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Psychological Dimensions of Access to Justice: An Empirical Study and Typology of Disputing Styles

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfillment of the requirements of the degree of Master of Laws (LL.M.)

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ABSTRACT

Many factors have been hypothesized to account for the fact that certain disputes become legal claims while others fail to escalate. This thesis argues that psychological factors play a major role in disputants' decisions to resort to the court system, and that a person's propensity to do so is a function of his/her attitudes toward State institutions and his/her personal disputing style.

This thesis is based on an empirical study exploring the existence of such disputing styles in the context of landlord-tenant relationships. Accounts of real-life disputes were gathered through interviews with tenants having recently faced problems with their landlords; four personality tests were also administered to the participants.

In this thesis, qualitative descriptions of 37 individual cases are used in order to build a typology of disputing styles. A statistical analysis of the role played by four personality traits in this typology is then undertaken.

SOMMAIRE

Plusieurs hypothèses ont été émises quant aux facteurs à l'origine du fait que certains conflits sont soumis aux tribunaux et d'autres non. Ce mémoire soutient que des facteurs psychologiques joue un rôle important dans la décision de recourir ou non au système judiciaire, et que la propension d'un individu à faire appel à ce système dépend de son attitude envers les institutions étatiques et de son style personnel de résolution des conflits.

Ce mémoire est basé sur une étude empirique visant à mettre à jour l'existence de tels styles de résolution des conflits dans le contexte des relations propriétaires-locataires. Des récits de conflits ont été recueillis de la part de locataires ayant vécu des problèmes avec leurs propriétaires dans un passé récent; des tests de personnalité ont aussi été administrés aux participants.

Dans ce mémoire, des descriptions qualitatives de 37 cas individuels sont utilisées pour bâtir une typologie de styles de résolution des conflits. Une analyse statistique de rôle joué par quatre traits de personnalité dans cette typologie est ensuite effectuée.

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INTRODUCTION

Two major concerns are presently at the core of much discussion of the capacity, role and limitations of the Canadian civil justice system. Some authors assert that people are becoming more and more dependent on the justice system for resolving their disputes, a situation likely to provoke a "litigation explosion". On the other hand, "access to justice" advocates claim that ensuring disadvantaged people a better access to the courts is the best, if not the only way, to bring them justice.

To determine if there is too much or not enough recourse to courts in Canada, one must first set standards about the ideal amount of litigation in society and decide what kind of problems courts should or should not be asked to resolve. Such decisions are always a function of a commitment to a defined idea of justice and of its relation to official law and the judicial system. Ultimately, reducing debates on justice to a determination of the appropriate amount of litigation in a society narrows the debate on justice issues to a matter of political or social choice.

Understanding the social phenomenon that lies behind litigation demands that more basic questions be addressed: how much court action actually is there, and what kind of action is it? Defining the roles courts should play largely depends on gaining a better understanding of what they actually do. Indeed, it is widely recognized today that one can not study the function courts fulfill in our society without studying the larger social context in which their activities take place.

Resorting to courts is but one means of resolving disputes that arise in everyday life. In fact, court activity represents only a marginal portion of all human activity concerned with dispute-solving and the search for justice. Several avenues are open to a person confronted with a problem: he/she can choose to negotiate a solution by him/herself, ask for third parties' help, resort to legal means such as negotiations through a lawyer, or a lawsuit, or an alternative mode of dispute resolution, or simply choose to "live with it".

A single dispute often involves a multiplicity of choices during the disputing process, each of these choices being influenced by litigants' subjective evaluations of possible costs and gains. The decision to resort to the court system is usually made only towards the last stages of this process.

This thesis argues that resorting to courts is ultimately a matter of personal choice. Even though the rules prevailing in Canadian courts may be more adapted to some types of problems, or more advantageous to a certain category of clientele, these differences do not account for the choices people make as to the pertinence of litigating their problems. Resorting to the judicial system is not solely the product of a rational cost/benefit analysis taking place within the individual but also a consequence of his/her attitude toward conflict in general and judicial means of conflict resolution in particular.

The main hypothesis underlying this thesis is that there exist such things as a conflict-solving styles, that are a function of one's personality. This conflict-solving style influences people's attitudes towards conflict and various means of conflict resolution, and the choices they make when they face a problem that could lead to a dispute. Filing a court action can therefore be hypothesized to correspond to a certain psychological profile.

This thesis is based on an empirical study that sought to explore the role of individual personality differences in decisions to resort to the court system in real-life settings. In this project, tenants having faced a problem related to their relationship with their landlord were asked to describe this problem and explain the decisions they made during the disputing process. Qualitative descriptions of these cases were used to highlight the roles of personal and situational characteristics in the decision to sue or not. A typology was then built in order to synthesize the data gathered and illustrate the commonalities and differences found between the participants interviewed. The scores obtained by the subjects on four different personality tests were also used to compare the different types of users and non-users of the Quebec Rental Board.

The first chapter of this thesis presents the literature reviewed in order to build the research framework, which is itself described in Chapter 2. A third chapter is devoted to the description and analysis of the data and the presentation of the typology of personalities. The relationships between a person's personality characteristics and his/her position in the typology is explored in Chapter 4. In a concluding chapter, the findings are summarized in view of their larger impact on traditional views of law reform.

CHAPTER 1: LITERATURE REVIEW

Almost everywhere around the world, the 20th century has seen the emergence or solidification of institutional complexes identified as national legal systems. In connection with the State, the new legal institutions purported to "encompass and control all the other institutions in the society and to subject them to a regime of general rules."[1] Disputes were to be solved by official institutions according to uniform legal rules. Justice was to be brought to the people. Access to justice became an important dimension of the official discourse on legal institutions, particularly in the past thirty years.

But access to courts is still more a myth than a reality. Even though many attempts have been made in numerous countries to increase the accessibility of courts, mainly by reducing litigation costs and lawyers' fees, court filings are still exceptional in regard of the overall number of problems that could be identified as legal ones. The analogy of the "tip of the iceberg" has often been used to describe this phenomenon: at the tip are those cases that are decided by a judge or a jury, and those that led to a court filing. Below the water line are the other cases, those that never reach the judicial system.

From a survey involving 1,000 American households, Miller and Sarat[2] evaluate at 5% of the reported grievances the number of cases that constitute the visible part of the iceberg. This number corresponds to only 11.2% of the total number of cases in which a claim was expressed and in part or totally resisted by the other party. Fitzgerald's study[3] of Australian cases reveals even less significant litigation rates (5.7%). In a study of problems encountered by Ontario citizens, Vidmar and Bogart[4] found that the cases that

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[1]M. Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law" (1981) 19 *Journal of Legal Pluralism* 1 at 19 [hereinafter "Justice in Many Rooms"].

[2]D.T. Miller & A. Sarat, "Grievances, Claims and Disputes: Assessing the Adversary Culture" (1980-81) 15 *Law and Society Review* 525.

[3]J. Fitzgerald, "Grievances, Disputes and Outcomes: A Comparison of Australia and the United States" (1983) 1 *Law in Context* 15.

[4]W.A. Bogart & N. Vidmar, "Problems and Experience with the Ontario Civil Justice System" in A. Hutchinson, ed., *Access to Civil Justice*, Toronto: Carswell, 1990, 1.

led to court action represented from 2% to 27% of the total number of problems experienced, depending on the category of problem. Moreover, these numbers refer to court filings and do not reflect the number of cases that are actually settled through the process of adjudication.

What happens to the other potential legal disputes? They are either "resolved" even before a claim is made, or settled between the parties, with or without the help of a lawyer or a mediation or arbitration agency. They constitute nonetheless the overwhelming majority of the problems and potential disputes occurring in people's everyday lives.

Many authors from different disciplines have tried to identify the main factors accounting for the fact that certain disputes become legal claims while others fail to escalate. Such an attempt requires not only a good knowledge of the functioning of legal institutions but also a broader understanding of disputing in modern societies.

According to Kidder,[5] there are 3 major research traditions about disputing and the disputing process. First, there has been work done on game theory and strategy analysis, especially as applied to labor and commercial relations. The second tradition refers to anthropological research on disputing in non-Western societies. Finally, much research has been undertaken on the institutions and processes of disputing in Western societies. To these three main categories, I would add a fourth one, which is comprised of the bulk of research made on procedural justice and the influence of perceived fairness on disputants' strategic choices.

From this literature, it is possible to extract three major kinds of factors that have been hypothesized to account for the use or non-use of available dispute resolution mechanisms by disputants. According to most sociologists and legal reformers, sociological factors, among which institutional factors, are the pivot of the litigation

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[5]R.L. Kidder, "The End of the Road? Problems in the Analysis of Disputes" (1980-81) 15 *Law and Society Review* 717.

phenomenon. Legal anthropologists rather tend to emphasize the influence of cultural factors on preferences for defined dispute resolution mechanisms. Finally, factors related to the individual characteristics of disputants have been explored in different kinds of studies.

In this chapter, the influence of these diverse categories of factors is studied throughout a review of the relevant literature. The impact of sociological factors on the disputing process is explored in a first section. A second section is devoted to the role of cultural factors. A third section focuses on social psychological studies on the relationship between personality and conflict resolution schemes.

1. Sociological factors

This section presents different studies having in common their emphasis on the role of objective barriers, i.e. barriers related to objective characteristics of people or judicial institutions, to account for the use or non-use of the official justice system as a dispute resolution mechanism. According to this "objective" approach, characteristics of disputants and their cases, as assessed by external observers, are pivotal in predicting their behavior. It presumes that is possible to influence litigants' behavior by reducing the role these factors play in the decision to litigate or not.

Tenants of this approach generally draw a relationship between equality of citizens before the law and equality of litigants before the courts. They combine concerns with access to judicial institutions with an interest in other, more egalitarian, forms of dispute resolution.

1.1 Traditional "Access to Justice" approach

From a liberal point of view, the "person" is an independent unit, capable of choice and empowered, whose rights have to be protected from others' actions. In this view, civil procedure is a mechanism for enforcing rights and protecting individual integrity. Therefore, courts are the forum through which disputes are and must be resolved in society.

With the recognition of second-generation human rights came the idea that the possession of rights is meaningless without mechanisms for their effective vindication. There was a shift from formal to effective equality of disputants before the law. From this perspective, civil procedure must be transparent, i.e. designed in such a way that it has no effect on the outcome of a case. Both disputants must have an equal possibility to resort to courts and be treated equally before these courts.

Following this assumption that equality can be achieved by ensuring equal access to rights-recognition procedures, "Access to Justice" reforms are most of the time based on the idea that the judicial system's transparency can be ensured through procedural reforms attacking access barriers.[6] Three distinct approaches to access to justice, often called the three "waves" of the movement, have emerged in Western countries since about 1965. The first wave's solution was the introduction of legal aid; the second wave was concerned with the legal representation of diffuse interests; the third wave combined these two first approaches with a new focus on "the full panoply of institutions and devices, personnel and procedures, used to process, and even prevent, disputes in modern societies."[7]

In these three approaches, an economic model of human behavior usually prevails: the individual is described as an interested person seeking to maximize his/her benefits. The choice to resort or not to the court system or to an other dispute-resolution forum is assimilated to a commercial transaction and described in terms of a cost/benefit analysis. Since the justice system is seen as a kind of "goods" that can be more or less appealing to consumers,[8] institutional factors, such as costs and delay, that have an influence on the "price" of court use, are hypothesized to account for the use or non-use of the justice

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[6]See D.M. Trubek, "Critical Moments in Access to Justice Theory: The Quest for the Empowered Self" in A. Hutchinson, ed., *Access to Civil Justice* (Toronto: Carswell, 1990) 107 [hereinafter "Critical Moments"].

[7]M. Cappelletti & B. Garth, eds., *Access to Justice, vol. I: A World Survey* (Milan: Sijthoff/Giuffre, 1978) at 49.

[8]See e.g L.M. Friedman, "The Idea of Right as a Social and Legal Concept" in J. L. Tapp & F. J. Levine, eds., *Law, Justice and the Individual in Society: Psychological and Legal Issue* (New York: Holt-Rinehart & Winston, 1977) 69 at 70: "Particularly on the civil side, the legal system is a kind of department store of goods and services, at which people are invited to shop and buy."

system. Therefore, economic models including these variables can be built and used to predict and influence "consumers'" behavior.[9]

Mainly on the basis of these economic models, concerns with access to justice for litigants not represented in courts led to reforms aiming at modifying the costs and benefits associated with court use by increasing courts' efficiency (e.g., delay reduction, procedural simplification...), reducing legal costs (*inter alia* by offering free legal services), and disseminating "legal information".

This traditional approach "does not suggest any bias in law and law enforcement against the poor, except that which results from the lack of a lawyer"[10] or the lack of a proper legal education. The presence of institutional barriers is hypothesized to be the best determinant of court use. Therefore, these studies look at the justice system most of the time from a "top-bottom" perspective: the only cases considered are those that are solved by the system.

1.2 Contextual approach

Assuming, as traditional Access to Justice tenants do, that delay, costs and complexity of litigation are the main determinants of lack of access, there is no doubt that measures such as the implementation of small claims courts or legal aid systems address concerns with justice accessibility. However, there is evidence that reforming the civil justice system in view of rendering it less costly and more user-friendly will have only a minor impact on the demographic of court users. Even after years of reform, there does not seem to exist

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[9] See e.g. F.M. Gollop & J. Marquardt, "A Microeconomic Model of Household Choice: The Household as a Disputant" (1980-81) 15 *Law & Society Review* 611, which presents a model destined to evaluate households' demand for dispute resolution goods and services based on the assumption that people invest time and money to resolve and prevent disputes, thus contributing to the formation of "legal welfare assets"; see also M.J. Trebilcock, "An Economic Perspective on Access to Civil Justice" in Ontario Law Reform Commission, *Study Paper on Prospects for Civil Justice* (Toronto: Ontario Law Reform Commission, 1996) 279 [hereinafter *Study Paper*].

[10] "Critical Moments", *supra* note 6 at 114.

major differences between the socio-demographic profiles of ordinary and small claims courts litigants.[11]

The "contextual" approach aims at accounting for these on-going differentials in access. Rather than focusing on the institutions mobilized by disputants, it is interested in the way disputes arise and are resolved in society in general. For tenants of this approach, disputes are not "things" that can be counted but social constructs. Their main objective is to build a theory of disputing encompassing not only the disputes resolved through judicial institutions but also disputes that fail to become legal claims.

The Civil Litigation Research Project (CLRP),[12] conducted by University of Michigan researchers at the end of the 1970's, is an excellent example of these studies that have sought to describe the process through which disputes are resolved. These studies are different from traditional access to justice studies in that they adopt a "bottom-up" perspective destined to place courts "in the context" of their relationships with society.[13] The "dispute therefore becomes a conceptual link between law and society".[14]

Disputes do not arise spontaneously but rather at the term of a long process during which a large number of decisions has been made by both disputants. According to Felstiner, Abel and Sarat,[15] the disputing process can be divided in three main stages: the naming stage (an injury is perceived), the blaming stage (the injury becomes a grievance by attributing its responsibility to someone's fault), and the "claiming stage" (the grievance is

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[11]For a recent example of differentials in access to small claims courts, see S.C. McGuire & R.A. Macdonald, "Of Magic Wands, Presto Justice and Other Illusions" (Paper presented to the Annual Meeting of the American Law and Society Association, Phoenix, 17 June 1994) [unpublished]; in regard to landlord-tenant problems, see C. Thomasset, *La Régie du logement à découvert* (Montreal: Louise Courteau, 1987).

[12]For a review of this project see the special edition of the *Law and Society Review*, vol. 15 (1980-1981).

[13]Other examples of bottom-up studies are "unmet needs studies", whose goals are to evaluate the number of cases that fail to reach the justice system (identified as needs) and propose solutions to respond to those needs: see B. Curran, *The Legal Needs of the Public* (Chicago: American Bar Foundation, 1977); C. Messier, *Les mains de la loi* (Montreal: Commission des services juridiques, 1975).

[14]D.M. Trubek, "Studying Courts in Context" (1980-81) 15 *Law and Society Review* 485 [hereinafter "Courts in Context"].

[15]W.L.F. Felstiner, R. Abel & A. Sarat, "The Emergence and Transformation of Disputes: Naming,

voiced to the other party.) A dispute arises only when a grievance is rejected in total or in part by the other party. It can then be transformed or not into a lawsuit.

"Contextual approach" researchers criticize the traditional approach for its focusing only on the last part of the disputing process, i.e. the transformation of disputes into lawsuits, therefore ignoring the role inequalities between disputants play in the earlier stages of the process. The idea behind "courts in context" studies is to obtain a sufficient amount of data on injuries, grievances and disputes to be able to compare the cases that reach the courts and those that don't, and to identify the factors influencing the transformation of an injury into a lawsuit.

The CLRP project and other bottom-up studies are based on a "modified stakes" model of disputing, incorporating in a classical economic model variables hypothesized to account for deviance from it.[16] These variables can be divided in two main categories: the parties' characteristics and the cases' characteristics. They have been tested by comparing Small Claims courts users and "aggrieved" non-users, mainly in Canada, Australia and the United States.[17]

The most interesting (though unexpected) finding of contextual studies concerns the very minor impact of "disputants' characteristics" on their choices: they generally fail to confirm the hypothesis that socio-demographic characteristics of potential plaintiffs play a major role in the disputing process. The fact that some categories of disputants seem to be absent from courts can not be accounted for by the presence of barriers affecting them particularly. Indeed, the correlation found between users' and non-users' gender, education, income, age or ethnic identity and their propensity to use the court system are

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Blaming, Claiming..." (1980-81) 15 *Law and Society Review* 631.

[16]"Courts in Context", *supra* note 14.

[17]See generally Miller & Sarat, *supra* note 2; Fitzgerald, *supra* note 3; N. Vidmar, "Seeking Justice: An Empirical Map of Consumer Problems and Consumer Responses in Canada" (1988) 26 *Osgoode Hall Law Journal* 757 [hereinafter "Seeking Justice"]; Curran, *supra* note 13. Similar studies have been made in regard to consumer problems: see e.g. M. Wall, L.E. Dickey & W. W. Talarzyk, "Predicting and Profiling Consumer Satisfaction and Propensity to Complain" and R.A. Westbrook, "Correlates of Post Purchase Satisfaction with Major Household Appliances" in R. L. Day, ed., *Consumer Satisfaction, Dissatisfaction and Complaining* Behavior (Bloomington: Indiana University, 1977) 91 and 85.

at most weak, if not non-existent. The best predictor of disputing behavior seems to be the type of problem involved, and differentials in access may therefore be explained by the fact that certain types of problems are more likely to affect certain categories of people.

The absence of any clear relationship between individuals' status and resources and their propensity to sue shows clearly that too simple an economic model is inadequate to describe human behavior. This led some authors to hypothesize the mediating role of variables of a socio-psychological type, such as the parties' relationships, their perception of their problems, their true motives, their conceptions of justice and social relationships, etc.[18] These variables are not "objective characteristics" of cases or individuals that can be observed from the outside, but rather subjective perceptions accessible only through contact with "informants".

1.3 ADR: making room for alternatives

In parallel with the "Access to Justice" movement, the Alternative dispute resolution movement (ADR) also seeks to provide the public with a more efficient, less costly, speedier and more accessible justice system. This movement is primarily interested in the psychological and relational costs of disputing, and particularly of the adversarial model of disputing offered by traditional courts of justice. The point of this approach is to address conflict in society at large by conceptualizing it as "a rupture of social relationships, to be processed so as to sustain the social nexus in which it arose, including to some extent the personal relationship between the disputants."[19]

ADR studies may be divided in two categories. First are those that criticize the level of adversariness of the adjudication system and point to the necessity of providing more

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[18] See the social psychological approach described in J. Fitzgerald & R. Dickins, "Disputing in Legal and non Legal Contexts: Some Questions for Sociologists of Law" (1980-81) 15 *Law and Society Review* 681; see also D. Coates & S. Penrod, "Social Psychology and the Emergence of Disputes" (1980-81) 15 *Law and Society Review* 655; Felstiner, Abel & Sarat, *supra* note 15.

efficient and satisfying modes of dispute resolution. On the basis of diverse criteria, such as outcomes, effects on social relations or litigants' satisfaction, some authors affirm the overall superiority of their favorite mode of dispute resolution, be it adversarial adjudication[20] or mediation.[21] Some rather make the assertion that certain forms of dispute processing are more likely to occur under certain social conditions, and insist on the necessity to "match" social organization and forum, i.e. to offer modes of dispute resolution corresponding to the particularities of the societies under study. For example, Felstiner affirms that, in societies that favor mobility, the costs of avoidance are lower than those of confrontation; therefore, people are more likely to walk away from disputes than to solve them.[22]

A second category of literature is concerned with the need to provide means of dispute resolution that are appropriate to the kind of conflict to be solved. It hypothesizes that certain dispute resolution modes are more appropriate to certain kinds of cases. Therefore, disputants should be provided with alternatives to courts, that is mediation and arbitration services as well as more "informal" adjudicative forums.

The challenge of this approach is to classify disputes in function of the forum hypothesized to be the best to solve them. This idea of classifying disputes, called "new formalism",[23] supposes that they are sufficiently stable and can be described in function of a limited number of variables.[24] This hypothesis has been tested by comparing cases resolved through adjudication, mediation and arbitration. Disputes' characteristics such as

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[19]Weinrib, L.E., "The Role of the Courts in the Resolution of Civil Disputes" in Ontario Law Reform Commission, *Rethinking Civil Justice: Research Studies for the Civil Justice Review*, vol. 1 (Toronto: Ontario Law Reform Commission, 1996) 305 at 314 [hereinafter *Rethinking Civil Justice*].

[20]J. Thibaut & L. Walker, *Procedural Justice: A Psychological Analysis* (Hillsdale, NJ: Erlbaum, 1975).

[21]C. McEwen & R. Maiman, "Mediation in Small Claims Court: Achieving Compliance Through Consent" (1984) 18 *Law and Society Review* 11.

[22]W.L.F. Felstiner, "Influences of Social Organization on Dispute Processing" (1974) 9 *Law and Society Review* 63; for a critique of this position see R. Danzig & M. Lowey, "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner" (1975) 9 *Law and Society Review* 675.

[23]For a review of the history of this approach, see Weinrib, *supra* note 19, at 312.

[24]For an example of taxonomy of disputes and dispute settlement institutions, see S.B. Goldberg, E.D. Green & F.E.A. Sander, *Dispute Resolution* (Boston: Little Brown, 1985).

admitted liability[25] or relational distance between the parties[26] has been found to have some impact on degrees of satisfaction and compliance with diverse disputes resolution modes' outcomes.

Many ADR studies hypothesize that dispute resolution mechanisms' characteristics, particularly their degree of adversariness, are an important element of the calculus of choice. Even though they are not ADR studies *per se*, "procedural justice" studies provide some insights into the role procedural considerations play in the disputing process. They focus on different factors as the reasons why people may prefer certain modes of dispute resolution over others.

In their classical work *Procedural justice*,[27] based on laboratory experiments, Thibaut and Walker focus on perception of control as the key variable affecting procedural justice judgments. According to them, process control is important to the extent that it provides disputants with control over the case through the process of evidence presentation. Tyler and Lind also conclude that procedural justice is one of the most important factors in determining which procedures will be preferred by disputants. But they see the importance of process control in procedural justice judgments as related to non-instrumental as well as instrumental concerns. Therefore, they conclude that people's preferences for a particular mode of dispute resolution are based on more than a desire for fair outcomes: "[p]rocedural justice involves more than questions of how decisions are made. It also involves questions of how people are treated by authorities and other parties."[28]

The ADR and procedural justice literature reveals that many factors are involved in the choice of and satisfaction with diverse modes of dispute resolution, and that these modes

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[25]See N. Vidmar, "Assessing the Effects of Case Characteristics and Settlement Forum on Dispute Outcomes and Compliance" (1987) 21 *Law and Society Review* 155.

[26]A. Sarat, "Alternatives in Dispute Processing" (1976) 10 *Law and Society Review* 339.

[27]Thibaut & Walker, *supra* note 20.

[28]T.R. Tyler & E.A. Lind, *The Social Psychology of Procedural Justice*, New York: Plenum Press, 1988 at 214.

are chosen for instrumental as well as non-instrumental purposes. Unfortunately, it often seems to be more concerned with determining which services should be offered than which ones are actually used or preferred and why.

1.4 Finding the case's match

The "access to justice", "courts in context" and "alternative dispute resolution" approaches to access to justice share one basic characteristic: they are all based on a functionalist assumption, according to which the role of dispute resolution institutions is to provide release of tensions in society. In Kidder's words, "the paradigm likens society to a pressure cooker with dispute processing mechanisms as relief values preventing social catastrophe."[29]

Even though the perspectives reviewed offer different solutions to the problem of access to courts, they share a common definition of the issue at stake as one of matching cases and forums.[30] They are all based on the assumption that there exists a "best way" to solve a dispute, and that this way can be rationally determined on the basis of objective factors. Therefore, it is possible to determine which cases should reach the courts and which ones should be solved through other modes of dispute resolution.

This supposes that people base their decisions about their disputing strategies on objective factors: they basically evaluate what is at stake versus the costs associated with each of the available choices. Even though they want to use the justice system, they are prevented from doing it by external factors related to their status. In this view, inequalities can be compensated by removing "objective" (i.e. economic) barriers to access. But reality seems to be much more complex than what this economic perspective proposes.

There is a lack of information in the literature as to what the real differentials in access to justice are, as well as the impact of the reforms made so far. As Ramsay states it, "assumptions about 'litigation explosions' or access problems remain untested, and

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[29]Kidder, *supra* note 5 at 718.

rhetoric continues to substitute for empirical data."[31] Without correlation between the number of lawsuits filed and the number of disputes, it is impossible to draw conclusions in respect the accessibility or inaccessibility of the judicial system. In addition, "we have almost no information of any description about civil justice in previous decades against which to compare contemporary statistics."[32]

However, the removing of many objective barriers to courts, as well as the greater availability of alternative modes of dispute resolution, does not seem to have modified the general portrait of litigiousness. Apparently, reformers' and lay people's evaluations of the "best ways" do not always correspond. One of the best illustrations of this phenomenon is what has been called the "paradox around mediation": Duffy, among others, deplores that there is relatively low demand for mediation services even though there is a great need for them.[33]

The functionalist paradigm basically presents the disputing process as a choice between many modes of dispute resolution made on the basis of their efficiency and the benefits they offer. But, as recent procedural justice studies suggest, the decision to resort to one or an other mode of dispute resolution also involves non-instrumental considerations. A greater number of factors than those included in classical cost/benefit models are at play in the litigation calculus. Even though these models could be (and have been) ameliorated to take into consideration factors related to the characteristics of cases or dispute resolution modes in addition to institutional factors, they are still unable to account for individual differences between "objectively" similar cases.

Since social psychological factors seem to play a major role in the litigation calculus, "many of the factors which determine the choice of dispute handling techniques are

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[30]See "Justice in Many Rooms", *supra* note 1 at 1.

[31]I. Ramsay, "Small Claims Courts in Canada: A Socio-Legal Appraisal" in C. J. Whelan, ed., *Small Claims Courts: A Comparative Study* (Oxford: Clarendon Press, 1990) 25 at 45.

[32] R.A. Macdonald, "Study Paper on Prospects for Civil Justice" in *Study Paper*, *supra* note 9, 1 at 21.

[33]See K.G. Duffy & P.V. Olczak, "Perceptions of Mediated Dispute: Some Characteristics Affecting Use" (1989) 4 *Journal of Social Behavior and Personality* 541.

simply not quantifiable in money terms."[34] To reach a deeper understanding of the disputing process, quantitative analysis must be complemented with qualitative observations.

2. Cultural factors

It is possible to study the mechanisms of conflict resolution from a qualitative rather than a quantitative perspective. Legal anthropologists have studied conflict in non-Western or "traditional" societies for a long time. Law in Western societies have also been studied by ethnographers trying to highlight the symbolic and cultural dimensions of legal phenomena.

According to these cultural studies, legal cultures differ from one society to another; the way disputes are resolved in a particular society depends on the culture prevailing in this society. In multi-cultural societies, many legal cultures and schemes of conflict resolution coexist. Some groups' ideological stances influencing their relationships to and conceptions of the State's judicial system, they are more likely than others to resort to this system.

The cultural approach has both descriptive and explanatory purposes. Cultures are described as ideologies carrying their conceptions of law, conflict and social order. Therefore, cultural conceptions are not always structurally or functionally congruent with patterns of official law. This incoherence is hypothesized to account for the existence of unofficial patterns of dispute resolution and the non-use of the official legal system.

2.1 Legal culture and procedural preferences

The conception of law as a cultural product is far from being new in sociolegal research. For Cotterell, for example, the term "culture" refers to "beliefs, attitudes, cognitive ideas, values and modes of reasoning and perception that are typical of a particular society or social group [...] a common outlook reflected in numerous aspects of collective life" and "[e]verything about law's institutional and conceptual character needs to be understood in

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[34]Fitzgerald & Dickins, *supra* note 18 at 692.

relation to the social conditions that have given rise to it."[35] The means and ends of law actually depend on culturally determined conceptions of justice and social ordering. These cultural conceptions also inform the scope of State law in social relations, and the way disputes are defined and solved in a particular society.

In legal anthropology, the notion of dispute has served as a common basis to study and compare culturally different phenomena (gossip, unstructured talk, local "institutions"...), labeled as "modes of dispute resolution".[36] In particular, attitudes of American and Japanese people toward litigation have been compared. It was hypothesized that low litigation rates reflect distinct cultural values, including a penchant for harmony accounting for Japanese "legal minimalism", whereas American individualism would account for their "litigiousness".[37] Diverse Western countries have also been compared in terms of their use of litigation.[38]

But it remains hard to determine if, in different countries, people's disputing behavior is related to their legal consciousness or to institutional constraints such as the costs and availability of diverse modes of dispute resolution. Whereas for Hamilton and Sanders,[39] legal culture shapes individual preferences and legitimizes structural arrangements, for Black, it is the unavailability of legal means of dispute resolution that forced Japanese to develop standards based on trust and honor.[40]

One way to minimize the importance of this legal structure/legal culture debate is to study the relationship between culture and preferences for certain modes of dispute resolution

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[35]R. Cotterrell, *The Sociology of Law: An Introduction* (London: Butterworths, 1992) at 23-24.

[36]For examples of field work based on "dispute theory", see L. Nader & H. Todd, eds., *The Disputing Process: Law in Ten Societies* (New York: Columbia University Press, 1978).

