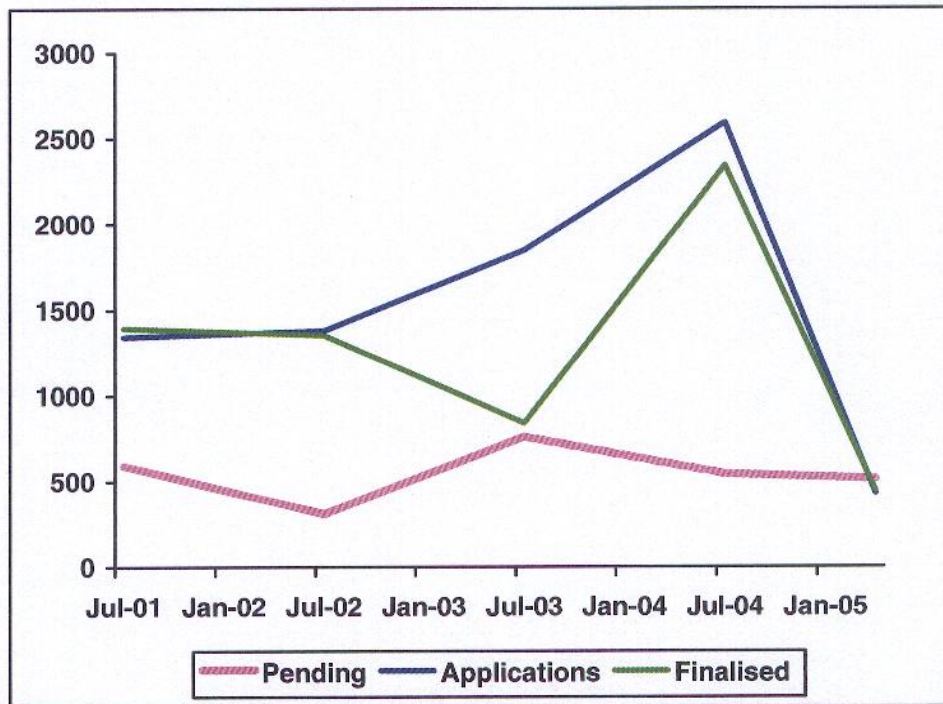


less H/C remittals		Calendar Year					Notes
Migration Workload		2000	2001	2002	2003	2004	
Federal Court							
Filed		1,123	1,379	1,295	1,046	857	(a)
+ remitted from H/C							
Sub-Total		1123	1379	1295	1046	857	
- transfers to FMC		0	0	563	480	258	
Workload		1123	1379	732	566	599	
increase/decrease		30.50%	18.80%	-43.20%	234.50%	105.83%	
FMC							(b)
Filed			2	175	1663	2752	
+ transfers from FedCrt			0	563	480	258	
Workload		0	2	738	2,143	3010	
increase/decrease					190.40%	140.46%	
Fedcrt & FMC							= (a) + (b)
Workload		1123	1381	1470	2709	3609	
increase/decrease		30.50%	19.00%	10.00%	213.10%	133.22%	

Federal Court of Australia Migration Workload

***Migration Act* matters filed, finalised and pending in the Federal Court**

The following figure does not include appeals or transfers to the Federal Magistrates Court. It does include matters remitted from the High Court.



Almost 80% of pending matters are less than 18 months old.

Judicial Officers' Bulletin

The Vexatious Litigant

Dr Grant Lester

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Increasingly common in our society is the persistent complainant who disrupts the work of complaints officers, ombudsmen, commissioners and, ultimately, tribunals and courts. In the process, they leave their own lives in chaos and show a significant potential for threats and violence. As government agencies, businesses, and professional organisations have established formal mechanisms for responding to complaints, so a small but vocal group of complainants has emerged which, by persistence and insistence, consumes disproportionate amounts of time and energy.

In attempting to understand and cope with the vexatious litigant, little account has been taken of well established literatures both in law and psychiatry.

The legal discourse is on the topic of the vexatious litigant. The psychiatric discourse is centred on querulous paranoia.¹

From the early eighteenth century, a small but significant group of the unusually persistent complainants and litigants brought psychiatry and the law together. The earliest forensic psychiatrists were exposed to litigants who did not simply complain, but who were relentlessly driven by a "pursuit of justice" which seriously damaged the individual's economic, social, and personal interests, and disrupted the functioning of the courts and/or

other agencies attempting to resolve the claims. The cascade in type and target of complaints over many years inundate the courts and also devastate the lives of the complainant.

To place this group, it is useful to view the spectrum of complaining behaviour.

A "normal" complainant believes they have experienced a loss. If the loss is evaluated as being caused by an external agent they may feel aggrieved. They may seek redress, usually in the form of reparation or compensation. The complainant *maintains perspective*, shown by the balance between the value of the loss and the effort (both physical and emotional) expended in the course of seeking redress, and the individual's ability to negotiate and accept reasonable settlement.