[37]See D.T. Johnson & S. Miyazawa, "Two Faces of Justice: A Milestone in Quantitative Cross-Cultural Research" (1994) 19 *Law & Social Inquiry* 667; T. Kawashima, "Dispute Resolution in Japan" in V. Aubert, ed., *Sociology of Law* (Harmondsworth: Penguin Books, 1969) 182.

[38]See for example H.M. Kritzer, "Propensity to Sue in England and the United States: Blaming and Claiming in Tort Cases" (1991) 18 *Journal of Law and Society* 400.

[39]V.L. Hamilton & J. Sanders, *Everyday Justice: Responsibility and the Individual in Japan and the United States* (New Haven: Yale University Press, 1992).

[40]D. Black, *Sociological Justice* (New York: Oxford University Press, 1989).

outside the structural frame. In a series of studies, Leung *et al.* presented people from different countries with conflict scenarios and asked them to choose between different means of dispute resolution (threatening, ignoring, mediating, negotiating...). Differences were found between cultures differing on degrees of femininity/masculinity (Canada and the Netherlands) and individualism/collectivism (China and the United States). But the results also suggested that cultural differences in preferences are not due to differences in values (e.g. the importance of animosity reduction) but to differences in beliefs that the chosen procedures are likely to advance valued goals.[41]

Using about the same method, Lind, Huo and Tyler studied the influence of gender and culture on preferences for dispute resolution modes among for ethnic groups (2 collectivist and 2 individualistic groups). Relatively small differences between the groups did not alter widespread preferences for two-party procedures over three-party ones. The differences noted also confirmed the hypothesis that cultural differences does not affect the importance of fairness in procedural choices but the degree of fairness associated to each available procedure.[42]

2.2 The ethnography of legal sub-cultures

Cultures are not only based on ethnicity. Many factors can account for differences in the way law and conflict are perceived and experienced by different people. Gender and religion are obvious examples of non-ethnic cultural determinants. Other determinants can be identified in definitions of culture encompassing more aspects of social life.

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[41]K. Leung, "Some Determinants of Reaction to Procedural Models for Conflict Resolution: A Cross-National Study" (1987) 53 *Journal of Personality and Social Psychology* 898; K. Leung, "Some Determinants of Conflict Avoidance" (1988) 19 *Journal of Cross-Cultural Psychology* 125; K. Leung *et al.*, "Effects of Cultural Femininity on Preference for Methods of Conflict Processing: A Cross-Cultural Study" (1990) 26 *Journal of Experimental Social Psychology* 373; see also P. Trubisky, S. Tingtoomey & S.L. Lin, "The Influence of Individualism, Collectivism and Self-Monitoring on Conflict Styles" (1991) 15 *International Journal of Intercultural Relations* 65.

[42]E.A. Lind, Y.J. Huo & T.R. Tyler, "And Justice for All: Ethnicity, Gender, and Preferences for Dispute Resolution Procedures" (1994) 18 *Law and Human Behavior* 269.

The existence of legal sub-cultures in Western societies has been investigated through anthropological research in a few American communities. Greenhouse[43] spent many years studying a Baptist community in an American suburb. She found that traditional hypotheses about non-litigiousness (such as lack of resources or knowledge) could not explain the Baptists' case. In her views, Baptists are not litigious because their ideology, based on their religious beliefs, cuts them off from all judicial resources and forms of overt disputing. For them, conflict is not a question of rules and personal interest but of spiritual state; they don't give external human authority any place in private relationships.

Baumgartner[44] studied the differences in perceptions and use of the court system among residents of an American suburb. She found a widespread ideology she called "moral minimalism", characterized by the prevalence of avoidance as a mode of dispute resolution, the conviction that conflict is a social contaminant and the belief that each has only minimal positive obligations to assist others. According to her, this ideology is characteristic of a particular pattern of social organization found in suburbia and involving independence, individuation, social fragmentation and social fluidity.

Merry studied two American neighborhoods to compare the behavior and attitudes of inhabitants of different areas of these neighborhoods. She found out that working-class residents, in opposition to elite and immigrant residents, were the ones that used the court system. For them, "recourse to law grows out of a sense of entitlement to law that is rooted in the history of the working-class of the region,"[45] whereas middle-class people tend to believe that resorting to court reveals a dependency toward the state that is contrary to their ideal of self-reliance. Self-reliance was also identified by Engel as a factor

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[43]C.J. Greenhouse, "Nature is to Culture as Praying is to Suing: Legal Pluralism in an American Suburb" (1982) 20 *Journal of Legal Pluralism and Unofficial Law* 17; C.J. Greenhouse, *Praying for Justice: Faith, Order, and Community in an American Town* (Ithaca: Cornell University Press, 1986).

[44]M. Baumgartner, *The Moral Order of a Suburb* (New York: Oxford University Press, 1988).

[45]S.E. Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago Press, 1990) at 29.

preventing members of a "close-knit community" from using the official justice system in cases of personal injury.[46]

These works illustrate the idea that disputes are not "facts" that can be counted and compared, but rather "cultural events, evolving within a framework of rules about what is worth fighting for, what is the normal or moral way to fight, what kinds of wrongs warrant action and what kinds of remedies are acceptable."[47] Resort to the court system fulfill many psychological as well as instrumental functions, and implies the existence of a particular mental frame, in which people see themselves as endowed with rights and entitled to the protection of the State. Therefore, litigating is ultimately a statement about the role of State authority in private relationships.

2.3 The nature of culture

The major advantage of the cultural approach is that it departs from an instrumental view of law. It offers a "revised notion of dispute which recognizes that social action is not entirely calculating and instrumental but is also affective, habitual and influenced by notions of rights and justice."[48]

Ethnological studies in particular are able to describe the decision to resort to the court system as a complex mental process involving personal views about social order and conflict. In each particular case, law is or is not part of a person's symbolic universe. The litigation calculus is not a "calculus" as much as a self-defining statement.

Views about conflict are related to one's self-image, and there is no doubt that culture is an important component of the self-defining process. However, much more is involved in one's view of him/herself than what was inherited from his/her cultural environment. The

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[46]D.M. Engel, "The Oven-Bird's Song: Insiders, Outsiders and Personal Injuries in an American Community" (1984) 18 *Law and Society Review* 551.

[47]S.E. Merry & S. Silbey, "What Do Plaintiffs Want? Re-examining the Context of Disputes" (1984) 9 *Justice System Journal* 151 at 157.

[48]*Ib.* at 155.

cultural approach, although it brings fundamental insights into the disputing process in society, is unable to account for inter-individual differences among members of the same cultural community. Moreover, the studies reviewed in the first section of this chapter suggests that ethnicity does not play a significant role in one's decision to resort to the court system. Therefore, a more encompassing view of the individual is needed to account for litigious behavior.

3. Individual factors

There is no doubt that both sociological and cultural factors play a major role in the way disputes are perceived and handled by different individuals. But these factors are unable to account for the fact two individuals sharing the same objective characteristics react differently. Cultural and social psychological studies have clearly highlighted the fact the decision to sue is made in the course of a reflective process taking place within individuals and involving numerous "subjective" considerations. They however have been unable to build a model of disputing incorporating these factors.

Psychologists have been concerned with person/situation interactions for a long time. They have built theories seeking to predict people's behavior in function of one or a few major factors. In situationist theories, situation accounts for people's behavior; for "traits" theorists, however, some stable personality characteristics called "traits" play this role, whereas person/situation interactions are at the core of interactionist theories.

Even though situational factors seem to play an important role in the way people make decisions about their own conflict-handling behavior, there also clearly exists individual differences in the way people apprehend conflict. Some are more likely to react in an emotional manner, others are more rational, some tend to avoid confrontation while others seem to like it, etc. These differences can be assimilated to "individual characteristics" or "personality traits", that are likely to influence both people's conflict-handling behavior and their propensity to use the official justice system.

3.1 Personal aspects of "litigiousness"

The idea that court use may be more appealing to certain types of persons is a relatively recent one. Friedman was among the firsts to suggest that litigiousness involves a particular "frame of mind". That "frame of mind that leads a person to assert a right is one of willingness to make demands on the State"[49] and is not culture-free. Moreover, since claim-consciousness is aggressive, Friedman suggests that only certain personality types are claim-conscious.

Abdennur shares this idea that "the institutions of a society have certain personal meaning for their members, and certain social arrangements have particular appeal to certain types of personality." Therefore, institutional arrangements establish a process of selection of "personality types who fit and adapt well to certain social institutions and thereby help to reinforce and strengthen the orientation of these institutions."[50] Authors interested in the dynamics of the disputing process have also suggested that people's personalities may have an effect on the way they perceive their problems and the available solutions.[51] But is it possible to associate a certain personality type with the use of the court system?

In their ethnographic study of small claims courts, Conley and O'Barr analyze the discourse of court users before, during and after the hearing. They describe two general orientations toward law and the legal system, the "rules" orientation and the "relationships" orientation, forming the extremities of a continuum. Rules-oriented litigants refer to legal rules; they feel comfortable with the evidence rules imposed and generally come from the public and business spheres. In contrast, relationships-oriented litigants generally refer to social standards or general principles of justice.; they exhibit a "powerless speech style" that make them less credible before a court than rules-oriented parties; they are often relegated to the social periphery. Conley and O'Barr observe that

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[49]Friedman, *supra* note 8 at 71.

[50]A. Abdennur, *The Conflict Resolution Syndrome: Volunteerism, Violence, and Beyond* (Ottawa: University of Ottawa Press, 1987) at 23.

[51]See e.g. the models described in Felstiner, Abel & Sarat, *supra* note 15, and Fitzgerald & Dickins, *supra* note 18.

the distribution of these two types of litigants among plaintiffs and defendants corresponds to a particular pattern: relational plaintiffs as well as rule-oriented defendants are uncommon. Therefore, they conclude that "the very act of going to court seems to presume some degree of attention to rules, as well as a belief in personal autonomy and power that is foreign to the relational orientation in general."[52]

If court plaintiffs correspond to a particular psychological profile, it should be possible to identify the components of this profile and label them using trait theories' classifications. Research on this topic is not quite developed. However, the next two sections present some findings pertaining to this question.

3.2 Personality and conflict-solving styles

In principle, trait theories of personality emphasize what an individual is like, without reference to specific situations. Therefore, "an implicit promise of trait theories is to account for consistency across a range of situations".[53] This notion of consistency is central to the status of traits as explanatory variables.

Behavioral consistency across different conflict situations has been investigated through the study of relationships between personality characteristics and expressed preferences for diverse modes of dispute resolution. In the "cooperation and conflict" field, many personality and attitudinal variables have been studied, most of the time through simulation games such as the "prisoner's dilemma", "nonzero-sum" or "chicken" games. After having reviewed these works, Terhune[54] concluded that a comprehensive study of cooperation and conflict must include personality variables.

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[52]J.M. Conley & W.M. O'Barr, *Rules versus Relationships: The Ethnography of Legal Discourse* (Chicago: University of Chicago Press, 1990) at 124.

[53]D.S. Moskowitz, "Cross-Situational Generality and the Interpersonal Circumplex" (1994) 66 *Journal of Personality and Social Psychology* 921 at 921.

[54]K.W. Terhune, "The Effects of Personality in Cooperation and Conflict" in P. Swingle, ed., *The Structure of Conflict* (New York: Academic Press, 1970) 193.

In order to test the hypothesis that people exhibit consistent "conflict-solving styles" across different situations, Sternberg and Soriano[55] confronted a group of undergraduate students to three types of hypothetical problems (interpersonal, interorganizational, international) and asked them to choose between seven "styles" of dispute resolution.[56] They also measured their ratings on seven personality[57] and cognitive variables.

They found that a lower reasoning ability was generally associated with conflict-intensifying styles; needs for deference, abasement and order were associated with conflict-mitigating styles, whereas needs for autonomy and change eschewed these styles. They concluded that "certain personal variables (intellectual level and personality needs) are at least moderately predictive of more or less preferred styles of conflict resolution."[58] Replicating this experiment using real instead of hypothetical problems, Sternberg and Dobson[59] still found consistency across situations, but notably weaker personality correlation.

If consistency seems to exist, it is not easily predictable from the personality scales used by Sternberg *et al.* Using other scales and real-life or simulated conflicts, other researchers investigated the role of basic needs[60] and other aspects of personality, such as the Jungian personality dimensions,[61] authoritarianism,[62] self-esteem and anxiety.[63] Their results

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[55]R.J. Sternberg & L. Soriano, "Styles of conflict Resolution" (1984) 7 *Journal of Personality and Social Psychology* 115.

[56]These modes were defined as: physical action, economic action, wait-and-see, accept, step-down, resort to a third-party, and undermining the esteem of the other party.

[57]The personality variables explored were the needs for deference, abasement, order, autonomy, change, induction, and endurance.

[58]Sternberg & Soriano, *supra* note 55 at 125.

[59]R.J. Sternberg & D.M. Dobson, "Resolving Interpersonal Conflicts: An Analysis of Stylistic Consistencies" (1987) 52 *Journal of Personality and Social Psychology* 794.

[60]R.E. Jones & B.H. Melcher, "Personality and the Preference for Modes of Conflict Resolution" (1982) 35 *Human Relations* 649; E.C. Bell & R.N. Blakeney, "Personality Correlates of Conflict Resolution Mode" (1977) 30 *Human Relations* 849; J.A. Schneer & M.N. Chanin, "Manifest Needs as Personality Predisposition to Conflict-Handling Behavior" (1987) 40 *Human Relations* 575; M.N. Chanin & J.A. Schneer, "A Study of the Relationship Between Jungian Personality Dimensions and Conflict-Handling Behavior" (1984) 37 *Human Relations* 863.

[61]R.H. Kilmann & K. W. Thomas, "Interpersonal Conflict-Handling Behavior as a Reflection of Jungian Personality Dimensions" (1975) 37 *Psychological Reports* 971; M.E. Barnett, "The Relationship Between

suggest that there may be stable personality dispositions associated with different conflict-handling styles. However, the effects found are most of the time quite weak.

3.3 Claim-consciousness as a personality trait

The relative failure of personality researchers may be related to the fact that they were overly ambitious in their attempt to associate such encompassing personality dimensions as basic needs or Jungian dimensions to conflict-handling behavior in all conflict situations. An other way of looking at this issue is to focus on the relationship between an observable real-life behavior, e.g. claiming behavior, and some precise attitudes or personality traits. That is what was done by "consumer behavior" researchers, interested in the way people react to unsatisfactory purchases, and more precisely in the factors that differentiate "complainers" from "non-complainers".

As in small claims courts studies, socio-demographic variables such as age, gender, income and level of education were first hypothesized to determine the propensity to complain. Best and Andreasen[64] found that households with high socioeconomic status were more likely to perceive problems related to unsatisfactory purchases and complain about them. In contrast, Kraft[65] found no significant difference in terms of education and income between complainers and non-complainers; he described the typical non-complainer as a socially isolated, rather than underprivileged, individual. Similarly, a study of four differentiated residential areas revealed no significant differences between these areas, and suggested that "socioeconomic factors - income, education - while important, do not

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Personality and Choice of Conflict Resolution Mode" (1990) 51 (5A) *Dissertation Abstracts International* 1504.

[62]S.K. Boardman, "Personality and Interpersonal Conflict: the Effect of Authoritarianism on Conflict Resolution Strategies" (1986) 47 (3B) *Dissertation Abstracts International* 1325.

[63]J. Sapan, "Response to Dyadic Conflict as a Function of Field Dependence, Self-Esteem and Anxiety" (1987) 47 (8B) *Dissertation Abstracts International* 3570.

[64]A. Best & A.R. Andreasen, "Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress" (1977) 11 *Law and Society Review* 701.

[65]F.B. Kraft, "Characteristics of Consumer Complainers and Complaint and Repatronage Behavior" in R.L. Day, *supra* note 17, 79.

differentiate disputing behavior a great deal better than residential area."[66] Vidmar's analysis of consumer problems in Ontario showed that "although there were demographic correlates involved in reporting of problems, such relationships were much weaker or non-existent when it came to complaint behavior, disputes, and outcomes."[67]

Which variables, other than socio-demographic characteristics, do influence the complaining process? According to Valle and Johnson, "attributions permeate the entire perception of the purchase and therefore mediate between the experience and the response of the consumer."[68] They found that the variable most strongly associated with taking no direct action was attributing responsibility to oneself, whereas taking direct action was associated with attributing blame to the company that sold the product. Similarly, Kraft found that "almost twice as large a proportion of consumers in the group of complainers perceived sellers as purposely deceiving, dissatisfying or defrauding."[69]

In his model of consumer behavior, Landon uses the attribution theory to describe consumer behavior as a function of dissatisfaction, importance of purchase, perceived benefits of complaining and personality variables. He describes ego-involvement as a determinant of consumer behavior: "consumers who are highly ego-involved with a product are more likely to believe that discrepancies between performance and expectation are important. Whenever a consumer feels "had" by a salesman or misled by an advertisement, s/he may become angry."[70] He also states that personality plays an important role in itself, in that it may predispose certain consumers to "find fault with retailers and producers", "possess more consumer discontent than others" or feel "less

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[66]J. Ladinsky & C. Susmilch, "Major Findings of the Milwaukee Consumer Dispute Study" in L. Ray, ed., *Consumer Dispute Resolution: Exploring the Alternatives* (ABA Special Committee on Alternative Dispute Resolution, 1983) 147 at 178.

[67]"Seeking Justice", *supra* note 17 at 793.

[68]V.A. Valle & E.J. Johnson, "Consumer Response to Product Quality" in I.H. Frieze, D. Bar-Tal & J.S. Carroll, eds., *New Approaches to Social Problems* (San Francisco: Jossey-Bass, 1979) 109 at 125.

[69]Kraft, *supra* note 65 at 80.

[70]E.L. Landon, "A Model of Consumer Complaint Behavior" in R.L. Day, *supra* note 17, 31 at 33.

self-assured in the conflict resolution setting".[71] He suggests that people's "locus of control", that refers to their predisposition to attribute the responsibility of events to themselves (internal orientation) or external agents or "luck" (external orientation), influences their behavior: externals would be more likely to complain about unsatisfactory situations.

The role of self-confidence was investigated by Wall, Dickey and Talarzyk,[72] who found that consumers were more likely not to report a problem if they characterized themselves as shy, withdrawn, lacking self-confidence, and going along with the group. Westbrook[73] found that people's satisfaction with their major appliances was related to their feelings of personal efficacy, a construct combining the notions of life outlook, ego strength and internal orientation. Jaccoby and Jaccard[74] also that personality variables such as self-confidence, assertiveness and locus of control have an influence on consumer behavior.

Vidmar's study of consumer behavior in Ontario[75] represents the first attempt to build a scale destined to measure a construct encompassing a number of characteristics called "claiming-propensity".[76] This scale was administered to small claims courts users and non-users, whose scores were then compared. Users proved to exhibit a significantly higher claiming-propensity. High scorers were also more likely to report having experienced more problems, to register a complaint, and to be less satisfied with outcomes. When asked to choose between different dispute resolution procedures, high scorers rated adjudication higher and mediation lower than low scorers. The only socio-

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[71] *Ib.* at 32

[72] Wall, Dickey & Talarzyk, *supra* note 17.

[73] Westbrook, *supra* note 17.

[74] J. Jaccoby & J. Jaccard, "The Sources, Meaning and Validity of Consumer Complaint Behavior: A Psychological Analysis" (1981) 57 (2) *Journal of Retailing* 4.

[75] "Seeking Justice", *supra* note 17. The part of this study dealing with claiming-propensity is described in greater details in N. Vidmar & R.A. Schuller, "Individual Differences and the Pursuit of Legal Rights: A Preliminary Inquiry" (1987) 11 *Law and Human Behavior* 299.

[76] A first version of the scale combined aggressiveness, assertiveness, competitiveness, perceptions of control, preference for risk and preference for winning over compromise. A second version comprised aggressiveness, assertiveness, competitiveness, preference for risk and preference for winning over compromise, outspokenness, attribution of blame to others and willingness to complain.

demographic associated with claiming-propensity was gender. Vidmar and Schuller conclude that "the robustness of the effects - across domains, across content areas, and across populations - is striking" and that "given the host of factors that may influence claiming behaviors, finding such consistent effects at all is somewhat remarkable."[77]

However, claim consciousness is a much more complex phenomenon than what the idea of "claiming-propensity" suggests. Even though Vidmar and Schuller's results are quite interesting, "they do not necessarily imply that high scorers are difficult, unpleasant people or that low scorers are retiring "wimps". High scorers may be contentious in making their claims or they may be polite but insistent upon getting what they feel is their due. Similarly, it should not be inferred that low scorers will always be passive and retiring."[78]

In summary, the studies reviewed in this section suggest that personality may have an impact on how people react to conflict. Unfortunately, the personality dimensions that have been tested so far in relation to claiming behavior or court use in itself are not numerous and at best only weakly significant. Many studies describe behavior observed in laboratory instead of real-life settings. Moreover, most studies of conflict or claiming behavior do not differentiate between resort to a third party such as the media or a governmental agency and resort to the court system.

Resorting to the court system involves more than a "propensity to complain" or to react to an unsatisfactory situation. It supposes also that claim-conscious people perceive their problem as one that can be solved effectively through the court system. The notion of claiming-propensity does not tell much about the dynamics of the claiming process in itself. The origins and effects of claim-consciousness can be understood only in the context of real conflict situations. Drawing the portrait of litigious and non-litigious people requires a deep knowledge of the psychological process underlying the decision to

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[77] Vidmar & Schuller, *supra* note 75 at 313.

[78] *Ib.* at 314.

sue and raises many questions: in which situations does claim-consciousness make a difference? What are its effects? Are there just one or different types of litigiousness?

4. Conclusion: what do we need to know about litigiousness?

The decision to sue is made during a process involving many other decisions as well. The literature reviewed in the preceding sections reveal that many authors have tried to understand and model this process, dividing it into stages at the end of which the judicial system was to intervene. According to them, resort to the court system was to be considered as a last resort in cases in which all other dispute-solving strategies had failed. This perspective, although logical and simple, presents disputes as uniform and comparable events: people all name, blame and claim, no matter how they do it. But it does not provide any insight into what precise actions are taken by disputants at each of these stages, and what factors lead them to pass from one stage to the other.[79]

This failure of past studies to draw a model of disputing coherent with the phenomena observable in the field can be partly explained by the inadequacy methods employed so far in this type of research. From a methodological point of view, the existing studies on litigiousness and disputing can be divided in two major types that both present important limitations.

First, in sociological and psychological literature, a methodology based on modeling and hypothesis-testing is usually used. A theory of disputing is elaborated, most of the time independently from direct observation. The disputing process is divided in distinct phases. In each of these phases, different factors are hypothesized to account for inter-individual differences. Projects are then designed to test the relationships between one or many of the factors identified and a certain type of behavior.

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[79]Such an approach is compatible with the use of quantitative methods of research; however, it tends to lead to the elaboration of research frameworks that "count" disputes rather than describe them; it suggests that all the kinds of behavior labeled "injury perception" or "grievance expression" have the same meaning for the actors involved. See for example the research designs used by Miller & Sarat, *supra* note 2, and in "Seeking Justice", *supra* note 17.

The fact that these studies failed to find relationships confirming the accuracy of the models built can be related to two major causes. First, for a survey methodology to be appropriate, there must exist a direct and stable relationship between two variables observed by the researcher. But in fact the variables involved in a process are most of the time closely interdependent. The role of one variable often depends on its combination with other variables that might not be "controlled" in the research design. Second, retrospective surveys[80] are inappropriate to the study of processes. Variables might play a very different role at each stage of the process observed; these differences are only observable through detailed longitudinal studies.[81] A good example of this is research on conflict and personality, that has so far been limited to studying relationships between certain personality traits and observed or reported behavior. Since a defined personality characteristic can be associated with many types of behavior,[82] court use can satisfy different needs for different persons. Therefore, to understand the role of personality (and any other factor) in the disputing process, it is necessary to observe its effects on the entire process, going from the way people identify and describe their problems to the decisions they make about the ways to solve them.

In contrast, ethnographic studies,[83] that form the second type of studies on disputing, do not seek to test hypotheses but to derive them from direct observation. They are for limited in their scope, their major objective usually being to shed some light on a precise part of the disputing process, and focusing on one particular variable. This variable (generally cultural factors) are then described as explanatory factors for deviations observed in Population A from a standard model of disputing existing in the population at

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[80]Retrospective surveys aim at getting descriptions of past events, mainly through the administration of a questionnaire formed of a checklist of variables hypothesized to play a role in the process under study; the relationship between a variable and the phenomenon it is supposed to explain is presumed constant.

[81]Longitudinal studies are designed in order to get many descriptions of an event as it evolves through time; this kind of design allows the researcher to identify the variables at play at each stage of the process.

[82]For example, aggressiveness can lead to court use only for people for which it constitutes a form of aggression.

[83]Ethnography is concerned with the scientific description of cultures, rather than scientific explanation of phenomena; "variables" are not part of the research design but are eventually deducted from data. One goal

large. Unfortunately, the results obtained, although interesting, can hardly be generalized to other populations than those directly studied.

The theories reviewed so far try to account for one's propensity to resort to the court system by focusing on one or the other types of "barriers to access": objective (costs, delay, physical inaccessibility, complexity of the system...) and subjective (cultural background, perceptions, knowledge of one's rights...). But "this dichotomization of objective and subjective, like all dichotomies, fail to direct our attention to the inter-relationship, indeed inter-dependency, between the (ostensible) polarities within the dichotomy. Are not costs subjective in the sense that they are only an impediment if one is not very well-off? And is not one's distrust of the legal system objective in the sense that it is the past performance of that system which informs the distrust (it's something more than a whimsy, or a intuitive feeling)."[84]

Indeed, the influence an external factor is likely to have on the decision-making process depends on its relevance to the particular way the decision-maker defines his problem and the available solutions. In each situation, it is the individual who subjectively determines which sociological, cultural or institutional factors will be significant. According to Lewin, "to understand or predict behavior, the person and his environment have to be considered as one constellation of interdependent factors"[85] that he calls a "field". This field is the "life space" of the individual, i.e. the person and environment *as it exists for him/her*. The life space includes only the facts that have existence for the individual under study at a conscious or unconscious level. It is therefore the individual himself who determines which variables must be taken into account by the researcher.[86]

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of ethnography is to account for inter-individual behavioral differences by focusing on cultural differences between social groups or sub-groups.

[84] I. Morrison & J. Mosher, "Barriers to Access to Civil Justice for Disadvantaged Groups" in *Rethinking Civil Justice*, *supra* note 19, vol. 2, 637 at 649.

[85] K. Lewin, *Field Theory in Social Sciences* (Harper, 1951) at 240.

[86] For example, the "expensiveness" of a remedy is primarily a matter of the price an individual is willing to pay for it. In addition, this price must incorporate psychological costs associated with the use of "dispute resolution goods". These costs are far from being uniform from one individual to the other. From a field theory perspective, any variable can be considered an explanatory variable only if the subject

New developments in the study of legal disputing are contingent upon our capacity to describe the process through which individuals transform injurious experiences into legal claims. An accurate description of disputing behavior must account for the fact that subjective perceptions play a central role in the disputing process. The success of such an undertaking depends on the use of anthropological methods of research implying a high level of rapport between researcher and informants.[87] Hypothesis-testing methodology has to be replaced with an inductive methodology, in which variables are to be identified and their role inferred from direct observation.

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has described his/her own behavior as conditioned by this variable (e.g. "as a woman, I could not do anything"...); most of the time, variables such as gender or ethnicity, which can be seen as much as social constructs than as personal characteristics, will be discarded in favor of variables describing the subjective components of this construct (e.g. femininity can be associated with powerlessness, tenderness, ...).

[87]See Felstiner, Abel & Sarat, *supra* note 15.

CHAPTER2: METHODOLOGY

This project is based on the hypothesis that there exist differences between people who resort (users) and do not resort (non-users) to the State legal system as a means of dispute resolution. Through the exploration of these differences, it aims at getting a better understanding of the psychological process underlying the transformation of injurious experiences into disputes, and, eventually, into legal claims. Its major objective is to account, by means of a typology, for the variety of possible reactions to a particular kind of situation of conflict. It is concerned with the description of these different types of reactions, as well as the dynamics that lead to the emergence of one type of reaction or another.

Due in part to its exploratory nature, this project does not seek to build a model or a theory of disputing. Its objective is not to test pre-formulated hypotheses about the disputing process but to bring to light the multiplicity of factors involved in this process and explore their interplay. In this framework, hypotheses are to be derived from observation.

A particular focus of this project is the interplay between individuals' personalities and their reactions to conflict. During field work and data analysis, special attention was brought to the role of personality factors. As a complement to the typology, the relationships between an individual's personality traits and his/her belonging to one type or another is explored.

The first part of this chapter is dedicated to a description of the general methodological framework on which this project was built. A second part describes in greater details the particularities of the work done during the three distinct phases of field work.

1. General methodological framework

There exist important differences in the way people claim what they think is their due and attribute the responsibility for their problems to another party. These differences are hypothesized to have an impact, although indirect, on these people's propensity to resort to the court system. This thesis seeks to identify some of the major factors accounting for one's decision to litigate.

Exploring the disputing process is a never-ending undertaking; getting an accurate understanding of it would necessitate an overwhelming amount of data. In the course of a project like the one described here, only a limited number of situations can be observed. The situations from which the data exposed is extracted do not in no way pretend to constitute a representative sample of disputes arising in everyday life. In any event, it seems almost impossible to determine of what such a representative sample might consist.

Field observations made in the project are therefore not statistically significant and the conclusions drawn can only be suggestive of the existence of certain phenomena in an undetermined numbers of situations. Although these conclusions may be taken as unproved, they can however provide useful information for a further more elaborate study of disputing processes.

This research resorts to techniques used by ethnographers and destined to let the "subjects" under study express themselves as freely as they wish. It aims at getting detailed subjective descriptions of situations of conflict that were or could have been solved through the court system, and identify the variables listed by disputants to account for the behavior they exhibited in these situations.

In addition, it seeks to evaluate on a qualitative basis and measure on a quantitative basis the influence of the disputants' personality traits on the decisions they made. These two goals are closely interrelated: the way people define and talk about their lives depends on

their views of themselves and their personalities. In the same way, personality expresses itself through discourse and behavior.