The "difficult" complainant also believes that they have experienced a loss. This complainant will generally attribute loss to external causes and become not only aggrieved but also, to varying degrees, indignant. This is because, cognitively, their egocentric view of the world centralises their own importance and devalues and dehumanises others. There are distinct themes of victimisation. Hence they feel angry, innocent of responsibility and a victim of an unjust act.

This is a heterogeneous group. There are those who are purely mendacious and avaricious, and whose indignation is counterfeit.

Difficult complainants may also suffer from a major psychiatric illness, most often schizophrenia. These complainants are easily identified as they have the general signs of the illness, are aggrieved primarily by feelings of persecution and victimisation, and the content of their complaints arises totally from their delusional beliefs, which are often bizarre and in a constant state of flux. As a result, it is often impossible to define, let alone resolve, their complaints. Their pre-existing major psychiatric illness requires treatment, rather than the complaint being initially addressed.

Others have egocentric personalities and are incapable of viewing any perspective other than their own. They are fearful and suspicious of others and a grandiose sense of entitlement has them constantly over-valuing their own worth. These chronic grumblers simply lurch from irritation to irritation ensuring that their whole life is a series of complaints.

At times, these chronic grumblers may become 'querulant' (morbid complainants). In general, they have a belief of a loss sustained, are indignant and aggrieved and their language is the language of the victim, as if the loss was personalised and directed towards them in some way. They have over-optimistic expectations for compensation, over-optimistic evaluation of the importance of the loss to themselves, and they are difficult to negotiate with and generally reject all but their own estimation of a just settlement. They are persistent, demanding, rude and frequently threatening (harm to self or others). There will be evidence of significant and increasing loss in life domains, driven by their own pursuit of claim. Over time, they begin to pursue claims against others involved in the management of claims, be it their own legal counsel, judges and other officials. While claiming a wish for compensation initially, any such offers never satisfy and their claims show an increasing need for personal vindication and, at times, revenge, rather than compensation or reparation.

Despite 150 years of psychiatric research into querulous paranoia, there is no consensus as to the underlying pathology. Theories range from an underlying organic disease process, similar to schizophrenia, through to psychogenic processes, that is, certain vulnerable characters are sensitised by certain life experiences and are then struck by a key event which triggers their complaining. Preceding the querulousness, they have often received some form of blow to their individual sense of self-esteem or security. This was often in the nature of a loss of relationship, through separation or death, ill health or loss of employment.

The key event is usually a genuine grievance and seems to echo previous losses. The key event is often of a type to threaten the (male) status symbols of prestige, position, power, property and rights. Environmental factors influence their complaint.

In general, these difficult complainants are middle-aged and males predominate 4:1.

Prior to the development of the complaint, they are reasonably high functioning, with a past history of education and employment. The majority of querulant complainants have had partners, however, their relationships or marriages are often failing or have ended. It is uncommon for them to have a past criminal history, psychiatric history or a history of substance abuse.

Their premorbid personality has been described by a variety of researchers over the years. Kraft Ebbing described them as having a "rough, irritable, egotistic personality, defective in their notions of justice".² Kolle described them as "restless, excitable, irritable, inflated self esteem, assertive, combative, defiant and fanatical".³ Ungvari described them as "inflexible with difficulties with intimacy, assertive, hyper-sensitive to criticism, and distrustful".⁴

They present as highly energised with labile emotions. They will have an overflowing suitcase, briefcase or box. They will appear to have pressure of speech such that interrupting them is difficult and they will speak to you as if you already know all the details of the case. Their speech is vague and full of unnecessary and often confusing and irrelevant detail.

Written communications have the appearance of having been written in excitement with numerous notes of exclamation and interrogation. These are often like a legal document except the entire surface is covered with script (including the margins). The substance is repeated in several different ways with undue grammatical emphasis and underlining. They will often refer to themselves in a third person legalistic style, for example, as "the defendant". Coloured inks are used for emphasis as are the star asterisk key and the use of capitalisation. Cut outs from newspapers, personal diaries and irrelevant materials abound. They will be initially seductive and recruiting, however, if you show any lack of response they rapidly become angry and will speak to you as if you are part of the persecuting opposition.⁵

Recent research has found that the majority of these individuals will commence litigation, and when and if they become exhausted, either through a lack of financial capacity, emotional exhaustion or through being declared a vexatious litigant, the complainant will now rest and recuperate in complaints departments and ombudsmen's offices.

In court they will nearly always be self-represented, as they desire vindication which is best gained through their "day in court". Their legal counsel will be viewed as an impediment, needlessly taking the focus away from themselves and "the truth" of the matter. They will appear legally hyper-competent, but will show no true understanding of the cases they cite. They will be disorganised and overwhelmed and will constantly request more time.

While not appearing low in mood, they will often describe the failure of their claim as life threatening and may overtly threaten suicide or violent consequences to those frustrating their efforts.