1.1 Choosing the object of study

Since the project focuses on inter-individual differences, it was important as a first step to reduce the effects of other variables. In order to minimize the impact of situational or institutional factors, subjects had to be selected on the basis of the commonalities between their problems. A single area of disputing had to be chosen.

Landlord/tenant relationships seemed to constitute a good focus of study for many reasons. First, landlord/tenant problems are under the exclusive jurisdiction of the Quebec's Rental Board, rendering litigants easy to locate. Second, the Board is relatively well-known, and objectively accessible; fees and delay are quite reasonable. Therefore, economic factors could be hypothesized to play at best a minor role in the decision to resort to the Board.

The Rental Board does not fulfill the same functions for all plaintiffs. For landlords, going to the Board is most of the time a way to get rid of an insolvent tenant. For tenants, it is rather a way to oppose to rent increases, force a landlord to fulfill his/her obligations or obtain rent reductions. Therefore, the role of the Rental Board in the resolution of landlord/tenant conflicts could be studied from two radically different perspectives: a "tenant" or a "landlord" perspective.

The "tenant" perspective was chosen for many reasons. First, tenants are offered a wide range of alternatives to court use, going from "lumping" to negotiating or moving. Second, they perceive their problems in emotional as well as economic terms and are more likely to be ego-involved in the disputing process than landlords. In addition, many community organizations exist that help tenants to solve their housing problems and are able to provide an access to a certain type of disputants.

1.2 Interviewing

Forty-seven (47) semi-structured interviews were conducted in the three phases of the project. In this type of interview, the interviewer informs the participant of the main themes to be covered during the interview, while letting him/her select and develop the aspects of his/her experience he/she sees as the most important. The interviewer's task is mainly to ensure that every aspect of the problematic to be explored was covered. This interview format does not involve the use of a questionnaire as such; rather, a list of questions is used by the interviewer as a reminder to ensure the collection of reliable and collectable data.[88]

The interview guides designed were not destined to provide a defined set of answers to precise questions; they were composed of a series of themes that could or not find a place in the subject's story. Questions aimed at bringing to the subject's mind some elements he/she might not have thought of during the interview. He/she could then choose to elaborate or not on that topic.

In the second and third phases, the interviews were oriented around two axes: what the subjects did to solve their problems, and the reasons why they behaved that way. The first axis was designed in order to list the strategies used, in conjunction with or instead of court use, and explore the possibility that personal conflict-solving styles may have an effect on strategic choices made by disputants. The second axis provided insights into the factors accounting for the decision to sue or not.

Most interviews were conducted at the participants' places of residence, except for 4 of them that took place at their places of work or in restaurants. All interviews but two were conducted in French. Nobody but the interviewer and participant was present during the interviews. Each lasted between 30 and 120 minutes. All interviews were recorded, taped

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[88] For a comparison of semi-structured interviews with other types of interviews, see H.R. Bernard, *Research Methods in Anthropology*, 2nd ed. (Thousand Oaks (CA): Sage, 1994) at 208ff.

and fully transcribed, each transcript being composed of 6 to 22 pages. A total amount of about 450 pages of transcript was analyzed.

1.3 Sampling

In a typological work aiming at bringing to light of a variety of reactions, the goal is not to study a representative sample of a population but to make room for diversity. No special attention was paid to participants' socio-demographic characteristics or socio-economic status. The techniques used to make contact with eventual informants in each stage of field work are described later in this chapter.

1.4 Data analysis and typology building

People met in the course of this project provided quite various visions of the factors influencing the course of a landlord-tenant relationship. One of the first goals of the project was to synthesize their points of view in such a way as to highlight their commonalities while acknowledging the particularities of each case.

This task proved to be quite difficult: the participants used diverse speech styles to describe realities that seemed, at least at first sight, hardly comparable. Some gave a very personal account of a story that had had an important emotional impact in their lives whereas others were more concerned with giving an accurate portrait of the factual situation. A good proportion of the participants made their stories look like tales of personal growth, focusing on personal factors such as their personality characteristics, personal preferences or state of mind (vulnerability, exhaustion...) at the time of the conflict. The rest of the participants rather emphasized the role of objective factors such as moving costs or the absence of judicial remedy to justify their behavior in a "rational" way.

The number of differences observable among users and non-users revealed the impossibility and uselessness of considering them as two homogeneous groups. Besides, commonalities seemed to exist between certain users and non-users. A typology

accounting for the diversity of reactions observable among users and non-users seemed the best way to accurately describe inter-individual differences, while acknowledging the importance of commonalities.

Instead of focusing on actual behavior as reported by participants, a typology aims at describing inter-individual differences in psychological reactions to a problem. It focuses on commonalities and differences between persons in a comparable situation. Each subject is not classified on the basis of his/her actual answers to a set of questions, but in function of his/her "profile", i.e. his/her possible reaction to an "ideal" situation of conflict.

Typologies are not purely descriptive. The goal is not simply to list the factors that differentiate one type of persons from the others, but rather, through classification, to rend these persons' behavior intelligible. Types are to be built not on the basis of observation alone but through the use of hypotheses about the factors determining or influencing the phenomenon observed in each case.

In this context, particular attention must be paid to the possible relationships existing between the variables at play. These relationships may suggest the existence of some typical combinations of them, associated to particular types of reactions. A typology does not seek to provide an exhaustive list of categories describing all possible reactions to a situation. Instead, data is assembled to throw light on conditioning relationships and causative factors, whose role vary from one type to the others.[89]

Typology building involves two distinct steps. First, data must be reduced to a comprehensive set of variables to be compared from one subject to another. Second, hypotheses must be drawn as to which factors account for these individual differences. At

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[89]See J. Lofland & L.H. Lofland, *A Guide to Qualitative Observation and Analysis* (Belmont, CA: Wadsworth, 1984) at 96: for Lofland & Lofland, the use of a typology is appropriate when the units under study seems to possess some complex but systemic interrelation. Typologizing then permits to "discover what the interrelation is by specifying a small number of relevant variable factors whose *conjoint* variations accurately incorporate the patterns you have already discerned (and usually point out still others you have not yet fully contemplated)".

this point, a typology can be derived that not only describes behavior but allows one to understand the logic behind them.

Two typologies were built, the first one from the interviews conducted in Phase 2 of the project, and the other one for the subjects constituting the main sample (Phase 3). The same methodology was used in both cases.

First, in order to provide some basis for comparison between the accounts given, some topics that were present in all or almost all the interviews were chosen. Each interview was then analyzed in function of these topics. Subjects were characterized in terms of the behavior they reported to have exhibited, the motives they put forward to account for this behavior and their attitudes toward the legal system in general. Commonalities and differences between the accounts given were identified. This exercise provided a first basis for comparison between the subjects.

Then, each account was reinterpreted in order to throw light on the relationships between psychological reactions observed and the variables identified. In the case of the main sample, two kinds factors emerged as determinant for the intelligibility of the reactions observed: the person's attitudes toward conflict in general, and his/her attitudes toward the State. Along each of these two axes, cases were then grouped by types in function of the particular mental processes uncovered by analysis.

2. Phases

Two preliminary phases preceded the main stage of field work. The methodology of the project was revised after each preliminary phase. In the absence of literature dealing specifically with the kind of disputes under study, it was difficult to elaborate a pre-defined list of variables to be explored in the main project. It was necessary to get a better knowledge of the dynamics of landlord/tenant relationship and the role of the Rental Board. The final objective of the first two phases was to select, among all the factors enumerated in the literature, those involved in tenants' decision to litigate, and then to explore the possible role of personality traits.

2.1 Phase 1: Exploratory interviews, 1st series

2.1.1 Sampling

This series of interview aimed at getting a basic knowledge of the general phenomenon to be studied. Specialists whose jobs involved working with injured tenants were chosen as first participants. It was hypothesized that, since they had been in contact with a large number of "injured" tenants, they were in position of distinguishing litigants from non-litigants and drawing their portraits.

Exploratory interviews were conducted with employees of the Rental Board (2), lawyers often representing tenants before the Board (4), and employees of community organizations specialized in legal assistance to tenants (4).

The persons interviewed were contacted through the intermediary of the Rental Board or community organizations. They were chosen in function of their availability and the time they had been in contact with the kind of clientele susceptible to use the Rental Board.

These interviews focused mainly on the profiles of the tenants that generally use the Board or show a certain reluctance to do so.[90] They also included questions on how the person conceived of his/her role as a lawyer, community worker or Rental Board's employee.[91] Finally, the interviews provided general descriptions of typical disputing situations that involved or did not involve the Rental Board.[92] The interviews lasted about 30 to 60 minutes each.

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[90]The participants were first asked to describe their habitual clientele by answering questions such as the following: what kind of persons resort to your services? Compared to all the tenants that face a problem with their landlords but don't resort to your services, would you say your clients share some special characteristic? If you had to classify your clients in different categories, what would be these categories?

[91]This part of the interview aimed at getting a better understanding of the kind of support tenants are likely to look for in the course of a dispute; some of the questions asked were: how do you conceive of your role toward your clients? What advice do you give them most of the time?

[92]Participants were asked to describe a typical scheme of dispute resolution for each category of clients enumerated: would this person go to the Rental Board? Under which circumstances? If not, what would

2.1.2 Preliminary findings

The interviews confirmed the unstated hypothesis that certain "types" of people react differently to the same kind of situation. Eight interviewees out of ten divided their "clientele" in two main categories.

In the majority were "deprived" people, characterized by their dependence on external resources to solve their problems and their desire to delegate their responsibilities to another person. "Deprived" tenants do not know how to solve their problems and expect the other person to make decisions for them. They consult lawyers or community organizations to satisfy their need for emotional support rather than to get strictly legal advice. The second category of tenants is composed of "fighters", who are looking for advice or technical support but make decisions and take initiatives by themselves. According to the specialists interviewed, one's characterization as a "deprived" or as a "fighter" is not related to his/her socioeconomic status or objective resources.

Although differences between "deprived" and "fighters" does not provide information on their respective propensity to use the court system, they suggest that the context in which they do it might be different from one category to the other. The reasons why a "deprived" will go to the Rental Board are likely to be different form the ones leading a "fighter" to do the same thing.

2.2 Phase 2: Exploratory interviews, 2nd series

Since personality seemed to play in the way tenants cope with their problems, a second series of interviews aimed at exploring this role through some real stories of tenant/landlord conflict. This series of interview had two major objectives: to observe directly in the field the phenomena described in the first set of interviews, and to identify the factors appearing as the most significant in the disputing process.

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he/she do? Is this person a repeat or one-shot user of the kind of services you offer? Is he/she likely to encounter this kind of problem repeatedly?

2.2.1 Sampling

Subjects were found through the intermediary of lawyers or community organizations. Seven interviews were undertaken; three subjects had used the Rental Board to solve their problems and four had not. They were asked to describe their apartment and tell the story of their conflict with their landlord. Although the interviews were rather informal, special attention was devoted to getting some precise information as to the motives underlying the subjects' decisions. An interview guide was designed that covered the aspects mentioned as central in the first set of interviews, mainly:

- the conflict-resolution scheme, i.e. how did the tenant react to conflict, how much time did he/she take to react, what were his/her main motives...
- the help-seeking scheme, i.e. did the tenant ask for external help, in what context, for what reasons...
- the motives underlying the tenant's decision to litigate or not
- the tenant's attitudes toward the Rental Board, the justice system and the State

Finally, the subjects were asked if their behavior in the case described was typical or not of their behavior in situations of conflict. This question often incited the subjects to provide more or less detailed self-descriptions.

2.2.2 Data analysis

The text of the interviews was analyzed in regard of the dimensions covered by the questionnaire that appeared as central and showed the highest level of variance, i.e.:

-the strategies used by tenants to solve their problems

-the help-seeking schemes and role of third parties in the conflict

-the emotional costs endured

-the tenant's relationship to the landlord

-the tenant's relationship to the judicial system

-the tenant's self-portrait and reported typical problem-solving behavior

Through speech analysis, other themes that were not covered explicitly by the questionnaire appeared as significant. Special attention was brought to the vocabulary the subjects used to define their problems and the available solutions; any reference to notions such as "right", "rules", "norms" or "legality" was noted; in addition, the subjects' social integration into work environments or neighborhood networks was evaluated.

A first typology of court users and non-users was then built along these lines. The subjects were distributed among four different groups corresponding to four different types of conflict-solving behavior. [93] Rental Board users happened to all belong to the same type.

2.2.3 Preliminary findings

The first two series of interviews led to two major findings. First, the number of factors listed by the subjects as influencing the decision to resort to the official system proved to be small enough to allow generalizations from a small number of cases; it was therefore possible to discover classical schemes or "types". Second, personality variables seemed to play a significant role in the decision to "legalize" a problem or not.

However, two problems arose from the use of interviews as a sole means of investigation. First, the loose format of the interviews rendered it difficult to obtain the same type of information from all individuals. Some subjects were more prone to express personal feelings, other were more cold and/or reserved. Since subjects tended to present themselves in a favorable light, the accuracy of their self-portraits was also problematic. The consistency observed between self-reported habitual behavior and behavior exhibited in the story told was likely to be nothing more than the product of the subjects' desire to

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[93] This first typology is described in detail in Chapter 3.

present a coherent image of themselves. In addition, subjective interpretation was largely involved in the building of users and non-users types; therefore, there was a possibility that the similarities and differences between them reflected nothing but the wishes of the speech analyst.

Although the avenues explored seemed promising, more rigor was needed in the way data were gathered and analyzed. Particularly, personality dimensions, that were derived from speech analysis, had to be measured more objectively. The use of standard personality tests seemed to be an interesting alternative; personality could be measured uniformly and its effects studied on a statistical basis.

In collaboration with psychologists,[94] twelve traits that seemed to have play a role in the seven cases studied and characterize the four "types" built were identified. In order to ensure a good level of participation in the project, it was decided that no more than 30 minutes would be devoted to the administration of personality tests to each participant. In consequence, the four traits that seemed to differentiate the best between the different types were identified and tests destined to assess them were chosen. These traits are:

-interpersonal dependency, as assessed by Hirschfeld's *Interpersonal Dependency Inventory* (IDI);[95]

-self-esteem, as assessed by Rosenberg's *Self-Esteem Scale* (SES);[96]

-locus of control, as assessed by Rotter's *Internal-External Locus of Control Scale*;[97]

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[94]Professor David Zuroff and Professor Debbie Moskowitz from McGill Department of Psychology were of assistance in the identification of the traits studied and the tests used in this project.

[95]For a description of this instrument, see R.M.A. Hirschfeld *et al.*, "A Measure of Interpersonal Dependency" (1977) 41 *Journal of Personality Assessment* 610.

[96]For a description of this instrument, see M. Rosenberg, *Conceiving the Self* (New York: Basic Books, 1979).

[97]For a description of this instrument, see J.B. Rotter, "Generalized Expectancies for Internal Versus External Control of Reinforcement in J.B. Rotter, J.E. Chance & E.J. Phares, eds., *Applications of a Social Learning Theory of Personality* (New York: Holt, Rinehart and Winston, 1972) 260.

-dominance, submisiveness, quarrelsomeness, and agreeableness, as assessed by Moskowitz's *Social Behavior Inventory* (SBI).[98]

These traits are described in Chapter 3.

2.3 Phase 3: Main project design

The last phase of field work aimed at getting a large number of conflict-stories (15 stories of users and 15 of non-users) and test the role of personality traits on the conflict-resolution schemes described. The sample was restricted to a particular type of problem, i.e. maintenance problems (hygiene, plumbing, electricity...). The interview guide was rephrased in function of the formulations that had produced the best results with the first sample of tenants. Again, the guide was used as a reminder only and the questions and the phrasing of the interventions phrasing varied from one participant to the others.

2.3.1 Sampling

A first method of sampling used was to select cases that were about to be heard at one office of the Rental Board. Subjects were solicited immediately after the end of the hearing. Plaintiffs who agreed to take part in the project were then asked to give the names and phone numbers of neighbors also having problems with the landlord. Snow-ball sampling was used with these subjects as well. Some neighbors were also reached through door-knocking. Twenty-one subjects were contacted using one of these three methods. Of the nine other subjects, one was contacted through her lawyer, and the other through diverse community organizations.

The use of snow-ball sampling necessarily limited the number of landlords involved in the process; the role of landlords' personality characteristics could therefore be hypothesized to be uniform among neighbors. In addition, it could reasonably be expected that in a

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[98]For a description of this instrument, see Moskowitz, *supra* note 53.

single building, electricity, plumbing, hygiene and safety problems would affect all the residents at different degrees.

Some people approached first reported having had no specific problems with their apartment but they were interviewed nonetheless. During the interview, an overwhelming majority of them described situations that could have been qualified as problematic by external observers. In a few cases, the problems described proved to be minor ones. Should they be part of the final sample or dropped? Following the hypothesis that conflict-solving styles are stable and that behavior does not differ radically from one situation to another, it was decided to consider them anyway. The interviews made in these cases especially aimed at getting as much information as possible on the subject's general attitude and behavior in conflict situations.

Prior to the interviews, the goals of the project were explained to the subjects and they were asked to sign a consent form. The interviews lasted from 40 minutes to 2 hours. The subjects were then asked to fill out the four personality tests chosen either immediately or during the days following the interview. In this last case, the test were picked up the following week or returned by mail by the subjects themselves. This procedure was risky in the sense that the subjects were likely to fill the tests in a manner consistent with their previously reported behavior, rather than according to their sincere beliefs. However, since personality tests are a way of asking for personal information, it seemed far less intrusive and aggressive to do it at the end of the interview, during which some trust could have been built between interviewer and interviewee.

2.3.2 Data analysis

In order to analyze the data gathered, the interviews were fully transcribed and analyzed. Following the process described in section 1.4 of this chapter, a typology of reactions was built. Personality factors were then hypothesized to be associated with some particular types of psychological reactions.

The personality tests administered were scored to reveal each subject's ratings on the traits measured. Statistical tests were then made to uncover differences in personality scores of subjects belonging to different types. These tests are described in Chapter 4.

CHAPTER 3: QUALITATIVE DATA AND TYPOLOGIES

The major goal of the data analysis phase of the project was to compare accounts of disputes given by users and non-users. However, it soon became evident that there were so many differences among users and non-users that it was impossible and useless to see them as two homogeneous groups. Besides, some commonalities seemed to exist between certain user and non-user subgroups. That suggested that the differences accounting for the decision of some of them to resort to the judicial system could be far more subtle than expected.

The questionnaires were built around three main topics: exhibited behavior, reasons for having adopted such a behavior, and general attitudes toward the justice system. A high degree of variance was found in the subjects' answers to these three types of questions. Therefore, three viewpoints were available for comparing their accounts. First, their stories could be studied by focusing on behavior exhibited by the subjects in the situation under study and in conflict situations in general. Second, a more subjective approach could be adopted by concentrating on subjects' more or less clearly stated motives. Third, it was possible to study specifically inter-individual differences in attitudes toward the justice system and the Rental Board.

The first section of this chapter presents the content analysis of the exploratory interviews conducted during the first stage of the project. It describes how the personality variables to be tested in the main stage were chosen. The second section is devoted to the analysis of the data gathered during this second phase.

1. Preliminary sample

This sample is composed of seven subjects, numbered from 1 to 7. All but one of them (Subject #5) are female. Three of them (Subjects #2, 5 and 7) are users.

1.1 Types building

To build these preliminary types, a list of commonalities and differences between the seven subjects interviewed was developed. Two groups of subjects exhibited enough commonalities to be hypothesized to form two distinct types. Two subjects were left and presented so many particularities that they were thought to constitute two other types. The four types built reflect behavioral differences. However, some defined sets of attitudes and motives proved to be associated with some defined types of behavior. Thus, the types described below constitute as much a psychological portrait as an account of behavioral differences.

1.1.1 The litigant

This category is composed of the three subjects having resorted to the Rental Board. They have very different socio-demographic characteristics. One of them is male, another one is of ethnic origin; their levels of education vary as well as their ages, that range from 27 to 60.

However, there exist many commonalities between their stories. First, they exhibit a comparable conflict-solving behavior. They all take charge of their problem, take initiatives, seek out information by themselves, ask friends and/or relatives for advice. They seem self-confident and self-reliant.

They also do not hesitate to ask for external help: two of them were assisted by a lawyer, the other by a community organization worker, one called a legal expert giving advice on radio, and all of them called the Rental Board. However, the main role they saw for these third parties was to provide advice and to allow them to be "better prepared" or "more confident" ("ça me donnait un autre feed-back (...) j'avais plus confiance en mes moyens" (#2) "[without help] sure I would have done it but I would have been extra nervous" (#7)). They also describe themselves as non-aggressive and not quarrelsome ("je veux pas me chicaner, je veux être en bon contact, mais..." (#2), "je suis pas quelqu'un qui est

conflictuel" (#5), "I am that type of person that it is better to negotiate in a very peaceful manner" (#7)).

Their motives are also quite alike; they all insist on the preeminence of principles over material considerations in their decision. They describe the behavior of their landlord as socially unacceptable and their response to it as a matter of self-respect ("Quand le monde ambitionne il faut se défendre" (#2), "s'il veut faire de l'argent il la fera pas sur mon dos" (#5), "c'était une question de justice vis-à-vis de moi-même" (#2), "someone has to make a stand, you can't just sit and accept..." (#7)). They generally refer to "rules" that must prevail or to the importance of fighting for their "rights" ("il avait tous les droits pis moi j'en avais pas" (#2); "they should fulfill their responsibilities (...) they can't talk to me the way they want because they're landlords" (#7), "je trouve que j'ai été bafoué dans mes droits" (#5)).

1.1.2 The avoider

Only one subject (#4) belongs to this category. This avoider has in common with the litigants previously described a propensity to take responsibility for the situation in which she is placed. But her tendency to self-criticism makes her believe that she is the sole person responsible for her situation. This belief prevents her from talking about her problems, or taking efficient action to solve them. Subject #4 had had serious problems (cockroaches, rats, cold) in two different apartments at the time of the interview. In both cases, she mainly endured ("j'ai "toffé" de septembre à février", "j'espérais toujours que c'était pour changer"). In the first case, she stopped paying the rent, and finally left the apartment after ten months. She describes herself as a non-confrontational person ("quand je vois que ça marche pas, je m'éclipse, je m'en vais").

For her, acknowledging that a problem exists meant that she was not able to prevent it: honest people are always able to avoid problems ("si on reste le nez dans nos affaires on n'a pas de problèmes"). Resorting to the court system is not part of her mental universe ("La Régie, je m'arrêtais pas à ça, parce que j'ai jamais eu de problèmes avec la justice, j'ai

toujours été "clean" dans tout ce que j'ai fait"). The stigma of litigation prevented her from considering a judicial solution to her problems.

1.1.3 The dependent

The two participants belonging to this category (#1 and #3) proved not to be as ego-involved in the conflict they described as the litigants and the avoider. The main characteristic of dependent subjects is their lack of initiative. They don't look for information in order to solve their problem or prevent further conflict. They tend to have very emotional and tense relationships with their landlords ("j'avais peur, j'en braillais (...) je lui ai dit fais de quoi ou je mets le feu au bloc" (#3), "elle a haussé le ton, j'ai haussé le ton. (...) elle était p[l]us parlable à la fin". (#1))

Dependents seek external help in the last resort only; when they do, they expect third parties to take charge of their problem. ("J'attendais des nouvelles de S. [a community worker] pis de la propriétaire, pour négocier" (#1), "M. m'a écrit une lettre en 4 copies" (#3)). Since they are not able to make decisions or take initiatives by themselves, they tend to do what they are told, if it is not too costly. ("S. [her lawyer] a dit on va essayer de négocier" (#1), "la ville m'a dit de m'en aller" (#3)). Dependants are not motivated by the will to change a situation according to a norm; they only want to solve their own problem ("Il faudrait faire condamner ce bloc-là; c'est [aux nouveaux locataires] de bouger." (#3)).

Dependents are not likely to use the official system unless a third party convince them it is the best solution available. Among the dependents interviewed, one had a lawyer negotiate an agreement with her landlord; her boyfriend seems to have played a major role in her decision to look for help. The other, who had no support from her husband, lived in an unsanitary environment for three months. She was afraid rats would hurt or kill her youngest child. She finally quit her apartment before the end of the lease after a community organization worker and city inspectors told her she had the right to do so and offered to back her before the Rental Board if her landlord sued her. Her lack of self-confidence is visible in her search for external confirmation: "même la ville m'a dit de m'en

aller", "j'avais attrapé un mulot, j'avais une preuve qu'il y en avait", "S. m' a dit: s'il t'amène en cour, j'irai dire que c'est moi qui t'a dit de partir".

1.1.4 The fighter

One subject (#6) belongs to this category. The main distinguishing feature of this fighter is that she does not seek to solve her problems. On the contrary, the existence of this problem provides her with an opportunity to express herself and prove her personal worth ("je sais que j'ai des droits, je me défends. (...) chaque fois qu'il y a des manifs, j'y vais pis on montre qu'on est pas plus stupides [que les autres]"). Being an "exploited tenant" is part of her self-definition and allows her to ask for support and get out of her social isolation ("le comité a été ben correct (...) je vais aux réunions une fois par mois, on en profite. Ça, ça dérange les propriétaires.")

Since her main objective is to keep on fighting with her landlord, the fighter is unlikely to look for final solutions such as legal remedies. It is however possible that her fight might escalate in such a way as to lead her before the court.

1.2 Inter-types differences and personality variables

The first set of subjects interviewed exhibited many differences in behavior, motives and attributions. In the process of building types, some elements were assumed to have more influence than others on the behavior exhibited. It was hypothesized that these elements could be associated with personality traits: each type of subject would correspond to a certain personality profile. In order to identify the traits that could account for one's belonging to one type or another, four hypotheses were drawn; each of them was associated with a possibly-related personality trait.

1.2.1 Ego-involvement and self-esteem

First hypothesis: The decision to litigate is related to one's level of ego-involvement in the problem to be solved.

Since all users belonged to the same category, and since they all expressed their claims in terms of self-respect, it was hypothesized that the ability to become ego-involved in a dispute was a major determinant of behavior. This ability means that the disputant is so convinced of his/her personal worth as to interpret any departure from his/her own standards as an offense against his/her dignity. Therefore, a landlord's misconduct is not associated only with material inconvenience but becomes a personal offense, a wrong to be set right.

Self-esteem refers to a negative or positive orientation toward oneself. This concept is now widely accepted in psychology and is believed to be predictive of a wide variety of behavior. In fact, "self-esteem has been related to almost every variable at one time or another".[99] It is also assumed to be a stable, trait-like disposition, self-esteem levels being consistent over time within individuals.[100]

The instrument chosen to measure this construct is the Rosenberg's *Self-Esteem Scale* (SES).[101]

1.2.2 Dependency vs. self-reliance

Second hypothesis: The decision to litigate is related to one's reliance on others' advice.

Dependent and fighter subjects exhibited a certain permeability to others' opinions and tended to rely on them to determine the right conduct to adopt, whereas litigant and avoider ones tended to stick to their own visions of the issues at stake and solutions available.

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[99]R. Crandall, "The Measurement of Self-Esteem and Related Constructs" in J. P. Robinson & P. R. Shaver, eds., *Measures of Social Psychological Attitudes*, rev. ed. (Ann Arbor: Institute for Social Research, 1973) 45 at 45; among these variables are personality correlates such as happiness or shyness, behavioral correlates such as persistence, and clinical correlates such as depression.

[100]See J. Blascovich & J. Tomaka, "Measures of Self-Esteem" in J.P. Robinson, P.R. Shaver & L.S. Wrightsman, eds., *Measures of Personality and Social Psychological Attitudes* (San Diego: Academic Press, 1991) 115.

[101]See Rosenberg, *supra* note 96.

The personality construct of "interpersonal dependency refers to a complex of thoughts, beliefs, feelings, and behaviors which revolve around the need to associate closely with, interact with, and rely upon valued other people."[102] Two scales from the *Interpersonal Dependency Inventory* (IDI)[103] were used to measure two dimensions of dependency. The "lack of social self-confidence" scale's items express one's wishes for help in decision-making, social situations and in taking initiative. The items in the "assertion of autonomy" scale assert preferences for being alone and independent behavior, and express the conviction that one's self-esteem does not depend on the approval of others.

1.2.3 Locus of control

Third hypothesis: The decision to litigate is related to one's belief that he/she can or can not change the course of a dispute (or his/her life generally).

Litigants were characterized by their intimate belief that they were the ones in charge to do something, to make a stand against their landlords. They took initiatives and looked for information on the solutions available to them. They were pro-active rather than reactive. In comparison, non-users were in general more inclined to put the responsibility of changing things on other people's shoulders.

Internal-external locus of control refers to "the beliefs that individuals hold regarding the relationships between actions and outcomes."[104] People who believe that they have at least some control over their destinies are labeled "internals"; "externals", on the other hand, believe their fate is controlled by external agents such as luck, chance or unpredictable others.

It has been found that "Internals and Externals occupy different positions on the instrumental-expressive behavior dimension. Internals engage in more instrumental goal-

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[102]Hirschfeld *et al.*, *supra* note 95 at 610.

[103]See *Ib.*

[104]H.M. Lefcourt, "Locus of Control" in Robinson, Shaver & Wrightsman, *supra* note 100, 413 at 414.

directed activity whereas Externals more often manifest emotional non-goal-directed responses."[105] In addition, "perceived control is positively associated with access to opportunity. Those who are able, through position and groups membership, to attain more readily the valued outcomes that allow a person to feel personal satisfaction, are more likely to hold Internal control expectancies."[106]

Rotter's *Internal-External Locus of Control Scale* was used to assess this dimension.[107]

1.2.4 Interpersonal behavior and the Interpersonal Circumplex

Fourth hypothesis: The propensity to litigate is a function of one's manner of relating to others in conflict situations.

The subjects had different interpersonal "styles". Litigants exhibited a higher degree of self-confidence than subjects from the other types; their behavior can be described as assertive but not aggressive. Dependents were for their part less assertive but more aggressive with their landlords. The avoider and fighter subjects were even less assertive and tended to avoid contact or direct confrontation with their landlords.

The Interpersonal circumplex is a model used to organize the domain of traits relevant to interpersonal behavior.[108] Interpersonal characteristics are placed into a circus defined by two major axes. Four characteristics identify the axes: dominance and submisiveness (status axis), and agreeableness and quarrelsomeness (love axis). The *Social Behavior Inventory* was chosen to assess these characteristics.[109]

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[105]A.P. MacDonald, "Internal-External Locus of Control" in Robinson & Shaver, supra note 99, 169 at 170.

[106]H.M. Lefcourt, *Locus of Control: Current Trends in Theory and Research*, 2nd ed. (Hillsdale, N.J.: Erlbaum, 1982) at 31 [hereinafter *Locus of Control*].

[107]See Rotter, *supra* note 97.

[108]For a description of the model see J.S. Wiggins, "A Psychological Taxonomy of Trait-Descriptive Terms: the Interpersonal Domain" (1979) 37 *Journal of Personality and Social Psychology* 395; J.S. Wiggins & R. Broughton, "The Interpersonal Circle: A Structural Model for the Integration of Personality" in R. Hogan & W.H. Jones, eds., *Perspectives in Personality*, vol.1 (Greenwich, CT: JAI Press, 1985) 1.

[109]See Moskowitz, *supra* note 53.

2. Main sample

The first part of this section shows the differences and commonalities found between subjects' exhibited behavior, motives and attitudes, and classify them on the basis of these three elements, regardless of their "user" or "non-user" label. Using this classification, the second section seeks to build an inventory of user and non-user types.

2.1 Content analysis

Behavioral differences will first be presented, followed by the motives and excuses of the subjects. A last section will illustrate inter-individual differences in attitudes toward the court system.

2.1.1 Behavioral differences and personal styles

Subjects were chosen in order to interview 15 Rental Board's users et 15 non-users. However, simply labeling them "users" or "non-users" does not provide an accurate description of their conflict-solving behavior. Among non-users, some managed to force the landlord to respond to their claims in whole or in part without having to go to the Rental Board. A second category solved their problems without their landlord's cooperation, be this by doing some repairs themselves or by clearing out the apartment before or at the end of the lease. The rest managed to endure the situation for a more or less long period. These three schemes are not mutually exclusive, however, for many subjects had to endure the situation for a considerable period before they took the matter into their hands and solved the problem, the landlord doing often only part of the job accruing to him/her.

Among users, variety existed as well. Some users were quite active and used a whole set of problem-solving strategies before resorting to the Rental Board, whereas others did so after a long period of inactivity, or almost immediately after the problem occurred. The next two sections present an inventory of the strategies used by different interviewees, and classify these interviewees in terms of the type of behavior they exhibited.

2.1.1.1 Review of strategies

A dispute happens when a claim made by one person is resisted by another person. However, there are many ways to make a claim and to influence the other person's decision. Among users and non-users, many different strategies were used. They can be divided in four main categories.

2.1.1.1.1 Bilateral strategies

The first category is composed of all the strategies commonly used to express one's claim and/or force the other party to react to this claim. These strategies are all directed at the landlord him/herself. Using one of these strategies implies that a person has identified his/her landlord as the person responsible for the situation to be changed.

Among these strategies, phone calls were the most popular means of communication, used by all the subjects but two. The "phone calling" label uncovers many different strategies, going from leaving one or two messages on an answering machine in cases of emergency to what some subjects referred to as "phone harassment". One subject, whose landlord tended not to answer to phone calls and required her tenants to pay their rent at her residence, made unannounced visits to her place to get in touch with her. Informal talks during landlords' visits in the building were also common.

Letters were sent in some cases, mainly by court users as a prerequisite for legal action. Expressing a grievance in writing was seen as a way to establish its seriousness and test the landlord's good will. Eight subjects used the more aggressive strategies of stopping (7) or delaying (1) rent payment until the landlord's had reacted to their complaints (or, in one case, brought them to the Rental Board for default in paying). Finally, three users appealed against the Rental Board's decision.

2.1.1.1.2 Self-help

Self-help was used in a certain number of cases as a way to solve a problem more efficiently, or to avoid contacts with the landlord. Initiatives taken were as diverse as

doing minor repairs such as changing a lock or a fuse (5 cases), calling an electrician or a plumber in cases of emergency (3), buying and installing cockroach or rat traps (2), and doing major improvement to the apartment such as changing carpets, plastering walls, repairing balconies, having electrical installation inspected and repaired (6), and, eventually, moving out at the end (1) or before the end of the lease (2). Major repairs were done both without or after written or verbal agreement with the landlord.

2.1.1.1.3 Help and information seeking

These strategies include all the attempts made to get in touch with third parties other than specialists hired to solve a precise (most of the time electrical) problem. They are of two kinds: third parties can be used to get information or material or emotional support, or as intermediaries that will put pressure on the landlord.

Among parties contacted to get information or support, or share personal experiences were the Rental Board itself (6), neighbors (6), knowledgeable friends and acquaintances (6), community organizations specialized in housing problems (5), religious leaders (1), city inspectors (4), CLSC social workers (2) and lawyers (3). Parties used as spokespersons included lawyers (6), community organizations (1), journalists (TV and newspapers) (2), city inspectors (4), local leaders (1) and the police (2).

2.1.1.1.4 Endurance

Even though endurance consists more of the absence of any strategy than a strategy in itself, "lumping it" is for some subjects a way in itself to deal with problems.

2.1.1.2 Conflict-solving styles

On the basis of the strategies identified in the preceding section, subjects were classified under three behavioral labels.

A first label is concerned with the subject's ability to exert pressures on his/her landlord. The choice to use strategies corresponding to the "pressure" label indicates the degree of assertiveness exhibited by subjects in the course of their relationships with their

landlords. These strategies are essentially those described under the "bilateral strategies" heading. Subjects having repeatedly used these kinds of strategies were classified as "assertive", whereas more retiring subjects were labeled "reserved". Both users and non-users were classified in terms of their assertiveness.

A second indicator is the use of self-help strategies. A tendency to use such strategies is a good marker of a subject's ability to solve his/her problems in an autonomous way, the opposite tendency revealing a preference for endurance. Subjects who reported having used self-help strategies were classified as self-reliant, and those who did not as forbearing.

A third aspect of behavior is related to the predominance of help-seeking strategies. The presence of such type of strategies reveals a subject's tendency to depend on other people to solve his/her problems. Subjects who tended to rely on third parties to solve their problems and use them as spokespersons were classified as dependent, whereas subjects who resorted to third parties to get information or technical support, or did not look for external help at all were labeled independent.

The following sections show how these behavioral indicators were used to classify subjects as falling into one category or another.

2.1.1.2.1 User strategies

2.1.1.2.1.1 Assertiveness

Assertive users are those who had several contacts (or attempted to establish such contacts) with their landlord prior to their decision to resort to the Rental Board. Subjects #11, 13, 15, 19, and 21 belong to this category.

These subjects first try to negotiate an agreement with their landlord. They make many phone calls and often send letters. At the beginning of the conflict, they tend to believe in their landlord's good faith and try to build a good relationship with him. They go to the Rental Board in the last resort, having exhausted all the means they knew to influence

their landlord ("J'ai essayé de discuter, j'ai même pris des actions pour lui, changer la serrure [mais] y a pas de coopération de sa part, il veut pas" (#11), "Il y a toujours moyen de s'entendre, mais lui il te propose même pas des ententes, il dit oui et il vient pas. Façon facile de dire non" (#15),"quand j'ai vu que mes efforts personnels menaient à rien, j'ai décidé d'aller à la justice, pour voir" (#13), "On l'a appelé souvent, on l'a achalé pas mal (...) il rappelait jamais, il s'en foutait" (#19), "J'ai envoyé une lettre enregistrée, mais avant je leur avais parlé, envoyé d'autres lettres, il y avait rien à faire" (#21)).

These subjects often referred to their strategy as one destined to put pressure on the landlord by any means available ("on s'amusait à le faire lambiner un peu pour le loyer" (#11), "Il y a eu une urgence avec l'électricité, et vengeance, peut-être, je l'ai pas appelé, j'ai appelé un électricien, je cherchais des raisons mais je trouve que c'était pas injustifié (...) J'ai enlevé l'argent du loyer" (#15), "Normalement on allait porter le loyer chez elle, mais là j'ai dit (...) elle viendra le chercher si elle le veut.(...) J'avais le goût de lui faire réaliser qu'il fallait que ça marche" (#19)).

In contrast, reserved subjects expressed their grievance only once or a few times, or even not at all. Most of the time, they expected their landlord to react to their first grievance and did not repeat it or used other bilateral strategies[110] before resorting to legal means. Subjects #12, 14, 16, 18, 20, 23, 24, 25, 38, and 41 belong to this category.

These users often use the legal recourses available as a way to avoid direct confrontation with the landlord. They tend to use their lawyer or the Rental Board as a spokesperson to exert pressure on the landlord on their behalf ("Je m'en vais à la Régie parce que je peux rien lui demander à lui, je l'avise, c'est tout" (#12), "ma philosophie a toujours été de parler le moins possible à la propriétaire (...) [j'ai pris une avocate] parce que j'étais pas capable de régler ça, j'aurais passé l'éponge" (#18), "dans ma tête, après la Régie, il va vouloir prendre une entente"(#20), "j'ai pas tellement la parole facile [...] ça prenait quelqu'un

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[110]Among the bilateral strategies listed above, the only ones used by reserved users were "make a few phone calls (1-3)" (8 subjects), "send a mise en demeure" (6 subjects) and "stop paying the rent" (2 subjects).

pour nous représenter" (#25), "j'ai pas eu beaucoup de rapports avec le propriétaire [...] quand on a vu qu'il était pas parlable, on a décidé d'aller à la Régie tout de suite" (#38)).

Some reserved users (#12, 14, 16, 41) have had good relationships with their landlords to whom they never expressed a grievance, until the latter initiated a change in this relationship. These users then used the Rental Board as a means to resist this change and respond to their landlord's behavior.[111] ("J'aurais pu faire une plainte il y a 5 ans, mais le rapport était pas le même [à l'époque]" (#14), "on avait une entente verbale, mais il m'a augmenté [quand même], alors je peux le poursuivre" (#41).

2.1.1.2.1.2 Autonomy

Since all users ultimately resorted to legal means to solve their dispute with their landlord, it may not be surprising that few of them made use of self-help strategies.

Three of them (#11, 16, 20) were living in the same building and had agreed to do major repairs to their apartment with or without monetary compensation.[112] They finally sued for repairs that were not part of the agreement. Another (#24) spent a lot of time and energy on fixing his landlord's botched-up work on his apartment before he decided to resort to the Rental Board. Two other subjects (#14 and 18) were also classified as self-reliant on the basis of their reported usual behavior; they both mentioned instances in which they preferred to make repairs themselves instead of asking for the landlord to do it.

In contrast, forbearing subjects (#12, 13, 15, 19, 21, 23, 25, 38, 41) tended to concentrate on bilateral rather than self-help strategies.

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[111]The lack of correspondance between a user's real motives and the motives he/she mentions in his/her claim will be studied in greater details in the section on motives.

[112]Such an arrangement seems to be common among people renting "lofts".

2.1.1.2.1.3 Dependency

Distinctions between dependent and independent users can be drawn on the basis of the role that third parties played in the disputing process. Classifying one as dependent or independent depends on his/her needing help to get through the judicial process, i.e. the probability that her/his decision would have been different would not he/she have had been provided proper support. Resort to third parties may not be in itself a sign of dependence if its only goal is to get information.

Subjects #11, 12, 15, 16, 18, 19, 20, 21, 38 and 41 exhibited an independent behavior; they looked for information directly at the Rental Board; they did not ask for community organizations support. Among them, subjects #15 and #18 were assisted by a lawyer whom they already knew (friend or acquaintance). Independent users characteristically make their own decisions before they ask for help; they look for external support only in order to feel better prepared or get professional advice ("[mon avocat] m'a aidé, parce qu'il connaissait la paperasse, je lui ai demandé conseil" (#15), "sans avocate je serais allée quand même, probablement moins certaine de moi un peu" (#18)).

Subjects #13, 14, 23, 24 and 25 exhibited a dependent behavior. All but one of them (#24) were represented by a lawyer before the Rental Board. Subject #13 was also assisted throughout the process by community workers from a CLSC and a neighbor. The others were helped by specialized community organizations. Subjects #24 and 25 cases are characterized by the role played by an intimate in their decision. Subject #24 was motivated by his duty toward his mother ("ma mère, ça l'affectait, je pouvais pas dire: "tant pis pour elle, je suis trop peureux, j'y vais pas""). Subject #25 was influenced by her boyfriend's refusal to "give up the fight" and move out ("S. voulait pas déménager, moi je pleurais, je voulais partir").

2.1.1.2.2 Non-user strategies

Among non-users, levels of autonomy and assertiveness vary and are often related. The level of dependency of non-users is however hard to evaluate. In fact, two main types of non-users seem to exist: those who do something and those who wait and endure.

2.1.1.2.2.1 Assertiveness

Assertive non-users are those who tried to convince their landlord to react to their claim but finally chose not to use the Rental Board. Their strategies are comparable to those used by assertive users ("si tu veux quelque chose, tu l'achales, tu l'écoeures, tu le rappelles" (#17), "every two days or every week I would talk to him and he would say "it's coming"" (#27), "je vais les payer cash, ils me voient la face; ils savent que je suis tenace" (#29), "je lui ai dit: "ton loyer tu le verras pas tant que t'as pas réparé le mur"" (#35). Subjects #17, 27, 29, 30, 34 and 35 can be qualified as assertive.

In contrast, reserved non-users barely express their discontent. When they do, they do it in a shy manner and tend to accept their landlord's explanations and/or justifications without much discussion. Their attitude is often related to a propensity to consider their situation as being related to external causes over which neither them nor their landlord have control. Subjects #26, 28, 31, 32, 33, 36, 37, 39 and 40 are labeled reserved ("j'ai jamais fait de menaces ou de choses comme ça (...) je lui parle pas tellement. Il a pas de talent pour être propriétaire" (#26), "pendant un an, on lui a rien fait d'officiel (...) il avait pas les bonnes personnes qui travaillaient pour lui (...) on avait espoir que ça allait se régler tout seul, comme par magie" (#31), "[pour les champignons] il pouvait pas nécessairement rien faire, c'était un problème de l'appartement (...) J'attendais qu'il vienne chercher son loyer pis là je lui faisais de la pression." (#39), "j'aimerais peut-être être plus confrontationnel, exigervraiment le règlement du problème (...) je laisse un peu traîner les choses" (#37), "c'est pas un problème ou tu peux dire réellement c'est la faute au propriétaire (...) chaque fois on se disait ça va peut-être marcher cette fois-ci" (#36), "si ça se reproduisait, je serais p[l]us aussi patient que je l'étais" (#34), "je lui parle pas ben ben

au propriétaire, ça me tente pas ben ben" (#32), "je suis pas une personne qui a fait beaucoup de démarches (...) je me suis pas défendue trop trop" (#33)).

Even though Subject #28 is the president of his building's tenant association, his self-description as a very assertive person proved not to be accurate ("Il me prend pas pour une farce"). His insistence on the altruism of his motives ("je l'ai toujours fait pour les autres") as well as his reliance on community workers and his qualification of his problems as "political" classify him as reserved ("je sais pas encore ce que je vais faire, j'attends le moment propice. Je lui laisse l'année pour respirer").

2.1.1.2.2.2 Autonomy

Autonomy is a matter of behavior as well as of attitudes. Self-reliant non-users are those who consciously choose to solve their problems by themselves, whereas forbearing subjects tend to wait for their landlord to react and meanwhile endure the situation.

Subjects #17, 27, 29, 30, 31, 34, 35 and 39 exhibited self-reliant behavior. Among them, subjects #35 and 39 chose to clear out. For #39, however, this choice was made under the influence of his roommate and he would better be labeled forbearing. Subject #31 chose to move out at the end of her lease. Subjects #17, 27, 29, 30 34 and 35 all managed to do some repairs by themselves ("j'ai préféré faire moi-même mes rénovations, parce que si j'attends après la propriétaire, je vais attendre longtemps" (#29), "j'ai fait beaucoup de choses ici, j'ai peinturé, nettoyé la cour; j'ai acheté du bois pour réparer la galerie" (#17), "on a défoncé la porte, on a fait des changements de "fuse", essayé toutes sortes d'affaires" (#35), "s'il venait pas je disais je vais le faire pis le déduire du loyer" (#34), "on avait décidé de faire notre affaire, de pas avoir affaire à lui trop trop" (#31)). Subject #32, even though he did not use any self-help strategy in relation to his problem, expressed a general tendency to rely on himself that classifies him as an self-reliant non-user ("J'aime mieux faire ma petite affaire (...) si j'avais un problème grave, je me pousserais, ou je réparerais moi-même je pense").

By contrast, subjects #26, 28, 33, 36, 37 and 40 waited for their landlord to solve their problems during a more or less important period of time.

2.1.1.2.2.3 Dependency

Only a small minority of non-users discussed their problems with third parties other than neighbors or family members. Their degree of dependency can not be evaluated solely on the basis of the role played by third parties in the disputing process; it has to be deducted from the subject's general tendency to rely on other people and adopt other people's opinions as his/her own. It was therefore hard to evaluate it solely from the content of the interviews; it was impossible to classify subjects #30, 31 and 34 in terms of dependency.

Subjects #17, 27, 29, 32 and 35 qualified as independent non-users; these users tend to make their own decisions and look for information by themselves. They also tend to initiate the relationships with their neighbors.

Dependent non-users are looking for external support from their neighbors or other third parties. They often refer to a lack of support from their neighbors to justify their passivity. They may participate in collective actions initiated by others; as in the case of subject #28, they can also, as leaders of tenant associations, act as a front for community workers. They also tend to describe their actions and problems in collective terms and use other persons as spokespersons.

Subjects # 26, 28, 33, 36, 37, 39 and 40 are dependent ("3-4 fois j'ai participé à des demandes collectives avec le monde du bloc, finalement ça a viré en queue de poisson et j'en ai pus entendu parler" (#26), "si c'était pas du CLSC qui est derrière moi, je lâcherais toute la patente" (#28), "c'est bon une collective, le monde ensemble, ça fait grouiller quand t'es un groupe" (#40), "je lui ai dit on peut peut-être faire quelque chose en commun, mais j'en ai pus entendu parler" (#37), "quand c'est toi qui écrit [les propriétaires] pensent qu'ils ont gagné, mais quand c'est [un comité de logement], ils ont peur" (#40), "à l'époque mon co-locataire était quelqu'un d'inactif, mais ma copine actuelle

elle se laisse pas marcher sur les pieds" (#36), "quand il y a une association tu peux en parler (...) juste un particulier ça pèse pas fort" (#33)).

2.1.2 Motives, reasons and excuses

The variety of strategies used by users and non-users reveals that people have different reactions to a problematic situation. They may either use their interpersonal skills to influence their landlord's behavior, try solve their problems by themselves, or just give up.

Among users, resort to the court system may happen after a more or less important amount of pre-litigation activity. It can complement or replace the aggrieved party's own assertiveness. Non-users can for their part be "lumpers" as well as assertive and/or autonomous individuals. The similarities observed between the strategies used by some users and non-users suggest that the role played by the judicial system in the disputing process is not simply function of one's own habitual conflict-solving style.

According to the Access to Justice movement, the decision to sue is function of the availability of judicial remedies and the benefits that can be expected from this remedy. It supposes that the main difference between users and non-users is their having different views on the benefits and costs associated to court use.[113] But not much is known on what compose these costs and benefits, and how they are evaluated by disputants.

In the interviews, some light was thrown on this phenomenon, as each subject provided a personal vision of the issues at stake, and the costs and benefits associated with each solution contemplated. The goals pursued by the disputants proved to be at the core of the decisions they made. The following sections therefore present the main types of motives listed by the participants in this project.

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[113]See e.g. the model described in Fitzgerald & Dickins, *supra* note 18.

2.1.2.1 User motives

Two main categories of users seem to exist in terms of motives: principled users and materialistic users. Two other types can also be found: the hesitant user, and the avenger.

2.1.2.1.1 The Materialistic user

This first category of users is composed of the subjects who expressed their claims in material terms. For them, going to the Rental Board was merely a way to obtain some material compensation for the injuries suffered. In many cases, their main objective was to obtain a rent reduction.

Most materialistic users describe their situation as a "no-choice" one; they have tried every way possible to get to an agreement with their landlord but failed. Therefore, they see judicial remedies as the only ones that provide them with an opportunity to improve their situation ("je me disais je vais y aller jusqu'au bout, pis au moins j'aurai essayé" (#23), "je suis pas sûre que ça va donner quelque chose, mais tant qu'à rien faire aussi bien essayer" (#29)). However, most of the time, they do not expect courts to have any direct effect on their landlord's behavior; they resort to them in order to reduce their material losses or exert pressures of a financial nature on the other party ("je suis comme épuisé de me battre (...) je vais rester sur le "basic", aller en réduction de loyer, pis je me dis qu'ici je resterai pas longtemps" (#11), "J'ai dans ma tête que quand on va être allés à la Régie lui il va vouloir prendre une entente, un bail de 3 ans, pis faire les rénovations" (#20), "mon objectif c'est carrément parce que c'était désagréable de vivre ça (...) c'était surtout pour la réduction de loyer, mais pour les réparations aussi, parce que je me disais que sinon ça serait pas fait" (#21), "le prix qu'on paie, c'est pas normal, alors (...) on a décidé d'aller à la Régie" (#38)).

Subjects #11, 20, 21, 23 and 38 belong to this category.

2.1.2.1.2 The Principled user

Principled users are those who express their claim as "a matter of principle". They are generally highly ego-involved in the dispute and interpret the landlord's behavior as an offense against their personal dignity.

Their main objective is to change their landlord's behavior by showing him/her to be wrong rather than to obtain a material compensation. According to them, their landlord's behavior is unacceptable from a moral standpoint, and someone has to do something about it, whatever the costs might be. Therefore, what characterizes principled users is their insistence on the preeminence of moral/personal over material considerations on their decision. ("les sous, c'est pas ça que je cherche, c'est ma dignité" (#13), "c'était pour me faire respecter un peu, parce que j'aurais pu en faire une il y a 5, 6 ans..." (#14), "je trouve que c'est un manque de respect, c'est surtout ça qui a fait que j'ai engagé des poursuites, l'argent c'est venu après (...) je le fais par principe" (#15), "c'était même pas pour l'argent, c'est pour mon honneur" (#18), "je me disais c'est la seule façon de les faire payer vraiment eux autres, pas en argent mais de la manière qu'ils nous traitent. J'étais vraiment tannée de me faire niaiser" (#19), "je me disais j'irai pas pour gagner quoi que ce soit, mais au moins pour le principe, il nous marchera pas sur la tête tout le temps, ou en tous cas il va falloir qu'il s'explique devant quelqu'un" (#24)).

Subjects #13, 14, 15, 18, 19, and 24 belong to this category. They referred to three main types of social norms: norms defining "good landlord duties" ("c'est pas une question de règlements ou de sous, c'est une question de dire il y a une propriétaire que je connais qui est pas correcte" (#18), "Faire vivre le monde là-dedans, nous autres ou quelqu'un d'autre, ça se fait pas" (#19)), norms governing interpersonal behavior ("je peux pardonner à quelqu'un quand je vois que c'est pas exprès, mais quand c'est de la mauvaise volonté, de la mauvaise foi, ça me choque" (#13), "j'aime pas l'hostilité, l'intimidation, les gens qui font des menaces, je ne mérite pas ça, alors S.V.P. un peu de respect" (#14), "s'il m'avait dit dès le départ je touche à rien, je l'aurais pris, mais me faire dire qu'on va le faire pis on le fait pas, c'est rire du monde! Moi j'accepte pas ça." (#15), "je voyais pas pourquoi il avait le

droit de nous traiter de même, comme si on avait pas de droits" (#19), "quand j'obtiens la conviction qu'on fait rire de soi, là il y a la dignité de l'individu qui entre en ligne de compte" (#24)), and norms related to inter-group relationships ("je voulais leur faire plier l'échine, leur faire comprendre que c'est pas parce qu'on est des immigrants..." (#13), "ils nous regardent de haut: "nous on est propriétaires"... je m'excuse mais c'est pas parce que je suis étudiante pis j'ai pas beaucoup d'argent que... (...) je me disais en allant là, pour une fois il va me servir à moi ce système-là, je vais m'en servir pour me faire respecter au travers" (#19), "je demande des réparations parce que la discrimination je peux pas en parler parce que c'est difficile à prouver" (#14)).

2.1.2.1.3 The Avenger

Avengers' motives are less clear than those of principled and materialistic users. Avengers often resemble principled users, but whereas principled subjects tend to center their accounts on their feelings and personal evolution through the disputing process, avengers focus on their strategy and the major events of their "fight" ("C'est tout un jeu de stratégie cette histoire-là! (#12), "je suis sur son terrain maintenant" (#16)). They describe their relationship with their landlord as a good one, until "something was broken" without valid reason ("je voulais prouver qu'on peut pas se conduire mal avec des gens, ça faisait 9 ans qu'on était amis pis il a tout balayé du jour au lendemain" (#12), "il a brisé l'entente, alors je peux le poursuivre" (#41)). Resorting to court is seen as a way to exert personal revenge on their landlord, "bother him" or "make him pay for what he did" ("c'est un vieux bucké, mais tant que je vais être ici, que je vais être vivant, je vais bouger, il va être obligé d'obtempérer à la loi (...) je vais lui barrer le chemin tout le temps" (#12), "j'espère une réduction de loyer, pis l'écoeurer un peu lui aussi; ça me dérange pas pan toutte de perdre, c'est juste pour le faire déplacer, je veux qu'il se déplace" (#16), "en se poursuivant mutuellement, ça va lui coûter cher, je vais mordre très fort" (#41)).

Subjects #12, 16, and 41 belong to this category.

2.1.2.1.4 The Hesitant user

The hesitant user is not a real, personally motivated user, but rather someone acting on behalf of, or in accordance with somebody else's wishes. To be qualified as hesitant, a user must admit having adopted somebody else's position instead of his/her own. Subject #25 belongs to this category ("Moi je voulais déménager, j'aurais pas été capable de passer au travers de ça, c'est impossible pour une femme seule").

2.1.2.2 Non-user motives

When asked why they did not use the court system to solve their disputes, most non-users did not provide very structured or convincing answers. Although most of them stated it was "not worth it", this explanation was related to very different concerns. It proved difficult to identify the real motives underlying their answers.

Some concerns were shared by many subjects. For example, one fear that was expressed by many subjects was that bringing their landlord to court would rend him/her even less cooperative. Another common concern was courts' inability to induce a change in their landlord's general attitude, or force him/her to obey their orders. Therefore, material compensation was the most common remedy sought.

All the subjects said that, even though they had chosen not to use the court system this time, they would do it in extreme circumstances. Differences between them occurred in their definition of what constitutes an extreme circumstance. In order to get a better understanding of their reported behavior, the interviews aimed at having them describe those circumstances under which they would become users. These accounts led to the identification of three types of motives preventing people from going to court. Subjects were then classified in function of the type of motives that seemed predominant in their discourse and accounted best for their behavior.

2.1.2.2.1 Circumstantial motives

Circumstantial non-users are those who would not hesitate to resort to the court system, but did not do so due to the special circumstances surrounding their own problems. These circumstances can refer to personal factors, external factors or institutional factors ("C'est vraiment des circonstances exceptionnelles qui ont fait qu'on a pas bougé (...) de la négligence, des ordres de priorité différents... C'est sûr que c'est nono, avoir tout commencé pis pas s'être rendu là" (#31), "la première raison, c'est le temps à investir, deuxièmement j'ai un jugement contre moi là-bas, j'ose pas y retourner, et troisième chose, je les vois aller et je pense que même avec un jugement ils se grouilleraient pas plus" (#29)).

Such an attitude can be related at least in part to a lack of motivation caused by the absence of efficient legal remedies available. One subject, whose apartment was so badly insulated that it was almost uninhabitable, thought the legal system could only provide her with material compensation and that she would have to move anyway. This suggests that a change in the legal means available to tenants or the circumstances surrounding their problems would be sufficient to lead them to court.

Only three subjects (#29, #31 and #40) belong to this category. All of them had used the Rental Board earlier in their lives.

2.1.2.2.2 Rental Board's role-related motives

The decision to resort to the court system to solve a problem is based on an unstated assertion that this problem is one that the court system should address. In the same way, the refusal to litigate contains an implicit statement about which problems are suitable cases for the courts. Thus, a person's characterization of his/her problem is an important stage of the disputing process.

For many non-users, this stage proved to be crucial; they based their decision to go to the Rental Board on the fact that their own problems were not "important enough", in their

opinion, to justify judicial action. When asked what aspects of their problems exactly they were referring to, they mention two major elements: the moral issues and the material issues at stake.

For two subjects, their problems were purely material and did not have any moral connotation justifying the court's intervention. One mentioned that her decision would probably have been different had she be convinced that her landlord was acting in a bad faith or consciously lying ("C'est pas du monde méchant. Peut-être s'ils étaient vraiment malhonnêtes... j'aime pas les gens méchants" (#17)). Another, who faced a number of different problems over a long period of time, looked for information about legal remedies for one of them only, characterizing it as the only one involving justice considerations ("le problème du frigo, c'est le seul que j'ai perçu vraiment comme un problème, une injustice flagrante, mais légalement je pouvais rien faire" (#36)).

For another subject, the role of the justice role was to address major problems only ("I think the justice system is appropriate for major things, like not having proper heating, but ... I'd feel stupid taking someone to court for something that would take half an hour or an hour of work, I'd almost feel embarrassed, I mean, it seems you shouldn't have to go that far" (#27)).

2.1.2.2.3 Personal motives

A majority of non-users expressed motives related to their own preferences and attitudes. They described legal means as opposed to their preferences for informal modes of dispute-resolution and general attitude toward conflict ("Je privilégie quand même une entente à l'amiable, aller à la Régie c'est pour aller à la guerre. J'aime autant conserver des rapports civilisés. Si je dois endurer des choses pas vivables, et qu'il n'y a aucun autre moyen et que vraiment je suis pas capable de supporter, oui je vais y aller, mais je vais essayer d'éviter le plus possible" (#30), "Moi je suis pas un fan de ça. Je pense que la question, il faut voir comment je suis (...) Je suis quelqu'un qui essaie de bien s'entendre avec le monde, je préfère toujours arriver à une entente que passer à la Régie" (#39), "De

nature je suis une personne qui a l'habitude de faire ses petites affaires toute seule, je veux dire, tu te plains pas trop, tu chiales pas trop..." (#33)).