Past psychiatric management was dependent on the behaviour of the querulant. Those who made threats, harmed self or others were institutionalised. Prior to the advent of psychopharmacology, they showed a chronic waxing and waning pattern over decades. With the advent of anti-psychotic medication, it has become evident that use of this medication, along with psychotherapy, is able to normalise their behaviour and thinking over a period of months. However, the querulant rarely commences any treatment voluntarily.

Managing the persistent complainant

There are existing rules for courts to manage difficult complainants. Superior courts have inherent powers to prevent an abuse of process. The policy behind these powers is the protection of courts and the maintenance of public confidence in the administration of justice.⁶ To prevent an abuse of process, courts may strike out proceedings which disclose no reasonable cause of action or defence, or which may cause prejudice, delay or embarrassment in the proceedings.⁷ The courts may also prescribe certain procedures. For example, the court may restrain a litigant from making oral submissions by requiring that the litigant make submissions only in writing.⁸ There is a separate power to prevent a person exercising a right of access to the court.⁹ Under the *Supreme Court Act* 1970, a litigant may be declared vexatious on application by the Attorney General.¹⁰ A vexatious litigant is prevented from instituting proceedings in any court without leave of the court.

Management of the querulant broadly falls into three categories:

1. Management by staff of complaints and ombudsmans' offices, and by staff from, for example, registry offices or court libraries.
2. Management by the judiciary.
3. Psychiatric management.

For the purposes of this article I will only outline guidelines for judicial officers.

1. "First: Do No Harm". A medical aphorism which highlights your goals, which should be safety and containment rather than completion and satisfaction.
2. Recognition via the six V's — they display *volatile* emotions, feel *victimised*, seek *vindication*, produce *voluminous* and *vague* communications, and *vary* their demands.
3. Maintain rigorous boundaries. They will rapidly form attachments to those they feel are "favouring" them and feel catastrophically betrayed if the favourable treatment is not maintained.
4. They are responsive to hierarchy and the formality of court must be maintained.
5. While they appear legally hyper-competent, they have a very shallow knowledge of the law. All communication with them should be simple, repetitive, and there should be recognition that their understanding of the law is generally no deeper than the average citizen.

6. It is important to clearly and repetitively maintain their focus on what the court is able to offer in terms of outcomes.
7. More time granted will lead to more confusion. They are disorganised and overwhelmed and more time rarely changes this.
8. Take all threats seriously and be aware of the psychological, as well as physical, safety of self and court staff.
9. Any recommendation that they seek psychiatric support or evaluation will lead to extremely angry and potentially threatening responses. The role of psychiatry is generally limited. However, for those individuals who threaten self harm or harm to others, or carry out aggressive behaviour, mandated psychiatric treatment is important.
10. Never seek to specialise in an individual. Always share the load with others.

It is important to recognise that these individuals make threats of self-harm and violence to others. About 50 per cent will make threats of violence to others. It is unknown how many actually carry out those threats but it is not rare for secure forensic psychiatric hospitals to treat querulants who have threatened and harmed others.

It is probable that one is not born a querulant. The "key event" when it comes can be quite minor, however, it will often echo losses, recent or far past. They will become locked into a "pursuit of justice" which becomes the central preoccupying focus of their world and they will eventually sacrifice all other life domains for their quest. We are only just beginning to understand how to manipulate the environmental factors to improve the outcome for the individual locked into this destructive pattern of behaviour.

Endnotes

- 1 While the European ICD-10 remains more comfortable with the diagnosis of paranoia, it is now subsumed under the diagnosis of "delusional disorder — unspecified type" in the American Psychiatric Association, *Diagnostic and Statistical Manual*, 4th ed, 2002, Washington DC. Regardless of nomenclature, the diagnosis remains one which requires both psychiatric expertise and a fuller understanding of the balance of positive and negative consequences of such a diagnosis.
- 2 R Krafft-Ebbing, *Text Book of Insanity: Based on Clinical Observations. For Practitioners and Students of Medicine* (trans C Chaddock, MD), 1905, FA Davis Co, Philadelphia.
- 3 K Kolle, "Über Querulanten. Archiv für Psychiatrie und Nervenkrankheiten", 1931, Verlag von Julius Springer, Berlin.
- 4 GS Ungvari, A Pang, C Wong, "Querulous Behaviour" (1997) 37 *Medicine Science and Law* 265.
- 5 G Lester, B Wilson, L Griffin, PE Mullen, "Unusually persistent complainants" (2004) 184 *British Journal of Psychiatry* 352.
- 6 *Ridgeway v The Queen* (1995) 184 CLR 19 per Gaudron J at [31].
- 7 *Supreme Court Rules* Pt 15 r 26.
- 8 *Wentworth v Graham* [2003] NSWCA 307.
- 9 *Commonwealth Trading Bank v Inglis* (1974) 131 CLR 311.
- 10 *Supreme Court Act* 1970, s 84. See, for example, *Bahattacharya v Minister for Police* [2001] NSWCA 109.