Some also saw the Rental Board as part of a larger social system against which they were reluctant to make demands; this reluctance could reveal either a vision of legal structures as functioning on the margins of real social life ("Il y a une certaine franchise que j'aime pis ça remplace ben des règlements, ben des lois. La loi c'est quand on est pas capable de se comporter comme il faut, de comprendre que les autres ont des intérêts pis qu'il faut les respecter (#34), "Ça prendrait quelque chose d'assez majeur pour que j'aie recours au système judiciaire. Les petites affaires on a pas besoin du système policier pour ça. Peut-être que je trouve que les relations propriétaires-locataires c'est pas assez gros pour que j'aille jusque là (..) pas assez important du côté de la moralité." (#35)), a will to limit their contacts with State institutions ("j'y ai jamais pensé sérieusement, je fais ma petite affaire... c'est pas un réflexe que j'ai de demander des choses à la société, je suis très asocial" (#32), "C'est en dernier recours, la Régie, sinon ça finirait p[l]us, si on y allait pour le moindre petit problème" (#34), "Je m'attends pas que la justice puisse régler mes problèmes, je compte pas là-dessus (...) Je me sens pas concerné" (#26)), or a feeling of exclusion from official structures ("Je suis de l'idée d'essayer de régler tes problèmes en dehors des organismes d'État, s'arranger à l'amiable. Pis c'est un peu comme une cour, la Régie, c'est pas ben intéressant, c'est très intimidant, je suis complètement perdu là-dedans, très mal à l'aise ... Je sais qu'il faut utiliser tous les instruments à notre portée, mais au niveau des tripes ça bloque" (#37), "J'ai de la misère avec l'ensemble de la démarche, formaliser, je comprends que ce soit nécessaire, mais..." (#35)).

Subject #28 proved to be a special case, since, even though he acts as the president of a tenant's association, he never managed to solve his own problems ("Je me disais en réglant les problèmes des autres, je réglais aussi le mien, je me défendais au travers l'Association (...) J'ai toujours essayé de défendre le petit." It seems that his actions aimed at satisfying his psychological needs rather than improve his material condition, and he therefore lacked the motivation necessary to engage in legal action. However, he expressed a general

reluctance to use the courts ("je suis pas un friand des tribunaux (...) le plus mauvais des arrangements est mieux que le meilleur procès").

2.1.3 Attitudes toward justice and social orientation

As seen in the preceding section, choosing not to resort the court system may be representative of one's position vis-à-vis social and legal structures in general and express a refusal to incorporate them in one's mental universe. However, the basis for this refusal remain unknown; it can not be clearly associated with feelings of political or legal alienation. In addition, it is not clear whether resorting to the court system implies a reverse attitude, i.e. one of adhesion to the structures in place. In other words, we may wonder whether there is a relationship between a person's attitudes toward the court system in general and his/her propensity to resort to it.

One's attitude toward the court system has two major components. It first has an abstract component, based on one's trust in the system in general and belief in its ability to produce fair results. Second, it has a subjective component, formed of a person's belief that he/she can manage to gain his/her point through the system; it is therefore related to one's degree of self-confidence in regard to legal procedure as well as one's evaluation of the system's accessibility.

Users and non-users were classified in four categories in respect of these two aspects. Many users' feelings toward the court system changed in the course of the disputing process; they were classified on the basis of their attitude at the moment when they initiated legal action.

2.1.3.1.1 Trustful/confident

Subjects in this category have no particular fear or concern in respect of the court system. Some of them have had positive experiences in the past and feel able to make their point ("J'avais aucune appréhension, je suis allée il y a quelques années mais ça m'avait pas marquée, ça avait été ben correct. Jusqu'à preuve du contraire on va leur faire confiance" (#31), "C'est de mieux en mieux, c'est plus honnête, aujourd'hui le juge écoute, on dirait

que c'est plus juste qu'avant. (...) J'ai bien aimé ça mon expérience. J'ai été juré aussi, à la Cour. Ça fait plus peur mais j'ai ben aimé ça" (#40), "je fais confiance à la justice, je pense pas me faire avoir" (#20), "j'ai toujours eu confiance dans la justice (...) la Régie, je connais pas tous les articles, mais ça me plaît, tu peux t'exprimer librement, chacun son tour" (#12), "en autant que tu as tes preuves, je pense que c'est assez juste pour rendre un bon jugement. J'avais une idée positive" (#38), "je le savais que j'allais gagner" (#11)).

It does not mean, however, that they would resort to the court system easily or would trust it in all circumstances. Most of them still think litigation is a long, often costly and disagreeable experience ("je suis pas amateur de la voie judiciaire, c'est long, dans l'avenir j'essaierais plutôt de régler à l'amiable" (#38), "la Régie j'ai rien à dire, je vais voir comment ça marche [à l'audition], mais j'aime pas ça faire affaire avec des organismes comme ça" (#16)). In addition, even though the system may not be wicked in itself, it is still composed of imperfect individuals ("Do I trust it? It's hard to say, for me it really depends on the individual you speak to, what are their own personalities like" (#27)).

Six users (#11, 12, 16, 20, 38, 41) and three non-users (#27, 31, 40) belong to this category.

2.1.3.1.2 Trustful/reluctant

This category is composed of individuals who, even though they don't distrust the justice system, might not be inclined to use it for personal reasons. They have no precise opinion of a system with which they have had little or no contact, and they are sometimes just not concerned with justice issues ("J'essaie d'éviter d'avoir des opinions sur des choses que j'ignore; j'avais pas d'opinion dans un sens ni dans l'autre" (#24), "j'avais jamais été là, c'était inconnu pour moi, je savais même pas que ça existait la Régie" (#25), "Pour certaines choses ça peut valoir la peine, mais moi je suis pas un fan de ça" (#39), "J'accepte que ce soit imparfait; je m'attends pas que la justice puisse régler tous mes problèmes, ils seront jamais capables, pis ça me scandalise pas" (#26)).

However, most of them would probably not feel at ease in a court room, due to a lack of self-confidence or a dislike of confrontation ("j'étais extrêmement gêné, j'aime pas me chicaner, alors... j'avais peur aussi d'être incapable de bien me présenter" (#24), "J'avais une image qui fait peur (...) J'ai jamais été fonceuse comme ça moi"(#25)).

Three users (#23, 24, 25) and two non-users (#26, 39) belong to this category.

2.1.3.1.3 Distrustful/confident

This category is composed of individuals who, even though they express feelings of distrust toward the judicial and often the political system in general, do not associate this distrust with a perception of a lack of fairness from the Rental Board ("J'ai toujours été convaincu que l'ensemble du système était fait pour autre chose que pour les gens, mais je peux pas dire que je pensais que la Régie était injuste à la base" (#35), "il y a une attitude qui fait qu'avec mon mode de vie, je suis vraiment pas sur un pied d'égalité avec les autres, même s'ils ont pas raison les autres ont le gros bout du bâton (...) [mais en allant à la Régie] j'y ai pas trop pensé" (#19), "j'ai pas tellement confiance, on dirait que c'est là pour protéger les propriétaires" (#21)). Some of them had had previous experiences that led them to doubt the efficiency of the system ("[en cour municipale] je suis sorti complètement survolté, très déçu, c'était pas sérieux. Déjà que mon image de la justice était pas très bonne" (#15).

However, they still think that a well-advised person, who can "play the game", can manage to win her/his cas. ("à la Régie j'avais pas vraiment d'idée préconçue, parce que je connais pas bien. (...) J'ai dit ce que j'avais à dire" (#15), "Peut-être parce que je l'ai vécu plus jeune, je me rends compte que des choses comme ça ça vaut pas nécessairement la peine, c'est bon pour quelqu'un qui a vraiment pas les moyens ... tu peux te faire entendre, avoir certaines choses, mais monétairement ça rapporte pas" (17), "C'est très long, c'est un vrai spectacle, il faut que tu vendes ta salade, il faut pas que tu te laisses impressionner. Les usagers sans expérience, ils se font biaiser (...) je crois que l'impression de la personne y fait " (#29), "Les gens les mieux protégés c'est ceux qui ont de l'argent... Le système pourrait être plus clair, plus facile d'accès [mais] un juge c'est pas Dieu le père, c'est

quelqu'un, je peux faire valoir mon point de vue, et la plupart du temps, si mon point est juste, je l'aurais" (#36), "un juge pour moi ça m'a jamais impressionné" (#19), "ce qui me dérangeait c'est de payer des frais, la procédure et tout j'y ai pas vraiment pensé" (#21)).

Three users (#15, 19, 21) and four non-users (#17, 29, 35, 36) belong to this category.

2.1.3.1.4 Distrustful/reluctant

Subjects in this category don't believe in the fairness of the justice system and are very critical of it. The failure of the system to recognize and to compensate for economical inequalities between disputants is cited as its major drawback ("Le système, j'y crois pas tellement, si t'as de l'argent tu arrives toujours à te défendre"(#34), "Ce que j'ai entendu, c'est pas fort comme organisme, c'est pas tellement du côté des locataires ... J'évalue le système très médiocrement. C'est tellement complexe, c'est impossible de se défendre tout seul, et j'ai pas droit à l'aide juridique. C'est une question de fric" (#37), "La justice y en a pas, aujourd'hui (...) avant il y a avait une certaine morale, mais maintenant la morale c'est élastique. Ceux qui ont pas d'argent ils sont pas capables de se défendre" (#33), "tu paies un bon avocat pis tu as plus de chances de ton côté, c'est pas normal" (#18)).

Such a concern often reveals a deeper feeling of alienation from the legal system, a system that is believed to discriminate, directly or indirectly, between the members of the dominant social class and the others ("La Régie laisse les choses aller, elle laisse une marge de manoeuvre au propriétaire. Ce sont toujours les propriétaires qui ont le gros bout du bâton" (#30), "Des fois tu tombes bien, mais en général c'est des crosseurs (...) Il faut un avocat pour avoir gain de cause devant le tribunal" (#32), "La Régie c'est une cour, pis dans une cour c'est un va-et-vient de parodie, d'échange, de ci pis ça... Être pris entre deux avocats adverses, surtout des fumistes! Prenez l'affaire du juge Bienvenue, c'en est de la fumisterie ça, c'est pas sérieux! (...) Et quand même tu gagnes à un procès, qu'est-ce qui te reste après? Rien. Du temps perdu" (#28), "J'essaie de me tenir loin. Je sais que le système est pas très correct [avec les membres des communautés culturelles], alors j'essaie de pas avoir de problèmes" (#14), "Il faut jamais avoir affaire à eux" (#18)).

In front of a tribunal, these subjects feel like strangers in a universe they can neither understand nor control. They are reluctant to appeal to legal means of dispute resolution ("Un jeu de polichinelles, avec les avocats en toges, avec leur langage... C'est un milieu complètement étranger, je suis pas capable de parler comme ça (...) C'est intimidant, j'ai pas le goût de me retrouver là" (#34), "C'est difficile d'obtenir gain de cause, il y en a qui sont plus compréhensifs que d'autres, à qui tu peux expliquer la situation , mais d'autres non" (#30), "c'est très intimidant aller en cour. Même si t'as raison, ces gens-là prennent une attitude pour te faire peur. (..) Les avocats sont arrogants, ils ont la parole facile. Du moment que tu te trompes, ils te manquent pas " (#33), "si on a pas un bon avocat, un caractère fort, on va sortir écorché" (#13), "j'étais très anxieux,j'avais peur de pas me faire comprendre, avec mon accent" (#14), "le système est fait pour se comprendre lui-même, entre avocat. C'est pas n'importe qui qui débarque là-dedans qui est à l'aise" (#18)).

Some users' opinion of the system changed in a favorable manner after their first contacts with it ("au départ, on me disait la Régie travaille pour les propriétaires, les pots-de-vin, on sait jamais, j'étais ambivalente (...) mais maintentant je sais que t'as tes preuves pis ça va. Là j'ai peur pour la Cour du Québec par exemple" (#13)). But, for others, having resorted to the court system represented and remains more of a stigma than something to be proud of ("devant la cour, les avocats sont là, il y a des gens qui me regardent, c'est comme si je suis en tort de quelque chose" (#14), "j'étais mal, je me sentais comme une criminelle, que mon geste était déplacé, je me suis remise en question ben gros (...) Je crierai pas sur tous les toits que je suis allée là" (#18)).

Three users (#13, 14, 18) and six non-users (#28, 30, 32, 33, 34 and 37) belong to this category.

2.2 "Types" building: Exploring the relationships between behavior, motives and attitude

The three variables elaborated in the preceding section (behavior, motives and attitudes) are not the only ones involved in a dispute. Nor are they independent one from the others or equally important in all conflicts. In fact, the situations reported by the participants in

the project were far form being uniform; the problems described varied in terms of seriousness, while participants' reactions to them were partly influenced by their own resources or the persons with whom they got in touch during the course of the dispute. External factors independent from the three variables chosen are likely to have played a major role in at least some of the reported disputes.

Since it is impossible to find perfectly comparable disputes in real-life settings, no clear conclusion about the factors determining conflict-solving behavior will ever be derived from direct observation. The goal of this section is therefore not to draw a mathematical model of disputing based on the variables described earlier; it rather aims at shedding some light at the patterns of correlation observable in the data gathered.

It is composed of two parts. The first part briefly presents some general findings about the relationships between the behavior, motives and attitudes reported by the participants on the project. The second introduces the typology of reactions to a housing problem built on the basis of these findings.

2.2.1 Preliminary observations

In order to study the relationships between subjects' motives, attitudes and behavior, a mathematical approach was first adopted. Due to the small size of the sample used, it proved impossible to highlight every possible relationship between these variables. However, some evident differences emerged between certain categories of users and non-users.

2.2.1.1 Behavioral schemes

Fewer users (6 out of 15) than non-users (8 out of 15) are classified as self-reliant. Among assertive subjects alone, whereas 4 assertive users out of 5 are forbearing, all assertive non-users are self-reliant. This may due to the fact that, by resorting to the court system, users express their will to have their landlords take charge of their problems. They are therefore not likely to try to solve them by themselves.

However, both assertive users and assertive non-users tended to exhibit independent rather than dependent behavior. In contrast, all forbearing non-users exhibited reserved and dependent behavior. This suggests that, although assertiveness seems to be associated with independence, users tend to rely exclusively on their assertive behavior to solve their problems, whereas assertive non-users resort to other means as well. In comparison, only half of reserved non-users resort to self-help strategies, the other half playing a rather passive and submissive role.

2.2.1.2 Avengers' particularities

A high degree of uniformity was found among avengers, both in terms of behavior and attitudes. All avengers exhibited reserved and independent behavior. They all also expressed trust in the court system and confidence in their capacity to win their case. This suggests that the tendency to use the court system as a way to exert revenge may be related to a particular behavioral and attitudinal profile.

2.2.1.3 Determinative role of principled considerations

A striking feature of principled users is their equal distribution in terms of assertiveness, autonomy and dependence; this suggests that the presence of this type of motive is determinative is court use, notwithstanding subjects' ordinary preferences for other means of conflict resolution. In addition, in terms of attitudes, 5 out of 6 principled users expressed distrust toward the court system, and 4 out of 6 avowed their reluctance to resort to it. Such a finding suggests that principled users resort to the court system despite their lack of faith in it. This is not the case, however, in respect of the other kinds of users: an overwhelming majority of them expressed trust in the system (6 out of 9) as well as self-confidence (7 out of 9).

2.2.1.4 Personal preferences as a central feature

Non-users who cited personal preferences as their main reason not to use the court system present many commonalities with each other, as well as many differences from

other non-users. A majority of them exhibited reserved (6 out of 9) and dependent behavior (5 vs. 2 independent). They represent 6 out of 9 reserved non-users, and 5 out of 7 dependent non-users.

As to their attitudes, these non-users were predominantly distrustful of the court system (7 out of 9), and reluctant to use it (8 out of 9). In contrast, the other types of non-users were self-confident and equally distributed in terms of trust.

2.2.1.5 Attitudes and litigiousness

If we look at attitudes alone, there does not seem to exist a clear relationship between one's trust in and degree of self-confidence toward the system. Users are equally distributed among the four attitudinal categories, except for the trustful/confident category to which belong twice as many subjects as to the three other profiles. Among non-users the same phenomenon can be observed: 6 non-users are distrustful/reluctant whereas the others are distributed among the other profiles.

There exists a clear difference between users and non-users in terms of expressed trust: 9 users, but only 5 non-users, are trustful. In terms of confidence, users are only slightly more confident than non-users (9 vs. 7 out of 15). However, as we have seen previously, principled users and "personal preferences" non-users can be distinguished from other users and non-users in terms of their attitudinal profiles. When they are removed from the sample, users and non-users differ in terms of trust (8 users out of 9 are trustful whereas only 3 non-users out of 6 are) but not in terms of self-confidence.

2.2.1.6 Attitudes and behavior

There seems to exist a relationship between expressed trust and assertiveness: a vast majority of reserved subjects (12 out of 19) were trustful whereas most assertive subjects were distrustful (9 out of 11). This relationship can be observed among users and assertive non-users, but not among reserved non-users, who are equally distributed in terms of trust.

Self-reliant (6 out of 8) and independent (4 out of 5) non-users are more likely to express distrust than trust in the system. In addition, a relationship can be found between a person's degree of self-confidence and his/her labeling as assertive and independent. Eight assertive subjects out of 11, and 13 independent subjects out of 15 expressed self-confidence. An inverse relationship exists for dependent subjects, of whom a vast majority (10 out of 12) were classified as reluctant. These relationships are observable among users as well as non-users.

2.2.2 Main typology

To make sense of the relationships previously described, it is important to identify the factors that seem to play a determinative role in one's reaction to a housing problem, and show how they play this role. Two main factors emerge from the data:

1. Attitudes toward conflict

A person's attitude toward conflict refer to his/her conflict-solving style; it has a purely descriptive aspect (i.e. what one actually does to solve the conflict) as well as a motivational aspect. It can be represented as an axis. At one end are highly assertive, independent and self-sufficient individuals. Reserved, forbearing, and dependent individuals are placed at the other end. Between these two poles are individuals whose degree of assertiveness, dependence and self-sufficiency is between these two extremes or vary depending on the circumstances.

2. Attitudes toward the State

One's attitudes toward the court system are most of the time consistent with one's attitudes toward State institutions in general. At one end of an axis are highly integrated people, who feel that they are members of State institutions and express trust in them. At the other end are people who feel alienated from a system they can't control nor trust. In between are situated individuals who are sceptical either of their own capacity to fit in the system, or of the system's capacity to respond to their needs.

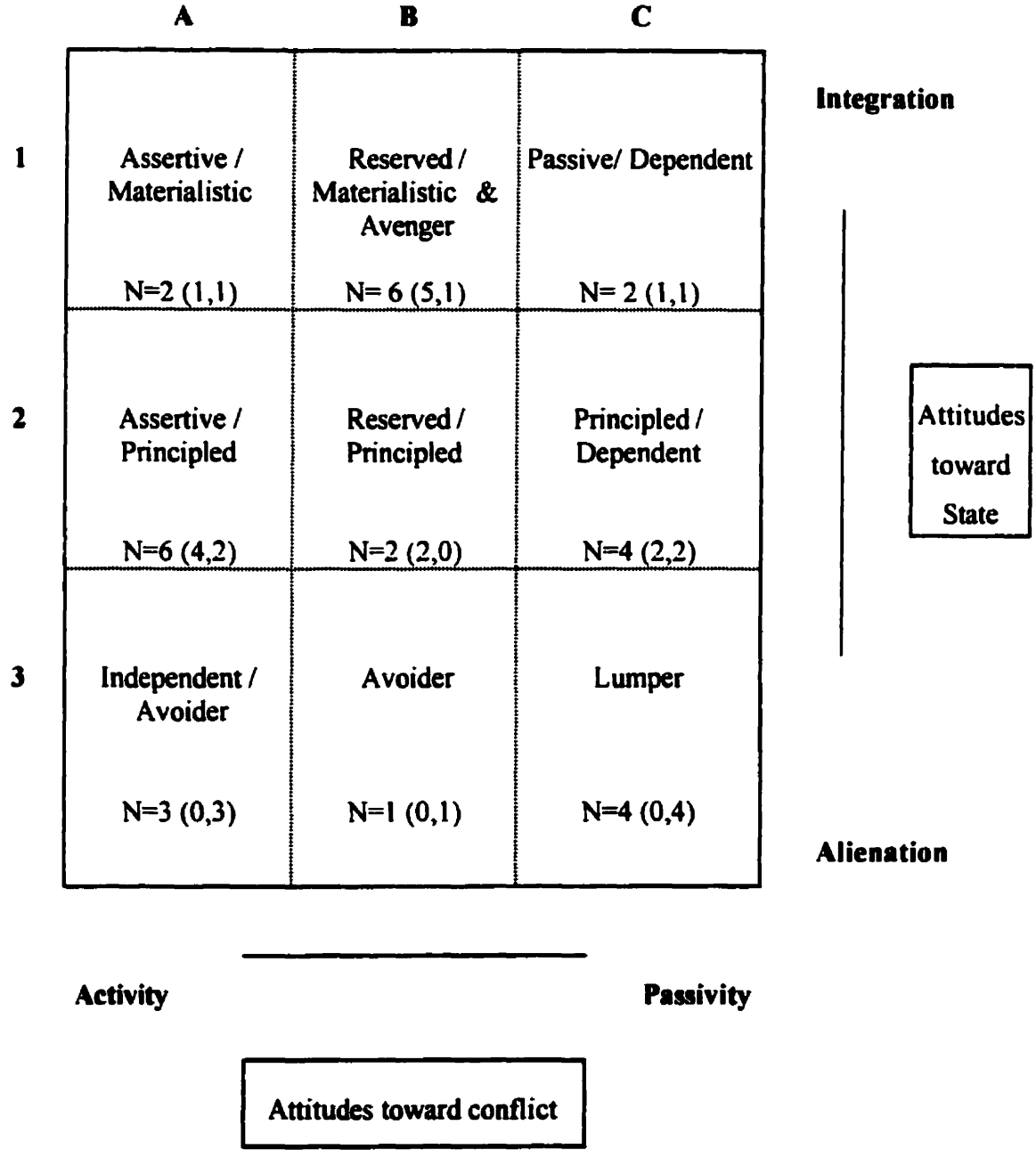
Even though most trustful/confident individuals are situated at the higher end of this axis, and most distrustful/reluctant ones are at the lower end, this axis is not one that purports to track these orientations. It illustrates a person's propensity to resort to State institutions in concrete cases notwithstanding his/her abstract, general attitudes toward these institutions.

As shown in Figure 1, a typology may be built around these two axes. The typology classifies the participants in the project as being of 9 major types. Members of the same type are not perfectly comparable individuals and other types could have been built in addition to these ones. Some of them could have been merged into a single type. However, the scheme presented seems to properly account for the commonalities and differences found among the persons interviewed. It does not claim to constitute an exhaustive typology of tenants. In addition, since peoples' attitudes and conflict-solving styles are likely to evolve during one's life and experiences, a person's membership in one category or another may well change over time.

These types bring together people whose behavior, although variable from case to case, obeys the same logic. For each type, a particular type of reaction is associated with a particular orientation toward conflict in general, and State institutions as fora of dispute-resolution. A type is nothing more than a combination of attitudes and observable behavior that interact with each other. One's propensity to resort to the court system is hypothesized to vary from one type to the other.

The following section provides for each type the number of subjects of this type, a general description of the type, and a portrait of one of the subjects that corresponds best to it.

FIGURE 1:



N = number of subjects (number of users, number of non-users)

2.2.2.1 "A" Types

This category is composed of three types, and embraces assertive, self-confident and autonomous individuals who take charge of their problems. These subjects tend to react rapidly, make their own decisions and look for information by themselves. They either resort to legal means of dispute resolution or to self-help strategies to solve their problems. They follow the same behavioral scheme: they first use bilateral strategies, and than resolve the dispute either by legal or other means (self-help strategies and/or exit).

Differences in their reasons for acting are what sustains their classification into three sub-categories:

2.2.2.1.1 A1: Assertive/Materialistic type

2.2.2.1.1.1 Members

1 user (#11), 1 non-user (#27)

2.2.2.1.1.2 Description

These active individuals' motivation is primarily material. They basically want to get their money's worth. Members of this category are likely to resort to the court system in last resort, after having tried every possible means to convince their landlords to react to their claims.

They exhibit a confident attitude toward the court system and feel comfortable in using it. However, for them to become users, material gains have to be significant enough to justify their involvement in the process.

These individuals are those who correspond the best to the cost-benefit analysis model described in the literature. They do not seem to get ego-involved in their disputes with their landlord. Considerations of justice or good faith do not appear in their discourses.

They tend to conceive of their relationship with their landlord as an economic transaction, in which equality between the parties is ensured by legal loss-compensation mechanisms.

2.2.2.1.1.3 The story of Charles

"Le problème, c'est un peu tout, la première année, on a eu de la vermine, étant donné que la porte est jamais barrée on se fait souvent voler, on rencontre souvent des gens, des itinérants, ou des gens qui se piquent dans les couloirs ... le manque d'insonorisation, le tuyau qui coule, le dessous d'évier... il y a tout le temps des vidanges qui traînent dans le corridor ...

On a comme mis un peu de temps pour emménager ça ici, j'étais pas prêt à déménager tout de suite ... j'ai investi, comme je te dis, dans les rideaux, j'ai fait tout ça sur mesure... faque je me dis qu'est-ce que je fais? Est-ce que je reste ici et je paie un loyer plus modique, en étant prêt à vivre un petit peu avec les inconvénients en espérant qu'il va y avoir des améliorations, ou je m'en vais? Alors c'est pour ça qu'on a décidé de faire un recours à la Régie du logement.

On a entamé les démarches habituelles, mises en demeure 2-3 fois, aucun changement, on est allés à la Régie du logement. On est passés 2-3 mois après, c'est quand même assez long ... Par la suite il nous a envoyé des demandes de recouvrement de loyer, parce que par la suite on s'amusait à le faire lambiner un peu, pour le loyer, on payait pas le premier ... pour dire "faites les travaux, là!" ... après quelques jours il s'amusait à nous envoyer des recouvrements de loyer, alors c'était pas avantageux, il fallait aller à la Régie ... j'avais pas le choix de dire effectivement j'ai pas payé le loyer, alors j'ai dit je peux pas continuer comme ça encore, alors je suis retourné faire une réduction de loyer ...

C'est quand même cher, 575, tu peux avoir un beau 5 1/2 à ce prix-là, faque je me suis dit premièrement si j'ai tellement d'inconvénients, ça fait deux fois que je me fais voler ici, ça paraît pas mais c'est 400$ de déductible ça, pis c'est des choses comme ça qu'on est pénalisés, alors si je suis capable d'aller chercher peut-être 1000$ pour les inconvénients que j'ai eu je vais essayer de l'avoir. Le gars qui habitait à côté ici avait fait aussi une démarche pis il nous a coaché un peu, il nous disait que que ce soit un règlement à l'amiable ou quoi que ce soit qui arrive que ça valait la peine de faire des pressions ... Je savais que j'allais gagner, parce que lui avait gagné, donc je savais, quel montant j'allais recevoir par contre, là ...

Le gars [his landlord] est complètement perdu... des fois je l'appelle, que ça soit pour des travaux à terminer, pis là il me fait accroire que la porte était barrée quand le gars est venu ... c'est pas du tout la réalité, alors à un moment donné ça vaut plus la peine, d'essayer de "dealer" avec lui une entente à l'amiable ou quelque chose comme ça... J'ai essayé, fréquemment! ... il y a pas de coopération de sa part, il veut pas, il est très avare ... j'envoie des mises en demeure, y a aucune action qui est jamais prise, il rappelle même pas ...

Je trouvais ça drôle que la Régie fasse rien contre ce bonhomme-là, parce que il est toujours rendu là, pis, c'est comme, tsé finalement, c'est là que je me dis le système est pas convaincant, il est pas objectif dans ses décisions, comme à la Régie, ils le savent ben que le gars est tout croche; si tu sors son dossier chez les inspecteurs, il est épais de même ... Des fois, c'est évident qu'il a menti en pleine face pis la régisseure, bon, elle est obligée de prendre qu'est-ce qu'il a dit... Pourquoi ils statuent pas?! Je trouve ça complètement idiot. Ça des fois je me dis c'est incroyable, que tu puisses finalement aller à chaque fois pis dire des niaiseries ...

Pis si je suis encore ici un an, juste avant de partir je vais retourner parce que je suis sûr qu'absolument rien va être fait, je vais faire les démarches pis quand je partirai je

récupérerai encore une partie des montants que j'aurai déboursés. Quand je vais vouloir m'établir je vais déménager.

Je suis un peu comme épuisé de me battre contre des niaiseries ... Je vais rester sur le basic, je vais aller en réduction de loyer; pis je me dis qu'ici je resterai pas longtemps ... Le système, c'est tout croche, c'est complètement fou ... une chance que je me décourage pas, que je me relève les manches, parce que sans ça ça me coûterait cher."

2.2.2.1.2 A2: Assertive/Principled type

2.2.2.1.2.1 Members

4 users (#13, 15, 19, 21), 2 non-users (#17, 29)

2.2.2.1.2.2 Description

Contrary to those in the preceding category, these subjects' discourse is more moral than legalistic. For them, a landlord-tenant relationship has a personal as well as an economic aspect. It involves each party respecting general standards of conduct applicable in all inter-personal relations.

These subjects do not seem to believe in the efficiency of the court system as a goods-distribution mechanism. This belief could account for their general distrust of legal institutions. Most of the time, they tend to solve their problems by themselves. In some situations, however, they may come to interpret their landlord's behavior as an attack upon their personal dignity. In such cases when moral issues are at stake, they look for support from an external, neutral authority.

These subjects resort to the Rental Board when they are convinced that dishonesty, rather than mere negligence, accounts for their landlords' behavior. In these cases, law primarily fulfills the symbolic function of determining the personal merits of each disputant. Its interest resides in its providing an opportunity to influence the other party's behavior.

This category includes principled users as well as disillusioned ex-principled users.

2.2.2.1.2.3 The story of Karine

"Il y avait plusieurs problèmes comme ça qu'on s'est rendus compte quand on est rentrés, on a fait comme "ah non!" Le plancher de salon était tout gondolé, ma fenêtre fermait pas, le lavabo était carrément renfoncé dans le meuble ... On l'a appelé souvent, on l'a achalé pas mal ... il rappelait jamais, il s'en foutait ben raide... il voulait tout le temps se débarrasser de nous autres, il disait tout le temps "je vais y aller, je vais y aller" pis ... il venait jamais finalement ...

On a envoyé des petits mots, tsé, écrire une lettre pis dire "là on a vraiment des problèmes, je peux comprendre que vous avez plusieurs problèmes vu que c'est le mois de juillet , on est ben compréhensifs, ça nous dérange pas que ça prenne un peu de temps, en autant que vous veniez au moins voir, à cause qu'il y a 2-3 choses que c'est vraiment urgent, le reste on peut attendre" ... En septembre on lui a envoyé une lettre enregistrée, avec toutes les choses qui étaient brisées à ce moment-là pis on lui a dit que s'il faisait pas rien nous autres on allait à la Régie ...

Ça va au 25 septembre, il est venu réparer le plancher, il a mis quelques tuiles ... il était supposé venir le lendemain pour faire tout le reste, sûr, sûr! ... on l'a pas revu, faque là on s'est remis à l'écoeurer, jusqu'au 23 octobre. Ils sont revenus faire d'autres réparations, mais il sont ben dit "ça a pas de bon sens, c'est temporaire, on va venir te le changer", encore là c'était supposé être le lendemain ...

Rendus en décembre, normalement on allait lui porter le loyer chez elle, sauf que là j'ai dit ... "si tu le veux tu vas venir le chercher, pis en même temps je veux que les affaires se fassent réparer, ça fait longtemps qu'on niaise, là, nous autres on a fait une demande à la Régie des loyers..." Là on était en attente de passer en cour, on lui disait "ça marche pas là, viens faire les réparations", pis on était même prêts à dire si tu nous rembourse le 40$ pis que tu viens faire les réparations tout au complet on laisse tomber la plainte"... On est passés en cour, on a eu un jugement mais le jugement ça valait pas de la schnout, parce que on a eu 40$ de frais qui étaient à rembourser, pis 15$ de réduction de loyer par mois jusqu'à ce que les réparations soient effectuées; sauf que ça lui coûte moins cher de nous laisser les 15$ par mois plutôt que d'effectuer les réparations ... j'ai appelé à la Régie, pis tout ce que je pouvais faire contre cette décision-là, c'est prendre un avocat pis l'amener en cour, aller aux petites créances ...

Tout le long j'essayais vraiment de lui laisser une porte de sortie, pour que si vraiment il avait eu de la bonne volonté il aurait pu le faire, montrer que correct, je vais faire attention ... On l'a averti qu'on allait voir un avocat, il a dit "non, non, demain je vais aller chez vous avec ma femme, on va en parler, on va s'arranger"... Là ils sont pas venus, ils ont même pas appelé ... Là j'ai dit à l'avocat: vas-y fort, sois vorace ... c'est une façon de leur faire payer ce qu'ils nous ont fait endurer pendant tous ces mois-là ...

J'étais tannée de me faire niaiser, je me suis dit je vais pas y aller trop raide parce que c'est quand même mes propriétaires pis je veux pas avoir du trouble ni rien, mais je vais faire toute comme dans les lois ... je me disais, c'est la seule façon de les faire vraiment payer eux autres. Pas payer en argent, mais de la façon qu'ils nous traitent, ils nous regardent de haut, nous autres on est les propriétaires pis si t'es pas content ferme ta gueule pis va t'en ... Je voyais pas de raison pour laquelle il avait le droit de nous traiter de même ... Je me disais, en allant là, pour une fois il va me servir à moi, pas aux autres, il va me servir à moi ce système-là, je vais m'en servir pour me faire respecter au travers ...

À la Régie, si j'avais été madame bla-bla, 30 et quelques années, pleine de "cash", je suis persuadée que ça aurait été différent. C'est ce que j'aime pas, cette attitude, avec mon mode de vie pis tout je suis vraiment pas sur un pied d'égalité avec les autres ... même dans les cas où j'ai raison, où les autres ont pas raison de me taper dessus, ils

ont quand même le gros bout du bâton, j'ai l'impression d'être toujours moins importante que la personne qui essaie de me taper dessus ... Le propriétaire il a fait un bon coup! Il se ramasse avec 15$ de réduction de loyer par mois, pis il en sauve combien en réparant pas! ... la Régie embarque dans leur "pattern", ils font comme approuver ce qu'il fait en lui faisant un cadeau de même. C'est comme s'ils disaient c'est ben correct ce qu'il fait ... Faire vivre le monde là-dedans, nous ou quelqu'un d'autre, ça se fait pas. C'est pas correct qu'il s'en sorte si facilement que ça ...

Perdre ma cause, ça m'étonnerait, être en Cour du Québec pis ils encouragent encore des affaires de même! Je me gênerais pas pour dire ce que je pense, si le jugement est pas correct, je vais tout de même ben vider mon sac!! Un juge, c'est supposé "catcher" à quoi ça sert pis tout. En faisant ça, tu encourages le propriétaire à pas réparer c'est ça que tu fais..."

2.2.2.1.3 A3: Independent/Avoider type

2.2.2.1.3.1 Members

3 non-users (#30, 34, 35)

2.2.2.1.3.2 Description

These independent individuals do not trust, and do not feel at ease with, the legal system. They often describe it as too complicated, or as an universe in which they can't feel comfortable. These people like direct and honest relationships and dislike formalization. If they can't maintain a good dialogue with their landlord or feel they can't trust him/her, they would rather avoid most contacts with him/her or exit from the relationship.

2.2.2.1.3.3 The story of Richard

"Le propriétaire était jamais rejoignable, dès l'instant où on avait des problèmes on avait de la difficulté à le rejoindre, c'était long. J'avais un problème de salle de bains, j'avais de l'eau qui coulait, ça a pris un bon deux mois à le faire arranger. C'était pas des choses dramatiques mais c'était fatiguant. T'appelais, t'appelais, rien à faire il rappelait jamais. ... Ça commençait à gonfler le mur, j'ai appelé le propriétaire, à plusieurs reprises, il écoutait pas, c'est comme s'il était pas au courant, il venait pas voir, des fois il passait deux minutes, il rentrait même pas ...

Là il y a eu la goutte d'eau qui fait déborder le vase, qu'on a décidé qu'il venait de passer du stade désagrément au stade écoeurement, une fin de semaine le système électrique a pété, en hiver, rien marchait, on a pas eu de chauffage pendant trois jours ... on était pas au courant qu'on pouvait faire venir un électricien pis le charger au propriétaire ... on a fait des changement de "fuse", on a essayé toutes sortes d'affaires ça donnait rien, bon, finalement, il a fini par venir le mardi ... on était vraiment en maudit, on a décidé qu'on restait pas là une deuxième année quoi qu'il arrive, c'était final.

On a commencé à chercher des appartements ... au mois d'avril on a pas payé le loyer. Au mois de mai il est venu pour demander pourquoi on avait pas payé le loyer et pourquoi on le payait pas encore ... Là j'ai dit moi c'est ben platte mais ton loyer tu le

vois pas tant que tu as pas réparé le mur dans la cuisine ... il a joué vraiment un jeu, comme si c'était tout nouveau, qu'on en avait jamais parlé, ce qui était pas vrai. On avait jamais par exemple fait la démarche d'envoyer une lettre enregistrée ou quoi que ce soit ...

Il a fait la réparation ... on s'est arrangés pour déménager d'avance, deux semaines avant ... J'ai jamais payé les mois de loyer qui manquaient ... les risques étaient minimes par rapport au fait que c'est une démarche assez complexe pour un propriétaire, ses trois mois de loyer ça valait peut-être pas la peine pour lui de s'investir plus que ça; on a parié là-dessus pis finalement on a jamais rien eu ...

Il était pas agressif comme bonhomme, sauf qu'il mentait, c'était n'importe quoi pour s'en sortir, il avait eu un gigantesque accident d'auto deux fois de suite, n'importe quoi ... Il nous tapait sur les nerfs, c'était plus ça ... j'étais décidé que je voulais pus rien savoir de ce gars-là ... En plus, on avait pas d'argent pour payer une compensation quelconque. On avait rien à offrir en échange qu'il nous laisse partir ...

Maintenant j'ai un propriétaire très gentil, pis là on est en train de négocier si je reste pour l'année prochaine, c'est informel mais c'est clair, pis lui il veut pas de lettres, il m'en a pas demandé, c'est clair, on s'est parlés, on s'est compris, c'est honnête pis c'est parfait. J'ai de la misère avec l'ensemble de la démarche, formaliser, je comprends que ce soit nécessaire des fois mais j'ai de la misère avec ça pareil ... J'ai très peu confiance. Je veux dire, dans l'efficacité, parce que quand tu embarques dans ces démarches-là c'est souvent lent ... ça laisse rien d'intéressant dans la relation ...

J'imagine que ça prendrait quelque chose d'assez majeur pour que j'aie recours au système judiciaire, quelque chose qui concernerait mon garçon j'hésiterais pas dix secondes, c'est une autre question, une question de violence ou quelque chose comme ça je le ferais tout de suite ... les petits crimes, on a pas besoin d'un système policier pour ça ... Peut-être que je trouve que les relations locataire-propriétaire c'est pas assez gros pour que j'aille jusque là."

2.2.2.2 "B" Types

These individuals tend to be reserved, avoid open confrontation with their landlords, and resort to self-help strategies. They can be distinguished from A1-type subjects in that they use the legal system as a spokesperson rather than a third party: legal proceedings don't occur at the end of the disputing process but at any moment at which they feel the need to gain some support form an external authority.

Since they do not tend to assert themselves in general, these subjects need a morale booster to be able to confront directly their landlords. Users from this category often made their decision to go to court after they allowed the situation to degenerate and become unbearable from a personal or material point of view. Once they reached this turning point, they proved themselves able to take charge of their problem.

They can be divided in three sub-categories:

2.2.2.2.1 B1: Reserved/Materialistic and Avenger types

2.2.2.2.1.1 Members

5 users (#12, 16, 20, 38, 41), 1 non-user (#31)

2.2.2.2.1.2 Description

These individuals resemble A1-type members; however, they tend to be less assertive than the latter in their relationships with their landlord. This category embraces materialistic users as well as satisfied ex-users, and avengers. These subjects feel comfortable in using the court system and may feel protected, rather than restrained, by procedural constraints; they may prefer to confront their landlord in court rather than directly.

As for A1-type subjects, these subjects do not refer to justice considerations or norms of conduct. They are not concerned with fairness or morality issues. They use legal remedies as a way to get even with their landlords. Some of them look primarily for material compensation only, and will go to court if "it's worth it". Others take advantage of the court system as a means to exert personal revenge. They are not concerned with the availability of adequate remedies as much as with the possibility to annoy their landlord or prove him/her wrong.

2.2.2.2.1.3 The story of Johanne

> **"Quand on est rentrés, comme je t'ai dit, le tuyau coulait, on a commencé à l'achaler dès qu'on est rentrés pis chaque fois qu'on le voyait, on lui en parlait, il disait tout le temps "ah oui, la semaine prochaine, un de mes hommes va aller voir ça, oui la semaine prochaine", ça arrivait jamais, pis des fois il nous a envoyé des gens faire des réparations qui avaient pas rapport avec les problèmes qu'on avait ...**
>
> **L'an dernier tu vois on lui a rien fait d'officiel, on lui parlait verbalement, au téléphone ou quand il passait dans le building. Avant Noël qu'on lui a envoyé une lettre, disant écoutez si ça s'améliore pas ... À un moment donné tu dis câline, il va-tu faire quelque chose? On s'était dit que peut-être en prenant des procédures écrites ça aurait plus d'effet, mais non, ça a pas donné grand-chose ... Quand on a écrit notre lettre, on avait l'intention d'écrire un dossier à la Régie, porter une plainte formellement, pour avoir peut-être une réduction de loyer pour compenser, c'est juste que c'est arrivé à un moment dans nos vies où on était débordés comme des malades, finalement on s'en est jamais occupé et on a décidé de déménager à la place, mais oui, ça nous est passé par la tête, pis j'avais appelé pour m'informer, ils nous avaient dit ce qu'il fallait faire,**

il nous avait dit que c'était 40$, pour ouvrir un dossier... On s'est jamais rendu jusque là. On aurait dû! ...

On a commencé à y penser assez tard, oui. On est des personnes pas mal tolérantes. On avait tout le temps espoir, ça va s'arranger ... On avait espoir que ça allait se régler tout seul comme par magie parce qu'il était harcelé de tous les côtés ... A un moment donné on s'est dit on essaie-tu ça? pis on a essayé. A un moment donné le concierge avait demandé à tous les locataires de ne pas payer le loyer comme moyen de pression. On était rendus en février pis ça avait rien donné, alors je me suis remis à jour dans mes paiements de loyer, j'ai dit coudon j'ai pas envie d'avoir du trouble plus tard à cause de ça ...

Le propriétaire, il est bien gentil c'est juste qu'il est pas du tout à son affaire. Quand on a loué l'appartement, on avait comme décidé de faire notre affaire, de pas avoir affaire à lui trop trop, parce qu'on voyait que ça avait pas l'air de marcher fort avec lui. On était comme avertis que si on voulait quelque chose ...

À la Régie on voulait juste une compensation monétaire pour les inconvénients ... Je pense qu'on aurait gagné, c'est pas pour ça qu'on s'est pas rendus jusque là. Je pense qu'on aurait peut-être dû faire des démarches avant pis les mener à terme, parce que là on a été un peu négligents, c'est ben beau essayer de se débrouiller, faire nos affaires pis pas avoir affaire à lui, mais ça règle rien non plus. Si ça recommençait, j'essaierais de discuter mais si ça donnait rien j'en ferais des démarches, coudon, j'irais à la Régie cette fois-là ... Quelque part on le payait le loyer de toute façon faque ça aurait juste fait de l'argent qui serait revenu mais... C'est sûr que c'est nono quand j'y pense, on avait tout commencé, pis on s'est pas rendus là."

2.2.2.2.2 B2: Reserved/Principled type

2.2.2.2.2.1 Members

2 users (#14, 18)

2.2.2.2.2.2 Description

These independent subjects do not assert themselves in conflict situations and tend to solve their problems by themselves. They combine a dislike of open confrontation with an inability to handle conflict. They lack self-confidence as to their capacity to face their landlord in informal settings as well as in front of a tribunal. These individuals tend to try to keep control of the situation and avoid conflict as much as possible. They describe themselves as good and tolerant tenants who do not want to make trouble. Legal means of dispute resolution would be used in last resort only, if moving out is impossible or too costly.

They would first resort to self-help strategies. Their failure to avoid conflict is likely to affect their self-image and lead them to describe their problem as a matter of self-respect.

They tend to justify their going to court from a moral point of view. Having to go to court represents a lack of control on their lives and a failure to avoid problems and/or solve them by themselves; they therefore need to be placed in extreme situations to resort to the court system.

The two users in this type defined their cases as involving a matter of principle. They went to court in reaction to an unacceptable lack of respect from their landlord. Both first thought of moving out before they decided to resort to the legal system; they finally did it in order to "make a stand" or prove themselves they had "faced the situation". Both were represented by a lawyer before the Rental Board.

2.2.2.2.2.3 The story of Chantale

"Le problème d'eau pour lequel je suis allée à la Régie, est arrivé pour la première fois le printemps dernier. Ce que j'ai fait c'est que je lui ai téléphoné pour lui demander de prendre des mesures en conséquence, elle a rien fait ... elle a jamais pris une action; trois jours après il y a un monsieur des États-Unis qui est venu, il a coupé la gouttière, il l'a accroché avec une broche pis c'était arrangé.

Cet hiver, quand le problème d'eau est arrivé encore, je l'ai appelé la veille, c'était un mardi soir je pense, je l'ai appelé la veille, pas de nouvelles, à un moment donné à 11 heures du soir j'étais couchée sur mon sofa parce que c'était la seule place que je pouvais dormir, elle me téléphone ... elle est venue constater les dégâts, et à dix heures le lendemain elle avait encore rien fait ...

La première fois j'ai rien dit en disant c'est correct, on va endurer... J'ai seulement déduit de mon loyer la balayeuse que j'avais louée pour ramasser le tapis. J'aimais mieux le faire moi-même que lui demander, parce que... on est jamais mieux servi que par soi-même ... Mais là c'est plus l'accumulation de presque deux ans qui fait que tu te fâches pis tu dis il faut que je fasse quelque chose ... Ce qui a fait que je suis allée à la Régie c'est qu'à un moment donné pendant les réparations, ils sont venus réparer, défoncer le mur et replâtrer et tout pis là pendant une semaine j'ai pas eu de ses nouvelles ...

Moi je l'ai appelée à un moment donné, au bout d'un certain temps, je voulais pas la harceler non plus, mais quand j'ai vu qu'elle prenait pas de mesures pour régler le problème le plus vite possible, je l'ai appelé ... Elle a dit que les ouvriers étaient sortis seulement hier mais ça faisait deux jours qu'ils étaient sortis, parce qu'elle ment aussi. Quand elle vient ici sans m'avertir, elle dit que c'est pas vrai ...

C'est la première fois que j'ai un propriétaire comme ça. D'autant plus qu'avec moi, tsé, je rentre dans un appartement je le repeinture au complet, c'est toujours très propre, je paie toujours mes loyers à date. L'autre jour le robinet coulait, j'ai acheté des nouveaux caoutchoucs, je les ai posés ... Ma philosophie a toujours été de parler le moins possible à la propriétaire ... Là je suis allée à un moment donné à la Régie pour autre chose, mes raisons sont drôles peut-être, peuvent paraître drôles pour certaines personnes, c'était même pas pour l'argent, c'était juste pour mon honneur, de dire il y en a d'autres qui vont passer après moi, pis elle va les harceler, elle va leur faire la même chose, à un moment donné il faut que quelqu'un dise wo là! c'est assez! ... Après la semaine sans nouvelles, il fallait que je dise je suis pas une chienne, là, de coucher

sur mon sofa pis qu'on fait rien... Pis j'avais pas de recours parce que j'avais déjà appelé à la Régie ... je pouvais pas lever les pattes d'ici, je pouvais rien faire... Parce qu'à ce moment-là j'étais comme ça, j'étais prête à partir.

Dans la mise en demeure on disait clairement qu'on aimerait mieux régler à l'amiable pis qu'elle avait juste à communiquer avec mon avocate. Parce que moi j'étais pas capable de régler ça, j'aurais dit "oui c'est correct, on passe l'éponge..." pis c'est pas ce que je voulais. Elle a jamais appelé l'avocate ... Je suis pas une fille qui cherche les conflits, à faire des choses comme ça ... J'ai toujours espéré jusqu'à la fin que ça se règle. Le matin j'étais mal, je me sentais comme une criminelle; comme ben déplacée, que mon geste était déplacée, que j'exagérais peut-être, pourquoi j'avais fait ça... Je me suis remis en question ben gros...

C'était pas une question de gain, c'était plus une question de rétablir... Parce que les frais qui sont là, il y a plein de frais que moi j'aurais jamais pensé à réclamer, pis c'est l'avocate qui m'a dit "as-tu pensé à ça?" C'est venu comme ça. J'attends rien pour ça, je sais que je risque d'être dédommagée pour les biens mais le reste j'attends rien ...

Je suis contente de l'avoir fait, juste que ce soit inscrit quelque part, le nom des opposants, parce que je me dis si quelqu'un d'autre a des problèmes avec elle, je sais pas si ils peuvent en tenir compte dans les décisions, mais s'il y a un propriétaire à répétition qui se ramasse souvent là ils doivent ben savoir que c'est louche un peu ... C'était correct qu'il y ait une mise au point, pis je trouvais que c'était le temps que je le fasse, que quelqu'un le fasse pis c'était moi qui le faisait."

2.2.2.2.3 B3: Avoiders

2.2.2.2.3.1 Members

1 non-user (#32)

2.2.2.2.3.2 Description

These individuals are independent but not assertive. They are characterized by their reluctance to make demands on State institutions as well as on other individuals. They are isolated and tend to avoid contact with their landlords as well as with official institutions in general. When they face major problems, they tend to endure or to resort to self-help strategies, including clearing out. They may also resort to non-confrontational bilateral strategies such as not paying their rent.

2.2.2.2.3.3 The story of François

"Le chauffage de la salle de bain marche pas, mais on a jamais vraiment appelé pour ça. On a aussi le plafond qui a coulé, pis aussi la douche qui marchait pas. C'est tout dans la salle de bains ... On a pas rien fait pour ça, j'ai dit à ma coloc de le dire pis je pense qu'elle l'a pas fait. Je lui ai pas parlé ben ben moi au propriétaire. Ça me tente pas ben ben. Je paie le loyer pis c'est tout ... Le moins souvent que je la vois c'est le mieux ...

Le plafond a commencé à couler une couple de mois après qu'on soit rentrés, mettons en avril. Ça s'est réglé en juin ... Entre avril et juin, on a appelé deux-trois fois, ils ont rien fait, on a retenu le loyer, quand on a pas payé pendant un mois ils sont venus ... C'était mon idée de pas payer ... on avait déjà demandé 3 fois pis ça avait pas marché. Sauf qu'il a fallu payer fois le mois d'après pis l'argent était déjà dépensé! Ça a coûté cher le mois après! ...

Je leur parle pas, on leur a juste laissé des messages, on leur a pas reparlé, il y a jamais eu d'autres contacts. A un moment donné ils sont venus pis ils ont arrangé la douche aussi ... Les propriétaires je les connais pas pis je veux pas les connaître, le moins possible qu'on a des contacts le mieux c'est ... En général, j'ai jamais eu de contacts avec mes propriétaires à part pour payer le loyer ...

La société en général dans laquelle on vit c'est comme ça, le moins de contacts que j'ai avec l'autorité le mieux c'est. J'aime pas ça être mêlé à ça, j'aime mieux faire ma petite affaire ... J'y ai jamais pensé sérieusement à aller à la Régie ou quoi que ce soit. Moi je suis un asocial. J'ai ma job mes "chums", je fais ma petite affaire, je me débrouille avec ce qui m'est imposé. Je suis un genre de révolutionnaire de salon ... Par rapport à aller à la cour, ben ça dépendrait, ça dépendrait du problème, si j'avais pas le choix, mais c'est pas un réflexe que j'ai de demander à la société des choses, je suis très asocial ...

J'ai été en cour trois fois, dont une fois en 96, pis je suis allé avant ça deux fois pour conduite en état d'ébriété. J'ai pas pris d'avocat rien, je voulais que ça dure le moins longtemps possible pis de toute façon ça coûte cher ... C'était deux fois dans la même semaine, j'essaie de pas trop y penser, c'est pas trop fort, la première ils m'ont enlevé mon permis, la deuxième fois je l'avais déjà p[l]us, là je pourrais le reprendre mais je veux pas. Tout ce que je vis c'est à vingt minutes à pied de chez nous alors j'en ai pas besoin. J'ai déjà eu des tickets mais je les ai pas contestés ...

Avec la justice, des fois tu tombes bien, mais en général c'est des crosseurs, c'est toute la même gang qui se protègent entre eux, prends juste l'affaire Barnabé, pis Gossett ... Peut-être je pourrais avoir gain de cause à la Régie, mais il faut un avocat, c'est long ... je pense que si j'avais un gros problème je me pousserais, ça serait plus simple que d'aller en cour. Ou bien je réparerais moi-même. Il me semble que c'est mieux de pouvoir s'en sortir seul. Ça forme le caractère."

2.2.2.3 "C" Types

Whereas A and B types subjects are generally independent and self-sufficient, subjects in this category tend to rely on others to take charge of their problems.

2.2.2.3.1 C1: Dependent/Passive type

2.2.2.3.1.1 Members

1 user (#23) and 1 non-user (#40)

2.2.2.3.1.2 Description

The C1-type embraces passive individuals who share a common trust in the court system. These individuals exhibit the same type of enduring, dependent behavior. When they face a problem, they either ignore it or they tend to look for external help. They would possibly go to court, if their problem were important enough and they were provided proper support. These individuals do not get ego-involved in their disputes and do not refer to general norms either. They are mainly looking for someone to act as a spokesperson.

The two subjects belonging to this type resorted to the services of a community organization specialized in housing issues. Even though they had gained self-confidence through their past experiences with the court system, they still need external support to get through the legal process. It is very likely that they will continue to resort to community services and legal aid lawyers as a primary means for resolving their problems.

2.2.2.3.1.3 The story of Jean-Paul

> **"On est arrivés au mois de mai, ça va faire deux ans. On avait signé un bail pour deux ans, avec des conditions qui étaient sur le bail: faire la peinture, la toilette, il a tout peinturé tout ça, mais quand il lui restait à faire les fenêtres il l'a pas fait ...**
>
> **Quand on a vu qu'il le faisait pas on a envoyé une remise en demeure [sic]; là il s'est décidé d'arranger seulement ceux qui l'avaient envoyé. Parce que dans le bloc on était 8 logements, sur 8 on était 5 qui avaient signé pour qu'il arrange les châssis. Comme il avait plus peur de moi il a fait mes châssis à moi pis à ma fille à côté. Après ça on a parlé pis je lui ai dit "on a d'autres problèmes", parce que c'était un bloc de drogués, pis lui le savait. J'ai dit "c'est eux autres qui s'en allent ou c'est nous autres". Il a dit je vais casser le bail pour toi. On avait un bail de deux ans pis il l'a cassé après un an. Là on est arrivés icitte, là encore il y avait des choses marquées sur le bail, lui voulait pas les faire. On lui a envoyé encore une mise en demeure, pis lui il les a faites en novembre. On est rentrés en juin pis il l'a fait en novembre ... En plus, il avait promis de changer les portes, s'il le fait pas je vais lui envoyer encore une mise en demande [sic] ...**
>
> **Toutes les fois je suis allé à E. [a community organization for tenants] pis là ils m'ont rempli des papiers, la mise en demeure. C'est ma belle-soeur qui m'a donné ça, elle m'a dit va là, c'est bon, ils m'ont déjà aidé. Moi je croyais pas ça mais je pense que ça a été bon. Parce que eux autres [the landlords] quand c'est toi qui écrit ils pensent qu'ils ont gagné, mais quand c'est eux autres [E.] ils ont peur, parce que les portes, les châssis, c'est des affaires obligatoires, ils sont obligés de le faire. Y a ben du monde qui le savent pas, mais c'est une obligation, c'est l'entretien, l'entretien ils sont obligés de le faire ...**

Ça fait longtemps que je connais ça, la Régie, parce que la première fois, avec mon beau-frère, ça doit faire 17-18 ans. Mais c'est toujours de mieux en mieux. Avant, crime, pour des niaiseries il fallait prendre un avocat... Aujourd'hui c'est mieux, parce que c'est plus honnête, avant tu allais là pis les propriétaires gagnaient tout le temps, aujourd'hui le juge écoute, on dirait que c'est plus juste qu'avant. Y a vingt ans je trouvais que c'était ben moins juste, le propriétaire avait toujours raison, la maison était tombée en morceaux, tout tout croche, ça passait. Mais c'est vrai que la ville de Montréal aide beaucoup pour ça, parce qu'eux autres sont toujours d'accord pour que ta maison soit arrangée, ils donnent des subventions ...

Dans ce temps-là c'était pas aussi gros que c'est aujourd'hui, c'est ben rare que tu gagnais de toute façon. On dirait qu'ils écoutaient ton cas mais ils l'appliquaient pas. Tandis que là tu vois le juge dit je vais décider, il te laisse pas t'ostiner, lui décide. Il prend la décision, tiens ta réponse, retournez chez vous, je vais vous envoyer ça par la malle ...

Par rapport à la Cour, j'ai été juré une fois, une affaire de marchandises. Ça fait plus peur [que la Régie] mais c'est le fun, ben le fun, c'est la seule place que vous êtes servi comme un roi. La police vous respecte. Monsieur, voulez-vous un petit café, un petit beigne? ... Ils te donnent 25-30$ par jour, nourri, pis tu manges ce que tu veux, ça coûte cher, tous les jours je prenais ma pinte de vin, tu peux manger tout ce que tu veux, j'ai essayé toutes sortes d'affaires. Y a 2-3 arrêts par jours avec des beignes pis des cafés, c'est incroyable ...

Je m'adonne ben avec les propriétaires, tout le temps, je dis les choses comme faut pis je prends pas de détours. Je lui dis "coudon attends-tu que je t'envoie une lettre? Ça fait quatre fois que je t'en parle, moi je marche pus de même je vais marcher avec des lettres". Quand ça marche pas c'est ça qui arrive, envoyer une lettre enregistrée ... Je disais à ma femme, aussi, il faut jamais faire ça, faire tous tes chèques pour l'année, dans ce temps-là le propriétaires se montre pas. J'ai dit on va lui en faire pour trois mois, trois mois, trois mois. La seule manière il va falloir qu'il vienne me voir pour avoir les autres. Sans ça, si tu lui donnes un an de temps, il est pas pressé, il sait qu'il est payé. Si c'est pas fait je vais lui envoyer ça par deux mois ...

J'ai dit à ma fille, on va se mettre tous ensemble, moi je suis un gars "wise", j'ai ma belle-soeur en haut ma fille pis moi, on fait la même chose, arrange ça, pis ça va marcher. Parce que c'est bon une collective, le monde ensemble c'est bon. On va être solides icitte talheure, on va être une collective, trois sur cinq, ça fait grouiller quand t'es un groupe."

2.2.2.3.2 C2: Dependent/Principled type

2.2.2.3.2.1 Members

2 users (#24, 25), 2 non-users (#28, 36)

2.2.2.3.2.2 Description

These individuals resemble members of the B2-type. However, they are more enduring and need more time to react to their lot. In addition, they are more dependent and their reactions are likely to be influenced by the people around them (family members, roommates, neighbors...).

Since they tend to avoid confrontation, these subjects are very reluctant to resort to legal means of dispute resolution. They do it only when it becomes necessary to preserve the integrity of their self-image. Otherwise, they tend either to attribute the responsibility for their problems to a third party (roommate, political authorities...) or describe them as unavoidable or not "unjust".

Users of this type are likely to be transformed by their experience with the court. Overcoming their fear of confrontation and public authorities may result in an increase in social self-confidence or assertiveness in general. In addition, their trust in the judicial system, that often rests in a naive belief in good faith in general, may be affected. Subjects #24 and 25 both reported such a kind of personal transformation through their experience with the Rental Board. This may lead them either to avoid future problems, or to exhibit more independence in resorting to legal means of dispute resolution.

2.2.2.3.2.3 The story of André

"En 90, il arrive, hey! écoutez, il nous a même fait signer un bail avant d'être propriétaire d'immeubles, on était d'une naïveté quasiment désolante, on aurait fait rire de nous si on avait su ça, il est venu chez nous, il nous a fait accepter une augmentation de 50%, chez les autres c'était les 2/3, une semaine avant d'être propriétaire de l'immeuble, c'est vous dire à quel point il était fort pis on était pourris, nous autres on voulait pas partir pis en plus on avait accepté dans notre loyer des augmentations annuelles, on avait signé pour trois ans avec des augmentations, c'était ça ou recevoir une lettre d'éviction pour rénovations majeures. On voulait pas, on était bien chez nous, on a accepté ça ... Il nous jetterait pas dehors si on acceptait qu'il fasse le travail pendant qu'on est là. Personne s'est méfié, on a dit oui, c'est dur à prendre mais mal pris comme on est... On se pensait mal pris ...

Les travaux traînaient, là il a fallu que je les finisse, du moins dans le cas de la salle de douche ... Ça traîne ... Là Mme C., elle décide de le poursuivre à la Régie, elle gagne son point, je suis extrêmement surpris. Le temps passe, moi j'essaie toujours d'avoir un comportement différent du propriétaire, lui il dit je vais t'envoyer quelqu'un, le quelqu'un vient jamais, je laisse passer les mois, je rappelle, je signale que ceci se passe, j'envoie quelqu'un cette semaine... Là de guerre lasse je décide moi aussi, peut-être un an après Mme C., je me décide, je me dis j'irai pas pour gagner ou quoi que ce soit mais au moins pour le principe, il nous marchera pas sur la tête tout le temps ou en tous cas il va falloir qu'il s'explique devant quelqu'un ...

Il faut dire que c'était une épreuve pour moi aussi d'aller là, j'étais dans tous mes états, garder mon calme ça a été difficile ... En plus l'histoire de la confrontation avec quelqu'un, comme je vous dis, j'étais très mal à l'aise à cause de ça, poursuivre quelqu'un pour moi c'est pas quelque chose de facile, j'aime pas me chicaner, alors évidemment, comme j'ai dit avant qu'on commence, je suis plus soucieux de mes obligations que de mes droits, c'est un fait, alors j'étais à la fois peureux des conséquences et aussi je craignais les conséquences qu'il y aurait entre nous après la décision de la Régie ... J'avais peur aussi d'être incapable de bien me présenter ...

Après la Régie, il a vendu, les nouveaux propriétaires ont l'air d'avoir plus d'allure. Moi j'ai obtenu entre temps ma décision, là je les préviens que je les attends et qu'en tant que propriétaire ils sont obligés de suivre la Régie ... Comme il est en mauvaise position, il a des locataires qu'il faut qu'il se débarrasse, je me dis je serai pas cochon avec lui, je vais lui montrer que je sais vivre, je me dis je lui appliquerai pas toutes les clauses contenues dans la décision de la Régie, en particulier la clause monétaire de baisse de loyer ... Il me fait des promesses qu'il va faire les travaux dans la décision ... En fait il voulait pas faire les travaux mais il voulait bénéficier du 30$ par mois que je lui avais fait enlever selon la décision de la Régie. Moi j'ai le droit de diminuer de 30$ par mois, mais en septembre je l'ai pas fait encore, toujours pour montrer ma bonne foi pis ma compréhension, pour dire à quel point je suis naïf ou nono, tsé. J'apprends ça, je dis hey! tu me fourreras pas de même toi, en octobre, de 330 que je payais j'envoie 30$ ... Après j'ai payé 300 et j'ai continué à payer 300 jusqu'à temps qu'on déménage.

Moi j'essayais toujours de trouver des raisons pour pas y aller, à un moment donné j'ai dit c'est pas possible, ou bien je suis un lâche total ou bien j'y vais. Ça a été ça la motivation ... Je suis sorti de mon mutisme. J'étais renfermé sur moi-même, j'avais une petite vie tranquille ... Dans le fond, le propriétaire, il m'a rendu un service, il m'a sorti de ma niche. Ça m'a réveillé dans le fond, j'étais endormi, ça m'a permis d'acquérir des connaissances aussi, maintenant sur le logement j'en connais diablement plus, c'est clair que c'est une expérience positive en définitive."

2.2.2.3.3 C3: Lumpers

2.2.2.3.3.1 Members

4 non-users (#26, 33, 37, 39)

2.2.2.3.3.2 Description

Lumpers are passive individuals who do not trust the court system and do not feel at ease with it. These individuals tend to endure their problems and often do not even perceive them as problems. They do not look for external help and do not take advantage of the opportunities that are open to them. They avoid conflict as much as possible by "minding their own business". Since these individuals are reluctant to make demands on the State and on other people in general, they are very unlikely to ever go to court in their lives.

2.2.2.3.3.3 The story of Marie

"En 91, ils ont fait des travaux. On avait des coquerelles avant, mais à partir de ce moment-là qu'on a été envahi, c'était plein ... D'autres se sont plaints des souris, d'autres se sont plaints de la vermine, moi j'ai pas eu ça. Moi, dans mon coin ici, je peux pas vraiment me plaindre; OK, y a des bibittes, de temps en temps, mais dans le restant y en a qui ont vécu plus que moi. Alors c'est la raison pour laquelle je suis pas allée à la Régie. Je suis allée une fois oui, pour sympathiser peut-être avec les autres, ben, sympathiser, pour supporter les autres ... Même au CLSC, j'ai dit, écoutez, j'ai pas vraiment de problèmes, y en a qui disent y a ci, y a ça, c'est pas mon

cas, alors je vais pas me plaindre pour le plaisir ... J'ai eu des dégâts d'eau, j'en ai eu quatre en un an. Une nuit un tuyau s'est mis à couler ... Tout l'appartement était inondé quand les pompiers sont arrivés ... Ensuite de ça, à tout moment le plafond dégouttait, t'arrivais pis oups, il y avait de l'eau à terre ...

Pour les coquerelles, ils sont peut-être onze ou douze fois en deux ans ... Je suis pas une déménageuse, ça m'en prend plus, comme là aujourd'hui c'est un effort pour me trouver du logement, une fois que je suis adaptée à la place je reste, quand t'en peux p[l]us tu pars mais sinon...

Des fois on recevait de la documentation que telle telle journée il y avait une réunion à la Régie pour régler les problèmes de tout le monde, juste un particulier ça pèse pas fort, mais quand on est plusieurs à ce moment-là ça met plus d'impact, ça met la bonne volonté qu'on veut que les choses changent, donc à ce niveau-là je suis allée ... le CLSC a aidé beaucoup, chaque mois ils envoyaient un papier qu'ils faisaient une réunion, n'importe quoi, à ce niveau-là je suis allée. C'est à peu près ma démarche à moi. Quand tu vis avec des rats, j'imagine si ça bouge pas tu fais plus, mais j'en avais pas, j'avais des problèmes d'eau, il m'en reste un petit peu mais ils ont de la misère à trouver la cause ...

Quand ils ont tout fait les rénovations, il y avait une installation de laveuse ici, quand je suis revenue, ils m'avaient tout coupé ça. Là j'étais pas contente ... j'ai dit "écoutez, quand je suis venue ici, je suis venue parce qu'il y avait une installation de laveuse". Il a dit "faites ce que vous voulez mais parlez-moi s'en pas". J'ai rien fait, j'ai dit si je suis responsable, ça me tentait pas beaucoup, faque j'irai laver en bas pis chez des amis ... J'avais aussi de la tapisserie dans ma chambre, des choses qui m'appartenaient à moi, la douche pis la tapisserie, une tapisserie assez dispendieuse. Ils ont tout enlevé. Comment ça se fait que j'y ai pas pensé? J'aurais pu me plaindre, qu'ils m'en paient une autre ...

De nature, je suis une personne qui a l'habitude de faire ses petites affaires toute seule, pis c'est pas toujours bon, je veux dire, tu te plains pas trop, tu chiales pas trop. Dans la vie c'est ça qui est arrivé ... Une fois, pour qu'ils réparent ma porte, j'ai retenu mon loyer, au lieu de le payer le premier. Ils m'ont envoyé une lettre de payer, pis ils m'ont amené à la Régie du loyer. Là j'ai dit "ça fait longtemps que je suis locataire, ça fait treize ans, j'ai toujours payé mon loyer, là sans savoir pourquoi je paie pas ils m'amènent à la Régie du loyer? C'est dégueulasse." J'ai pas apprécié du tout leur attitude ... Ils ont envoyé une lettre qu'ils me mettaient dehors pis ta ta ta, j'étais mal, mais quand la date est arrivée, ils m'ont demandé "renouvelez-vous votre bail?", pis là j'ai resté surpris parce que sur la lettre ils avaient que non, ils me renouvelaient pas, dans ma tête je me disais ils veulent pas de moi ...

Je souhaiterais pas du tout passer en vraie cour ... La justice y en a pas, aujourd'hui, ceux qui ont de l'argent... avant il y en avait une certaine, aujourd'hui la morale est très élastique ... Ceux qui ont pas d'argent ils sont pas capables de se défendre."

CHAPTER 4: QUANTITATIVE DATA - THE ROLE OF PERSONALITY IN THE TYPOLOGY

This project is based on the hypothesis that personal characteristics of disputants have an influence on their propensity to litigate and the context in which they are likely to litigate. The typology aimed at distributing disputants among a limited number of types characterized by certain preferences, beliefs and patterns of thinking. According to trait theories of personality, these preferences, beliefs and patterns of thinking, although observed only in the conflict situation reported by the participants, are of more transcendent significance: they are not likely to vary considerably during one's life and can therefore be seen as stable constituting aspects of personality.[114]

Trait theories are built on the hypothesis that behavior is consistent across a range of situations and can be accounted for by a limited number of characteristics called "traits". These traits are seen as stable characteristics of an individual, composed of feelings, needs, cognition and desires that predict behavior. In the same way, the typology aims at classifying reactions to conflict not only in function of behavioral indicators but also as produced by personal preferences and patterns of thinking. Each type was associated with a set of attitudes toward the State and toward conflict, constituting what one might call a "conflict-solving style". The existence of such styles supposes that, notwithstanding situational constraints, people are likely to react in a constant manner throughout a variety of conflict situations. This suggests that the typology could eventually be extended to other situations than landlord-tenant disputes.

This chapter aims at exploring possible relationships between the conflict-solving styles described in the typology and personality characteristics. In order to do so, eight personality traits were measured among subjects constituting the main sample. The

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[114]For trait theorists, personality may be described in terms of dispositions that characterize people's thoughts and behavioral patterns. Even though a person's personality can change, it is assumed to remain

process through which these traits were selected was reported in Chapters 2 and 3. It was hypothesized that these traits could be predictive of behavior and related to one's belonging to one type or another.

For a personality trait to be considered predictive of reactions, there needs to exist an observable difference between the reactions of people sharing this trait and those of other people. In order to compare different populations' scores, a t-test is used to determine the probability that the difference in the means that is observed is due to chance. The lower the likelihood that the difference is due to chance, the greater the likelihood that the difference between the groups is due to there being real differences between these groups. A difference in two groups' scorings on a precise trait is seen as significant when the probability of a random relationship is 5% or less ($p < \text{or} = 0,05$).

Using this procedure, personality scores of the members of some types were compared to the scores of the other participants in the project. Hypotheses were drawn as to which relationships should be tested. The hypotheses were considered proved each time the differences found between the two sub-samples were significant (i.e. $p < \text{or} = 0,05$). SAS software was used to perform the statistical analysis of data.

1. Hypotheses

The following hypotheses were used to determine the relationships to be tested:

1.1 The Interpersonal Circumplex

The Interpersonal Circumplex is a model used to organize the domain of traits relevant to interpersonal behavior. Four characteristics, dominance, submissiveness, quarrelsomeness and agreeableness, identify the axes of the circumplex. The scales of the *Social Behavior*

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consistent over long periods of time: see e.g. G.W. Allport, *Personality: A Psychological Interpretation* (New York: Holt, Rinehart & Winston, 1937).

Inventory were used to measure these traits. Self-ratings on these scales are thought to be predictive of behavior in a variety of interpersonal situations.[115]

1.1.1 Dominance/Submissiveness

In terms of dominance and submisiveness, a highly dominant person "speaks firmly, gives information, expresses opinions, takes the lead, ask others to do things, and gets to the point quickly. The highly submissive person speaks softly; waits for others to speak or act; goes along with others; does not state desires, feelings and opinions; and avoids being responsible."[116]

These elements seem to correspond to the use of what was called bilateral strategies (including court use), i.e. one's labeling as "assertive" vs. "reserved". It was therefore hypothesized that highly assertive subjects (A types) were more dominant and less submissive than other types, whereas highly reserved subjects (C types) were more submissive and less dominant than other types.

Hypothesis 1:	Subjects corresponding to A types (A1, A2, A3) are more dominant than other types subjects.
Hypothesis 2:	Subjects corresponding to A types (A1, A2, A3) are less submissive than other types subjects.
Hypothesis 3:	Subjects corresponding to C types (C1, C2, C3) are less dominant than other types subjects.
Hypothesis 4:	Subjects corresponding to C types (C1, C2, C3) are more submissive than other types subjects.

[115]See Moskowitz, *supra* note 53.

[116]*Ib.* at 930.

1.1.2 Quarrelsomeness/Agreeableness

Landlord-tenant relationships can be seen as personal relationships involving feelings and emotions as well as "professional" relationships based on rational standards of behavior and power considerations. When personal considerations predominate, agreeableness and quarrelsomeness can be as relevant as dominance and submissiveness in determining behavior. Therefore, it was decided to test the role of these two traits as well.

Someone who is high on agreeableness "listens attentively, speaks favorably of others, compromises, points out where there is agreement, and expresses affection, sympathy and reassurance. A person who is high on quarrelsomeness makes demands, criticizes others, uses sarcasm, does not respond to others, withholds information, and provides inaccurate information."[117]

These traits may be associated with the "reserved" and "assertive" labels, highly assertive subjects (A types) being more quarrelsome and less agreeable, and highly reserved subjects (C types) being less quarrelsome and more agreeable They may also represent a certain type of attitude toward formalized forms of confrontation and the court adversarial system: alienated individuals (A3, B3, C3 types) would be more agreeable and less quarrelsome than other types, whereas integrated subjects (A1, B1, C1) would be less agreeable and more quarrelsome than other types.

Hypothesis 5:	**Subjects corresponding to A types (A1, A2, A3) are more quarrelsome than other types subjects.**
Hypothesis 6:	**Subjects corresponding to A types (A1, A2, A3) are less agreeable than other types subjects.**
Hypothesis 7:	**Subjects corresponding to C types (C1, C2, C3) are less quarrelsome than other types subjects.**

[117] *Ib.*

Hypothesis 8:	Subjects corresponding to C types (C1, C2, C3) are more agreeable than other types subjects.
Hypothesis 9:	Subjects corresponding to types 1 (A1, B1, C1) are more quarrelsome than other types subjects.
Hypothesis 10:	Subjects corresponding to types 1 (A1, B1, C1) are less agreeable than other types subjects.
Hypothesis 11:	Subjects corresponding to types 3 (A3, B3, C3) are less quarrelsome than other types subjects.
Hypothesis 12:	Subjects corresponding to types 3 (A3, B3, C3) are more agreeable than other types subjects.

1.2 Dependency

The *Interpersonal Dependency Inventory* measures this trait on the basis on three distinct scales. Two of them were used in the project: the "Assertion of autonomy" scale and the "Lack of social self-confidence" scale.[118] Dependency refers to behavior stimulating general help, approval and attention. The "lack of social self-confidence" aspect of it refers to the existence of doubts about one's own capacity to function independently in specific situations, whereas "assertion of autonomy" implies an element of denial in regard to the extent of one's dependency on others.

As for assertion of autonomy, it was hypothesized that one's score on this scale was directly related to his/her resorting to self-help strategies ("autonomous" vs. "forbearing" labels).

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[118] See Hirschfeld *et al.*, *supra* note 102.

Hypothesis 13: Subjects corresponding to A types (A1, A2, A3) are more autonomous than other types subjects.

Hypothesis 14: Subjects corresponding to C types (C1, C2, C3) are less autonomous than other types subjects.

As to lack of social self-confidence, it was hypothesized that it is related to one's feeling of self-confidence or powerlessness in regard of legal procedures ("reluctant"/"self-confident" qualification - integration/alienation axis), as well as one's propensity to look for help in decision-making and difficulty in taking initiative ("dependent" vs. "independent" classification - passivity/activity axis).

Hypothesis 15: Subjects corresponding to types 1 (A1, B1, C1) have lower lack of social self-confidence than other types subjects.

Hypothesis 16: Subjects corresponding to types 3 (A3, B3, C3) have higher lack of social self-confidence than other types subjects.

Hypothesis 17: Subjects corresponding to A types (A1, A2, A3) have lower lack of social self-confidence than other types subjects.

Hypothesis 18: Subjects corresponding to C types (C1, C2, C3) have higher lack of social self-confidence than other types subjects.

1.3 Control

Locus of control can have a variable impact on behavior depending on the presence or absence of other traits. However, it is generally recognized that internals exhibit more confidence in their problem solving-ability,[119] and are more likely to get ego-involved in a

[119]See *Locus of Control*, *supra* note 106.

dispute,[120] whereas an external orientation is associated with higher levels of dependency, and the choice of non-confrontational behavior.

It was hypothesized that locus of control was related to one's level of dependency and assertiveness ("dependent" vs. "independent" and "assertive" vs. "reserved" labels - passivity/activity axis), one's propensity to become ego-involved in a dispute (i.e. be labeled "principled"), and not to engage in conflict at all (i.e. be an avoider or lumper).

Hypothesis 19:	Subjects corresponding to C types (C1, C2, C3) are more external than other types subjects.
Hypothesis 20:	Subjects corresponding to A types (A1, A2, A3) are more internal than other types subjects.
Hypothesis 21:	Principled subjects (A2, B2, C2 types) are more internal than other types subjects.
Hypothesis 22:	Lumpers and avoiders (C3 and B3 types) are more external than other types subjects.

1.4 Self-esteem

Self-esteem is related to one's evaluation of self-worth. This trait was chosen in order to investigate its influence on people's propensity to define their problems in personal, rather than material terms. However, it is difficult to evaluate the real influence of self-esteem on behavior. It is more likely to play the role of a mediating variable.[121]

Some hypotheses were nevertheless drawn and tested. It was hypothesized that self-esteem was related to one's feeling of self-confidence or powerlessness in regard of legal procedures ("reluctant" vs. "self-confident" qualification - integration/alienation axis),

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[120]See Landon, *supra* note 70.

[121]For a description of this construct and major assessment instruments see Blascovich & Tomaka, *supra* note 100; Rosenberg, *supra* note 96; D.H. Demo, "The Measurement of Self-Esteem: Refining our Methods" (1985) 48 *Journal of Personality and Social Psychology* 1490.

one's propensity not to react to conflict (i.e. be "passive/dependent") and to become ego-involved in a dispute (i.e. be labeled "principled").

Hypothesis 23:	Principled users (A2, B2, C2) have higher self-esteem than other types subjects.
Hypothesis 24:	Reserved/dependent subjects (C types) have lower self-esteem than other types subjects.
Hypothesis 25:	Subjects corresponding to types 1 (A1, B1, C1) have lower lack of social self-confidence than other types subjects.
Hypothesis 26:	Subjects corresponding to types 3 (A3, B3, C3) have higher lack of social self-confidence than other types subjects.

2. Results

Except for locus of control, significant differences in scores ($p<0.05$) were found among the sub-samples constituted in regard to each trait measured. Since the probability that these differences are due to a random relationship is less than 5%, they may be assumed to exist. However, this is the case for only 8 hypotheses on 26. These 8 hypotheses may be considered proved.

One's personality seems to be more closely associated to one's position on the "attitudes toward conflict" axis than on the "attitudes toward State" axis. Differences between A, B and C types were found on 6 traits, whereas types 1, 2 and 3 seem to differ only on 2 traits.

2.1 The Interpersonal Circumplex

2.1.1 Dominance/Submissiveness

The following hypotheses were proved:

Hypothesis 1: Subjects corresponding to A types (A1, A2, A3) are more dominant than other types subjects ($p<0.01$).
Hypothesis 2: Subjects corresponding to A types (A1, A2, A3) are less submissive than other types subjects ($p<0.05$).

A-type subjects are different from others in their levels of dominance and submissiveness. These traits seem to be predictive of one's classification as "assertive vs. reserved". This suggests that one's level of activity in a conflict situation and propensity to react rapidly to a problem is at least in part related to his/her level of dominance and submissiveness in general, i.e. his/her propensity to assert him/herself and take responsibility for his/her problems. "Objective" factors such as the seriousness of a problem or the availability of material or informational resources may not account for the fact that certain complaints are voiced and certain disputes escalate. It seems that complaining and disputing are more natural and less costly to certain types of disputants.

2.1.2 Quarrelsomeness/Agreeableness

Hypotheses 10 and 12 were disproved. Even though there exist differences between types 1, 2, and 3 in terms of agreeableness, the relationships found were contrary to expectations. A person's degree of integration is directly, and not inversely, related to his/her degree of agreeableness. The following revised hypotheses may be considered proved.

Hypothesis 10: (revised) **Subjects corresponding to types 1 (A1, B1, C1) are more agreeable than other types subjects ($p<0.05$).**
Hypothesis 12: (revised) **Subjects corresponding to types 3 (A3, B3, C3) are less agreeable than other types subjects ($p<0.05$).**

A high level of agreeableness reveals a tendency to listen to others and compromise. This suggests that a positive orientation toward the justice system (integration) may not reveal a propensity to handle conflict in an aggressive manner, but rather a tendency to avoid open confrontation by resorting to neutral third parties. In the same way, one's propensity to avoid confrontation in court may not be due as much to a reluctance to engage in conflict and a desire to maintain good relationships as to a tendency to avoid any form of social interaction.

Even though, as suggested by Friedman, the frame of mind leading a person to assert a right may be one of willingness to make demands on the State, these findings suggest that this frame is not necessarily associated with aggressiveness.[122] On the contrary, a certain number of court users may resort to legal means of dispute resolution as a way to prevent disputes from escalating.

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[122]See Friedman, *supra* note 8.

2.2 Dependency

The following hypotheses were proved:

Hypothesis 14: Subjects corresponding to C types (C1, C2, C3) are less autonomous than other types subjects ($p<0.05$).

Hypothesis 17: Subjects corresponding to A types (A1, A2, A3) have lower lack of social self-confidence than other types subjects ($p<0.05$).

Hypothesis 18: Subjects corresponding to C types (C1, C2, C3) have higher lack of social self-confidence than other types subjects ($p<0.01$).

This suggests a relationship between one's degree of activity in conflict situation and one's level of social self-confidence. A-type subjects are more self-confident and assertive than others.

In contrast, C-type subjects, that are characterized by their level of dependency, exhibit a higher lack of social self-confidence and a lower level of autonomy. These traits may account for their passivity and their tendency to rely on others to take charge of their problems.

2.3 Self-esteem

The following hypothesis was proved:

Hypothesis 24: Reserved/Dependent subjects (C types) have lower self-esteem than members of the other types subjects ($p<0.05$).

Again, this trait differentiates C-type subjects from other types. This suggests that these subjects' dependency and lack of assertiveness may be related to two other aspects of their personalities, both encompassed in the self-esteem construct. First, they may share an inability to perceive injuries (lack of worthiness) preventing them from having the degree of motivation necessary to enter into conflict. Second, they may have doubts about

their ability to solve their problems (lack of competence) and therefore choose to endure the situation.

Three major conclusions may be drawn from these results. First, C-type subjects seem to differ from other subjects on many points: they are less autonomous, have a higher lack of social self-confidence and a lower level of self-esteem. These traits may account for their exhibiting a reserved/dependent type of behavior.

Second, A-type subjects are more dominant, less submissive and are more self-confident than other subjects. This is consistent with the fact that these subjects are mainly characterized by their level of assertiveness.

Finally, it is interesting to note that highly integrated individuals see themselves as agreeable. Many explanations may account for this finding. It may be that individuals who prefer to handle conflict in a peaceful manner tend to perceive the court system as a forum in which dialogue and compromise is facilitated. Their positive orientation toward the court system may also be an extension of their general tendency to see people and things under a favorable light. In all cases, this suggests that a good proportion of court potential users do not correspond to the traditional image of litigants as quarrelsome, aggressive people.

Moreover, the relationships found between a person's position in the typology and certain of his/her personality scores reveals that such a typology may be useful not only to describe and classify different types of reactions to a particular conflict but also types of potential litigants. It suggests that a person's propensity to litigate is in part determined by factors that are independent of the problems he/she encounters and the resources available to him/her. These personality factors can be associated to particular conflict-solving styles and attitudes toward the State that limit the range of behavior one is likely to adopt.

3. Personality measurement and methodological limitations

The use of statistical analysis to study the role of personality in a process presents many important limitations that may account for the results previously described.

3.1 Problems with trait assessment

Trait assessment is most often made through the use of objective tests; such self-reports are quick and easy to administer and score. However, they can reflect only what an individual thinks of him/herself, and may translate a false perception of the self. Such a bias is not likely to play an important role in the case of characteristics based on self-perceptions or opinions (e.g. self-esteem or locus of control), but may affect evaluations of traits destined to assess people's propensity to exhibit one type of behavior (e.g. dominance, dependency).

Second, the instruments chosen might not have been the right ones; the choice of the traits to be measured and tested was partly made on the basis of intuition. Some other traits are likely to play a more important role in the disputing process than those that were studied. In addition, assessment instruments translate only one aspect or vision of a trait. For example, self-esteem is a multi-dimensional trait; using a general scale such as the Rosenberg's inventory ensured that all aspects of the trait were covered but might have concealed one aspect of it (e.g. competence) under the others (e.g. self-worth). A direct measure of competence might have produced better results.

Finally, although traits are most of the time seen as stable personal characteristics, they are likely to evolve as a person's self-concept changes through experience. Having to go to court to solve a major problem is the kind of experience that may provoke important changes in one's attitudes and self-perception of his/her abilities. In some cases, this change was perceptible during the interview as subjects described how the events

described had increased their feeling of empowerment.[123] Since traits were measured after the dispute took place, the scores obtained don't necessarily reflect the subject's state at the moment of the conflict and can't be expected to accurately predict their behavior.

3.2 Limits of the trait theory

Another limitation of the approach taken here is the assimilation of the role of personality in a dispute with the role of specific traits. Using trait theory as a basis for investigating personality correlates of actual behavior is risky in that, as noted by many trait theory critics, although a score on a personality inventory may paint a general picture of an individual's personality characteristics, it will not necessarily yield an accurate description of how he or she will behave in specific situations.[124] In addition to one's traits, two factors are particularly important when attempting to make predictions about any one individual's behavior: the way in which this individual perceives different situations, and the differences existing in trait expression in a given situation within the same individual.[125]

The use of a typology, rather than simplified accounts of behavior, aimed at coping with these difficulties. Individuals were classified in function of their predicted habitual behavior (e.g. "would-be" users, lumpers...). Some room was also made for problem perception in the definition of the types. Each type was conceived as a description of reactions of persons sharing personality traits and a tendency to perceive problems in a similar way. However, only a longitudinal study could have validated the classifications made. In addition, a larger sample would have been needed to allow inter-types comparisons.

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[123]Subjects #24 and #25 described important changes in their self-concepts and attitudes following their appearance before the Rental Board.

[124]See for example W. Mischel, *Personality and Assessment* (New York: Wiley, 1968).

[125]See W. Buskist & D.W. Gerbing, *Psychology: Boundaries and Frontiers* (Harper Collins, 1990) at 591.

3.3 Designing a follow-up study

In order to complement and validate the typology and determine the role of personality factors in the definition of each type, it would be necessary to obtain statistically significant data on the relationships between a person's categorization according to the typology and his/her scores on diverse personality scales. Four major steps would have to be taken in a eventual follow-up study.

First, a large population should be used in order to allow for the discovery of as many behavioral and attitudinal patterns as possible and their comparison. Conflicts should be described on the basis of a limited number of variables (costs, type of relationships, motives, type of problem...). In order to uncover the eventual existence of cross-situational consistency, a longitudinal type of study would be preferable. Each subject would be contacted several times during a pre-determined period of time and asked to report any conflict having occurred between these moments.

Second, more traits should be chosen as a basis for investigation. It would be necessary to account for personality changes during the disputing process. Even though traits are most of the time quite stable characteristics, we have seen that they are likely to be modified through meaningful experiences as litigation. Therefore, many assessments of subjects' personalities would have to be made at different stages of the disputing process. Differences in their scores could serve to illustrate the impact of personality on behavior as well as the impact of experience on personality. Attitudes could also be assessed on a quantitative basis rather than on the sole basis of interview data. Again, such measures should be made at different stages of the process.

Third, it would be necessary to explore the interaction between two or more personality variables, as well as between personality and attitudinal variables (e.g.: Do attitudes toward litigation vary among assertive and non-assertive people? Does a person's level of self-esteem correlate with his/her degree of dependency?...). In the same way, situational factors should be examined in function of their relationships to personal preferences (e.g.:

Do litigation costs matter equally for all types of people? In what ways does a person's attitudes toward the State influence his/her characterization of his/her problems?)

CHAPTER 5: CONCLUSION

> "Traditionally, [...] members of the public have resolved their civil disputes through the court process. This process - based primarily upon the adversarial method of dispute resolution - has ultimately led to justice.
>
> In recent times, however, because of the pressures of modern litigation, such justice has come at great expense to the litigants, and, too often, after numerous and lengthy delays.
>
> The members of the public require a more efficient, less costly, speedier and more accessible civil justice system."[126]

This excerpt from the Terms of Reference of the Ontario Civil Justice Review summarizes perfectly the assumptions at the core of the Access to Justice movement. For access to justice proselytizers, justice is fundamentally a product to which all citizens should have access, a commodity produced by adversarial courts of justice and marketed by the State which can be made more accessible by removing "barriers". These barriers are generally thought to be of two kinds. The first ones to have been investigated are those commonly known as objective barriers, which reflect the constraints limiting people's ability to call in aid State legal institutions. They are related to the availability of legal services and fora, essentially from a material point of view (costs, physical accessibility, delay, existence of legal remedies...). The second ones are these "subjective" barriers related to people's knowledge and capacities.

However, issues that can framed in terms of barriers only arise once a "legal problem" has been perceived. As suggested by Felstiner, Abel and Sarat,[127] most injurious experiences are never transformed into legal claims; many problems of access to justice are in fact

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[126]These "Terms of Reference" are reproduced in the paper prepared by Macdonald for the Civil Justice Review: see *Study Paper*, *supra* note 9 at 149.

problems of perception and formulation. Indeed, "one of the root assumptions of the access to justice movement, the assumption that the public has a desperate desire for "access to the system, however imperfect it may be, has never been made the subject of empirical investigation."[128]

This project sought to explore the reality of this desire for access, and the components of the so-called "subjective barriers" to this access. For doing so, it was hypothesized that the "disputing process" is not divided into stages but is rather composed of many interwoven processes by which an individual defines his problems and the available solutions. A unique set of attitudes and predisposition preside to the decisions made in all stages and the same series of factors can be used to account for differences in problem-perception and definition, claiming styles and attitudes toward litigation.

Typology building was used as a means to illustrate the changing role of these factors in the variety of approaches to conflict and its legalization found among the subjects interviewed. Indeed, the typology serves not only to describe behavioral differences but also the internal logic leading one to exhibit this behavior. It also provides new insights into what leads people to resort to the court system and their expectations toward it. Even though personality was chosen as a focus for inquiry, it did not mean to suggest that it is in itself determinative of behavior in conflict situations. It was rather used as a way to highlight how behavioral differences are grounded in internal states. Personality was seen not as a innate and immutable characteristics but as particular ways of perceiving the world and the self that change through experience.

"Access to justice" issues are the product of an ethic of legalism, according to which justice is achieved by the assignment by the State of rights to be enforced by official rights-recognizing institutions. In this view, the State legal system fulfills one essential

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[127]Felstiner, Abel & Sarat, *supra* note 15.

[128]R.A. Macdonald, "Access to Justice and Law Reform" (1991) 10 *Windsor Yearbook of Access to Justice* 287 at 302 [hereinafter "Access to Justice"].

function, i.e. the enforcement of legally pre-established "just" claims. However, the typology suggests the existence among lay people of a diversity of approaches to conflict and litigation; in this context, the court system is set to serve an array of different functions and visions of justice. In this sense, the typology may serve as a tool for questioning the accuracy of legalism as a description of the actual role State law and legal institutions play in our society. More precisely, it offers an opportunity to challenge basic beliefs underlying the Access to Justice movement.

1. What access?

According to Access to Justice theory, two kind of obstacles prevent people from using the court system. First, the "grievance apathy" phenomenon keeps injurious experiences from being transformed into disputes; then, barriers to the system prevent these disputes from reaching the courts. These two types of obstacles will be reviewed one by one.

1.1 The generation of conflict: the first axis of the typology

Responses to conflict vary with situational options and constraints as well as personal dispositions. Conflict involves a level of opposition, contradiction and tension that tends to motivate either a resolution of that conflict or an accommodation to it that minimizes the tension generated. Responses to conflict are complex and diversified. However, "[i]n actual social life, any specific response to conflict can be viewed as taking a certain compromise position on [a] confrontation/avoidance continuum."[129]

The nine types described earlier correspond to different modes of adaptation to conflict. These modes are at least partly related to one's personality. As shown before, a person's degree of submissiveness, dominance and dependency seem to be related to his/her position on the "conflict" axis of the typology. That suggests that personal characteristics of disputants are likely to play a more important role in the disputing process than it is usually thought. It is also interesting to note that there exists a whole variety of conflict-

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[129] Abdennur, *supra* note 50 at 8.

solving styles that are susceptible to lead to court use. Even after excluding the A3, B3 and C3 types, whose propensity to litigate can be presumed to be very low, six different types of would-be users emerge. Among those individuals, court use does not necessarily occur as a last resort at the end of the disputing process. In fact, legal action may for some constitute the main way of claiming(B1, B2), whereas for other it is only one step among others (A1, A2).

Personal characteristics do not only influence a person's reaction to a problem, but also the earlier stages of the disputing process, i.e. those concerned with problem perception and attributions. As to problem perception, the interviews made reveal that a problem's objective seriousness is not determinative of one's propensity to react to it. People's abilities to define their situations as problematic vary even when they are placed in a comparable context. Personal standards may not be the only factor accounting for these differences; a high degree of dependency may also lead to fatalism and a lack of motivation.

It also seems that the perception and the attribution stages are closely interrelated. A minor injury attributed to bad faith may become a major problem, whereas a major injury may not be seen as a problem in the absence of someone to blame it on. Some individuals seem to be more prone to become ego-involved in disputes and react to what they interpret as personal attacks, whereas for others the absence of obvious dishonest behavior may justify endurance.

In the light of the typology, it seems that improving the efficiency of the courts might not result in improving civil justice, particularly for members of marginalized or disadvantaged groups. In the context of the Welfare State, poverty is often connected to dependency upon the State. Such a dependency may lead to feelings of inadequacy, helplessness and apathy that are characteristic of members of the different C types. Among dependent types (C1, C2, C3), a failure to perceive a situation as problematic can often be observed. This may be due, as suggested by the statistical analysis undertaken above, to a lower level of self-esteem. It is also possible that subordination to authority promotes among

these persons an inability to conceptualize either the sources of troubles or the alternatives to them. It may also be that the fact of being dependent in a cultural context that values independence often leads to self-blame, a phenomenon that is increasingly being reinforced by right-wing ideologues and society in general. And, as Morrison and Mosher put it, "[t]hose who blame themselves may have no conception of themselves as right-bearers entitled to make claims against the State."[130]

In the light of these findings, it seems that there are many sets of personal characteristics leading a person to perceive injuries and make claims. As suggested by Merry, "views about managing conflict are related to self-image and self-definition." [131] Investigations such as Vidmar and Schuller's[132] that seek to describe a single kind of litigious behavior may be too one-dimensional to account for the diversity of subjective experiences leading to litigation. Moreover, the existence of a "litigious personality", as suggested by Friedman,[133] is too simple an hypothesis to account for the variety of pre-litigation activity.

1.2 The judicialization of conflict: the second axis of the typology

The Access to Justice movement presents the decision to litigate as the product of a cost-benefit analysis. Benefits are function of the solutions provided by the system to a particular kind of problem, whereas costs are determined by the presence of objective and subjective "barriers" to access (material and psychological costs, delay...).

1.2.1 Costs

One interesting finding of this project is the quasi-absence of objective barriers in the accounts given by the participants. A very few of them mentioned litigation costs, delay, or physical distance from courts as determinants of their behavior. None of them referred

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[130]Morrison & Mosher, *supra* note 84 at 656.

[131]Merry & Silbey, *supra* note 47 at 176.

[132]See Vidmar & Schuller, *supra* note 77.

[133]Friedman, *supra* note 8.

to objective barriers as the main factors accounting for their decisions. Subjective barriers seemed to have played a more important role that objective barriers in the stories gathered.

The discourse on objective barriers supposes that the desire to use the system exists; but such a generalized desire has not been proved in this project. In fact, the most important type of barriers involved in the disputing process seems to be those that prevent people from even considering the possibility to resort to the court system in any situation. The typology may help to grasp the essence of this type of subjective barrier.

Along the second axis of the typology, people are characterized according to the degree of their alienation from or integration into State institutions. In fact, it seems that "alienated" individuals belong to three categories (A3, B3, C3) referring to two major types of psychological barriers to access. First, for A3-type individuals, the complexity of the court system seems to be determinant. Even though the system's complexity is often presented as an objective barrier, it may in fact reflect a dislike of procedural constraints, court language, and formalization in general. Since subjects of this types expressed a preference for open, direct and honest interpersonal relationships, it is doubtful that the simple removal of "complexity" barriers will change their attitudes toward legalized conflict.

In contrast, C3-type individuals do not express a dislike of formalization as much as a dislike of confrontation in general, courts only being the place in which conflict is formally articulated. Even though these subjects express distrust toward the court system, this element seems to constitute only an epiphenomenon of their general orientation toward conflict and serves to justify, rather than nourish, their profound reluctance to litigate. Between these two types are individuals belonging to the B3-type, who dislike open confrontation and therefore the idea of going to court, without being able to afford other types of confrontation.

In view of these inter-types differences, one can conclude that reducing attitudes toward litigation to a barrier related to law's complexity leads to an over-simplification of reality. As Macdonald puts it, "recharacterizing law's complexity as a barrier to access is yet another tactic to instrumentalize the psychological impediments to achieving justice. It is not the notion of state law itself, or of formal rationality as a conception of interpersonal relations, or of a universal abstract justice which requires removal; rather energy should be directed to removing the barrier caused by excessive complexity in the system."[134]

1.2.2 Benefits

From a "barrier" perspective, the benefits of litigation are primarily related to the availability of remedies to particular problems. If litigation costs are low, people are hypothesized to be motivated by legal opportunities to have their legal rights respected and those rights' violations compensated for.

The accounts gathered in this project reveal, on the contrary, that litigants are not concerned with the kind of remedies the court system provides. Most of them make their decisions whether or not to resort to the legal system even before they know what legal remedies are available to them. In fact, it seems that most of the individuals met in the course of this project did not look for information as to what their rights were and did not know what to expect from a Rental Board's decision. In a majority of cases, people went to the Board "just in case" it could make a difference.

Two kinds of benefits were expected from the Rental Board. Members of A1, B1, and C1 types were primarily looking for some form of material compensation, notwithstanding what their rights might be. In contrast, members of A2, B2, and C2 types focused on ways to punish landlords for their misconduct; they tended to refer to general, rather than legal, norms of conduct. In both cases, litigants' goals often seemed to have nothing to do with the legal remedies available to them; they were not looking for what the law

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[134] "Access to Justice", *supra* note 128 at 301.

provides, but for what the justice process constitutes in itself, i.e. an opportunity to annoy the other party or show him/her wrong.

In all cases, the formal recognition of legal rights did not seem to constitute a primary source of motivation. In view of this, one might conclude that substantive law reforms may produce more satisfactory results for those people who resort to courts, but they can not be expected to have a profound impact on people's propensity to litigate.

2. Whose justice?

The State legal system has been designed for the average, middle-class, middle-aged "rational" white male. Those who do not correspond to this description are to be seen as deviations from the norm, rather than constituting aspects of normality. In this context, it is not surprising that people' evaluations of costs and benefits associated with litigation seem to depart radically from what an economic approach suggests.

As traditionally understood, the debate on access to justice is largely instrumental. Justice is to be achieved through access to dispute processing agencies applying pre-established "rational" and "just" norms. Access to justice can therefore be reduced to access to the processes and institutions of formalized law. However, there seems to exist important gaps between State officials and legal professionals understanding and lay people visions of the State legal system. These gaps are particularly visible in the differences between their conceptions of "justice" and "rationality".

2.1 Access to justice or access to law?

One striking conclusion to be derived from the data gathered is the importance of justice considerations for litigants. As mentioned earlier, the accounts gathered in this project reveal that litigants are not primarily interested in the kind of remedies the court system provides. In the eyes of litigants, justice can not be reduced to ensuring the respect of legal norms through procedurally fair processes. As seen earlier, most litigants do not define their problems in terms of "rights", even less in terms of "legal rights". The use of legal

terminology is often the result of a process of *problem-restatement* by third parties such as lawyers or Rental Board's employees.

For lay litigants, having their legal rights recognized (and being compensated for their violation) is not an end in itself but a means to be employed to achieve justice. The majority of users met in the course if this project brought lawsuits out of principle or out of vengeance. Even for materialistic users, achieving justice seemed to require that broad concerns such as the personal merits or general conduct and intentions of disputants be taken into account. It seems that the sense of injustice is grounded in beliefs about actors as well as acts. Litigants do not only look for indemnification but also for remedies that punish and dissuade the wrongdoer. In fact, monetary compensation may fulfill a symbolic as well as a material function. As Lerner's researches on the sense of justice reveal, "[t]he desire to maximize one's outcomes is a relatively trivial motive in people's lives, that gains its importance only as it enters into the person's concerns with deserving and justice."[135]

In contrast, as illustrated in the McGuire and Macdonald's studies of the Montreal Small Claims Court, it seems that for a majority of judges, the possibility of obtaining material compensation is the principal motive for parties using the court.[136] Indeed, "[b]ecause most judges see the role of the court as facilitating the collection of money, to fight a case on principle is often viewed not as pursuing justice, but as being vengeful or egocentric."[137] Litigants' stated or unstated expectations toward the justice system are likely to be disappointed by its judges trivalizing right and wrong issues and equating justice with the award or refusal of monetary compensation.

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[135]M.J. Lerner, *The Belief in a Just World: A Fundamental Delusion* (New York: Plenum Press, 1980) at 194.

[136]S.C. McGuire & R.A. Macdonald, "Judicial Scripts in the Dramaturgy of the Small Claims Court" (1996) 11 *Canadian Journal of Law and Society* 63.

[137]*Ib.* at 90.

2.2 Common sense and formal rationality

Access to justice reforms derive from a model of disputing as a form of rational behavior derived prominently from economic transactions. However, the findings of this project confirms the fact that much human behavior is non-rational; social action is not entirely instrumental but is also influenced by notions of right and justice. The conception of what constitutes a "rational" way of handling disputes held by lay litigants and legal professionals seems to differ on two major aspects: how disputes are handled by courts (procedural concerns), and how they are resolved (normative concerns).

From a normative point of view, the remedies offered by the court system will be satisfying only in so far as they remedy what litigants define as the source of their problems. For legal professionals, such a source can be nothing other than the breach of a precise legal rule. Remedies consist merely in the annulment of the consequences of this precise and isolated wrongful act.

Litigants' views may be quite different from this "sanitized" vision of inter-personal conflict. Even though law may provide a way to word a grievance and frame the debate, violations of legal norms are not the sources of grievance. As noted by Conley and O'Barr, "[t]he analysis of everyday conversations show that people concerned with blame and responsibility tend to talk about these issues and to assess responsibility in interactive sequence rather than to attribute blame directly and unambiguously."[138] A wrongful act essentially makes sense in relation to a whole series of events, the discussion of which does not find its place in courts. For litigants, the appropriate remedies must be chosen in respect of the personal merits of disputants. They must also fulfill a dissuasive as well as a compensatory function. Awarding too light a compensation challenges the system's inefficiency by encouraging wrongdoers to persist in their behavior.

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[138]Conley & O'Barr, *supra* note 52 at 48.

Procedural concerns are correlate of normative concerns. The parceling out of concrete conflict situations into distinct claims and counter-claims seems to constitute an important source of discontent for many reasons. First, it multiplies the number of proceedings required to solve what litigants see as a single problem. Second, it prevents the Rental Board from considering the multiple aspects of this problem at once and to reach truly "fair" outcomes. Many participants in the project resented the impossibility to refer to their landlord's prior record before the Board as an indication of his/her bad behavior. Finally, evidence rules and procedural constraints may impair the benefits expected from the story-telling process.[139]

For legal professionals, the classical adversarial process is still closely associated with fairness and justice: adjudication processes are seen as more likely to produce fair results than those that allow a third-party to have more control on the way evidence is gathered and presented. In the same way, when group participants were consulted by the Ontario Civil Justice Review, "without exception they stressed [...] the importance of party control and expressed a deep scepticism about the fairness of an inquisitorial process."[140] For them too, litigants are autonomous individuals willing to fight for their rights.

The perspective brought by the participants in this project seems however to be quite different. Many of the persons interviewed expressed their wish that the legal system be more proactive, looking out for errors of injustice instead of waiting for an aggrieved individual to make a complaint. The "reactive" features of the system may be a source of frustration for those who wonder, not without reasons, why it is they, the victims, who should bear the burden of punishing often well-known wrong-doers[141] and enforcing legal norms.

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[139]See *Ib.* at 130. As Conley and O'Barr put it, "many people treat the litigation process as a form of therapy [of which] the central, cathartic element is the chance to relate one's troubles to a authoritative yet sympathetic listener."

[140]Morrison & Mosher, *supra* note 84 at 665.

[141]A good proportion of the tenants interviewed were engaged in relationships with landlords that were known by the Rental Board's employees as "bad" landlords.

According to numerous studies, being heard and having one's case taken seriously are more important determinants of users' satisfaction with the dispute resolution processes they use than the actual degree of adversariness of these processes.[142] However, being heard often means being allowed to define the issues at stake and say what one thinks is relevant to these issues, and having one's case taken seriously may suppose that the remedies offered really address one's problems. In that sense, evaluations of fairness may depend as much on the outcomes of one's cases than on the procedural rules applied.

3. The litigation and ADR explosions

An impressive number of observers has concluded that American and Canadian societies are over-legalized, and their tribunals overwhelmed by a flood of litigation. Even though there does not seem to exist a consensus as to what the sources of this flood are,[143] solutions have already been offered to counter the excessive use of adjudication as a means of dispute resolution. Among them are the prevention of litigation by preventing conflict from escalating into a legal dispute, and the prevention of litigation by offering alternative (and purportedly more attractive and efficient) modes of dispute resolution.[144] The typology offers some insights into the possible efficiency of these measures.

3.1 Preventive law and the prevention of conflict

Focus on legal education is an important feature of preventive law. The dissemination of legal knowledge, understood as information about legal rights and remedies, is seen as a first step toward the reduction of litigation rates in that it prevents people from bringing "non-legal disputes" to courts, prompts them to find other solutions to their problems,

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[142]See S. Wain, "Public Perceptions of the Civil Justice System" in *Rethinking Civil Justice*, vol. 1, *supra* note 19, 39; Tyler & Lind, *supra* note 28; Thibaut & Walker, *supra* note 20.

[143]Or even the existence of such an explosion. For a discussion of this issue, see M. Galanter, "Reading the Landscapes of Disputes: What we Know, Don't Know (and Think we Know) About our Allegedly Contentious Society" (1983) 31 *UCLA Law Review* 4.

[144]For a Quebec perspective on preventive law, see P. Noreau, *Droit préventif: le droit au-delà de la loi* (Montreal: Thémis, 1993).

and may provide arguments to be used in a negotiation or mediation process. It is often thought that well-informed litigants or litigants with previous experiences with the legal system are better armed to solve their disputes in a satisfactory manner, with or without the help of courts. Experienced users seem also to be more successful in court than first-time players.[145]

However, access to legal information does not seem to have played a major role in the disputes reported in this project. The unavailability of such information was resented by only a tiny minority of participants. Moreover, a vast majority of them looked for that kind of information only after, or at the moment when they made the decision to resort to the court system. Among users, only those from the C1-type exhibited a tendency to describe their problems in terms of legal norms and obligations. As a result of their contacts with community organizations, they develop a capacity to frame their problem in legal terms; however, legal standards seem to be superficially integrated in their discourse without being internalized. In their case, "[a]ccessible legal language typically leads to the displacement of the ordinary language of justice by which most people mediate their everyday relationships with each other."[146]

Among other users, however, access to legal information did not provoke such a displacement: they almost never referred to legal norms and preferred to describe their problems in terms of principles or interests. Even though a good proportion of them described their experience with the court system as a learning process, they emphasized its impact on their personal, rather than intellectual, development.

It appears that legal education or experience does not have a uniform impact on people from different backgrounds. Independent individuals don't generally seem to integrate legal standards as ways to define their grievances. In contrast, some people who seem to lack

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[145]See notably M. Galanter, "Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change" (1974) 9 *Law and Society Review* 95.

[146]R.A. Macdonald, "Theses on Access to Justice" (1992) 7 (2) *Canadian Journal of Law and Society* 23 at 43 [hereinafter "Theses"].

of internal standards, tend to rely exclusively on legal norms to justify, in the eyes of external authorities, their dissatisfaction. In the absence of a deeply seated source of motivation, these people (mainly C1-type individuals) tend develop a form of dependency toward legal experts to define and react to their problems.

3.2 ADR and the prevention of litigation

By describing some types of lay people's relations to court in real-life settings, the findings of this project provide some insights into what has been called the "paradox around mediation",[147] i.e. the fact that people express positive feelings (and even preferences) for alternative mode of dispute resolution in general, but fail to use them in real-life settings.

This phenomenon may have two causes. First, it may be that, even though people may prefer to solve their problems in non-confrontational ways, situational constraints prevent them from doing so. Second, it is possible that the preferences for consensual and non-confrontational modes of dispute resolution often expressed by subjects confronted with conflict scenarios can be explained in part by social norms, people giving higher ratings to the procedures they view as more proper in the eyes of other people.[148]

This project's findings provide some support for this last hypothesis. Only a few subjects cited the undesirable consequences of adjudication[149] as a reason to justify their not using this mode of dispute resolution. In fact, concerns with adjudication in itself were expressed by only a small fraction of the participants in the project. The vast majority of them did not seem to distinguish between adjudication and other modes of dispute resolution. Although subjects belonging to types 3 (A3, B3, C3) expressed reluctance

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[147]Duffy & Olczak, *supra* note 33.

[148]See R.S. Peirce, D.G. Pruitt & S.J. Czaja, "Complainant-Respondent Differences in Procedural Choice" (1993) 4 *International Journal of Conflict Management* 199.

[149]Among these consequences are damage to future relationships between disputants, escalation of conflict, and the risk of "losing everything" in court.

toward the court system, their concerns seemed to be related to the "officialization" or "publicization" of conflict, notwithstanding the forum destined to handle it, rather than its "legalization" per se.

As illustrated by the typology, barriers to justice are often caused by a person's inability to perceive his/her problems and react to them, his/her fear of confrontation in general or his/her preference for bilateral means of dispute resolution. It is therefore doubtful that mediation services, or other informal means of dispute resolution, hold out much promise for these persons in terms of access to justice: "[t]he barriers to naming, blaming and claiming that impede access to a due process hearing also impede access to mediation. [...] It is hard to imagine that a person dependent upon the state (or abusive husband, or landlord) in an on-going way would be any more willing to take on conventional power through mediation, than through a due process hearing."[150]

A few subjects admitted that they were offered mediation services by employees of the Rental Board. In most cases, however, these services were neither offered nor asked for. An employee of the Board revealed that few and few cases are mediated every year through the intermediary of this tribunal, due in part to the fact that disputes are often seen as too advanced when they reach the Board to allow for alternative means of resolution to take place.[151] At this stage, both parties are dissatisfied and the intervention of someone who will take sides is required. Conflict has already become a grievance asking for an authoritative solution, and not a conflict of interest that can be negotiated.[152]

This raises doubts as to the advisability of what could be called the informalization of conflict before courts and administrative tribunals. Observations made in the Rental Board

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[150]Morrison & Mosher, *supra* note 84 at 673.

[151]It may be that this shift from a negotiable dispute to an open conflict tends to occur even before any third party is contacted; following this hypothesis, it is unlikely that an aggrieved person will choose to resort to mediation rather than adjudication services.

[152]C1 and C3 types subjects seem to be different in this respect; since they tend to be inactive and depend on others to find a solution to their problems, they may be indifferent to the kind of solution they are offered.

revealed that some *régisseurs* define their role as facilitating non-legal, consensual resolutions of the conflicts before them. From the typology, it seems that a good proportion of people want to go to court because they see themselves as endowed with rights and entitled to the protection of the state. An "informal justice" approach to conflict may be a source of dissatisfaction, especially for principled subjects, who tend to define their problems as issues of right and wrong. For them, judges' preferences for bilateral settlements before or during trial may provoke feelings of not warranting court attention and/or not being taken seriously.

4. The sense of injustice: suggestions for further research

By focusing on personality, this research aimed at exploring the diverse processes by which individuals define and react to perceived injurious experiences. It was decided to ignore the influence of other factors such as socio-demographic or socio-economic characteristics of the persons interviewed. The results obtained reveal that it is possible to draw portraits of typical litigants without taking their social backgrounds into account. This does not mean, however, that these characteristics are not relevant to our understanding of the disputing process. On the contrary, some elements of the typology reveal that social characteristics of disputants may, to a certain extent, be predictors of their disputing behavior.

In their study of litigants' speech styles, Conley and O'Barr[153] found that individuals placed at the social periphery are characterized by a pattern of thinking leading them to use a powerless speech style and describe their problems in relational (relational orientation), rather than normative (rule orientation) terms. However, their findings also reveal that rule orientation appears to derive specifically from experience with the culture of law and business rather than directly from wealth and social position. A similar phenomenon is visible in the typology in regard of the dichotomy between independent

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[153]Conley & O'Barr, *supra* note 52.

(A and B types) and dependent (C types) subjects, the latter generally coming from a lower socio-economic background than the former. However, some subjects in A and B types also come from this background.

Such findings suggest that social conditions may have an indirect effect on the way people handle disputes and relate to the court system. First, they are likely to correlate with the presence of certain personality traits. More specifically, one's belonging to a lower socio-economic stratum may result in a lack of education leading to inability to look for information properly, a tendency to rely on State and non-State institutions, a lack of assertiveness and self-confidence and a higher level of submissiveness. In addition, even though no correlation was found between a person's locus of control and his/her position in the typology, it has been suggested be personality researchers that perceived control (internal orientation) is positively associated with access to opportunity[154] and partly determined by one's belonging to a culture that favors individualism and autonomy.[155]

Second, status definitely has an influence on people's culture and modes of interaction with other people and public authorities. The complexity of legal language has often been described as a major obstacle preventing people from the social periphery to have access to courts; however, this informational gap can be easily compensated by the availability of community services acting as interprets and spokespersons. A more significant concern might be the fact the legal system remains a cultural system closed to a good proportion of the population. The legal-rational model of disputing is a social construct that describes the culture of professional elites, but not that of the majority of the population.[156] For marginalized people, this may result in tendency to "organize their legal arguments around concerns that the courts are likely to treat as irrelevant."[157] In addition, it seems that

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[154]See *Locus of Control*, *supra* note 106.

[155]S.E. Hampson, *The Construction of Personality: An Introduction* (London: Routledge, 1988).

[156]For an illustration of these "cultural gaps" see Merry, *supra* note 45.

[157]Conley & O'Barr, *supra* note 52 at 81.

attitudes toward law and the court system may depend on respondents' socio-demographic and socio-economic characteristics.[158]

Third, socio-economic status may play a role at the intra-personal level and affects problem perception and motivation. Commitment to justice is often explained in theories of equity as the rational invention of selfish people involved in a social contract. However, studies on the sense of injustice[159] suggest that, at the psychological level, people evaluate their material condition in terms of whether they deserve it or not: "[t]he absolute level, objective status, of one's fate is of indirect relevance to the person's level of satisfaction. What matters is that people believe that their fate is at least equal to what they deserve [...] there is ample evidence that people typically design their activities to get what they deserve, and they will be distressed if they subsequently acquire "more" than they deserve."[160] Standards of living, lack of access to opportunity, professional and social mobility and "learned fatalism" may all serve as elements to determine what one can actually expect as his/her due.

5. Conclusion

The problem of "access to justice" is eminently multi-faceted. Even though objective barriers to courts are still a major impediment to access to many tribunals, this thesis illustrates the fact that the removal of these barriers would not be sufficient to increase the proportion of problems solved by the civil justice system. Subjective barriers play an important role in the disputing process.

This project's findings also suggest that these subjective barriers vary among members of a

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[158]R.J. Moore, "Reflections of Canadians on the Law and the Legal System: Legal Research Institute Survey of Respondents on Montreal, Toronto and Winnipeg" in D. Gibson & J.K. Baldwin, eds., *Law in a Cynical Society? Opinion and Law in the 1980's* (Calgary: Carswell, 1985) 41.

[159]See generally M. Lerner & S. Lerner, eds., *The Justice Motive in Social Behavior* (New York: Plenum, 1981); Lerner, *supra* note 135; H.W. Bierhoff, R. L. Cohen & J. Greenberg, eds., *Justice in Social Relations* (New York: Plenum, 1986).

[160]Lerner, *supra* note 135 at 175.

same community. Even though litigants may be psychologically different from non-litigants, members of the two groups also differ among themselves. Reactions to conflict are various; people resort (or refuse to resort) to the court system in a variety of contexts and for many different reasons. In view of this reality, it seems that "[t]he [legal] system is not really a system at all, but an aggregation of individual encounters."[161]

For a good proportion of the participants in this project, the simple dislike of confrontation constituted a major barrier to the court system. For some of them, confrontation was so unpleasant that they preferred to engage in less psychologically costly forms of behavior (avoidance, self-help, lumping). In fact, confrontation has potential costs whether it takes place in private negotiations or a third-party forum. In particular, voicing a complaint constitutes an admission of victimization and imply the possibility of losing, being shown wrong or seen as an unpleasant person or a trouble-maker. All these elements constitute potential indicators of incompetence and may affect one's self-image. In addition, "[t]he simple act of voicing a complaint involves some form of wrong-doing by the complaining party against the second party."[162] Other participants proved to be able to handle two-party negotiations but sought to avoid the intervention of a third-party in their relationships with their landlords. In other cases, the disenchantment of ex-users with the judicial system proved to be a major barrier. Finally, a good proportion of participants were disempowered by their dependency on other people.

In an overwhelming majority of cases, however, litigants seemed to be at least partially dissatisfied with the functioning of the legal system. In addition to delay considerations, participants were particularly concerned with the apparent inefficiency of the judicial system, i.e. its inability to prevent wrongful actions. It is at least partly related to the fact that "legalism" requires rules be elaborated so as to treat all situations by reference to abstract criteria, relegating moral considerations and emotions only to categories

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[161]Conley & O'Barr, *supra* note 52 at 125.

[162]N. Vidmar, "Justice Motives and Other Psychological Factors in the Development and Resolution of Disputes" in Lerner & Lerner, *supra* note 135, 395.

postulated by these rules. Therefore, rendering a problem into a legally recognizable dispute often betrays litigants' wishes to achieve particular and individuated justice through law. Indeed, "[t]he presupposed self which is not rooted in a social situation gives rise to a conception of legal normativity which is also unrooted. Official law becomes a web of interlocking prescriptions, procedures and offices designed to generate characterizations of conduct which are separate from any individuating features of their anthropomorphic referent."[163]

Legal professionals assume that lay litigants share their understanding of the nature and purpose of civil justice and are concerned with eventual flaws in its delivery. They base most of their assumptions on the idea that the humans are a rational/self-interested beings. Even though this concept does not seem to describe human behavior, it may have a defensive function. According to Lerner, in spite of, or because we have basic needs for esteem and security, we "construct a series of myth about how ultimately selfish we all are. We pretend very hard to believe in them - because we think we must, in order to protect ourselves. But in fact, whenever the occasion arises, we [...] act in ways which reveal that we care about deserving and justice - about living in a just world."[164]

A lot of things still need to be known on the role justice considerations play in people's everyday lives. For access to justice to be achieved, however, this role has to be acknowledged by researchers as well as legal reformers. In fact, people's widespread commitment to justice might be a major resource for generating social change.

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[163]"Theses", *supra* note 146 at 28.

[164]Lerner, *supra* note 135 at 190.

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