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What has *Meads v Meads* wrought?

Written by: Jonnette Watson Hamilton and Alice Woolley

Cases commented on:

R v Duncan, [2013 ONCJ 160 \(CanLII\)](#); *R v Tyskerud*, [2013 BCPC 27 \(CanLII\)](#); *Cassa v The Queen*, [2013 TCC 43 \(CanLII\)](#); *R v Martin*, [2012 NSPC 115 \(CanLII\)](#); *R v Lavin*, 2013 ONCJ 6 (QL); *Scotia Mortgage Corporation v Gutierrez*, [2012 ABQB 683 \(CanLII\)](#); *Stancer (Re)*, [2012 BCSC 1533 \(CanLII\)](#); *Grattan (Re)*, 2012 NBQB 332, [2012] NBJ No 353 (QL)

I. Introduction

Associate Chief Justice John D. Rooke's decision in *Meads v Meads*, [2012 ABQB 571 \(CanLII\)](#) — one of CanLII's Top Ten Cases of 2012 — established a category of vexatious litigants that he called “Organized Pseudolegal Commercial Argument” (OPCA) litigants. OPCA litigants “employ a collection of techniques and arguments promoted and sold by ‘gurus’ ... to disrupt court operations and to attempt to frustrate the legal rights of governments, corporations, and individuals” (*Meads* at para 1). Although those techniques and arguments are varied, the essence of the OPCA litigants' position is that they deny the authority of the state and the courts. Both of us have commented on the *Meads* case previously on ABlawg: see “[The Organized Pseudolegal Commercial Argument \(OPCA\) Litigant Case](#)” and “[The Top Ten Canadian Legal Ethics Stories – 2012](#)”. What we want to look at in this post is the use that has been made of *Meads* in the intervening six months. We will also consider the extent to which OPCA and similar litigants may influence judges to embrace styles of judgment that are disrespectful of the parties appearing before them. The post will touch on the ethical problems created when judges embrace “literary flourishes” and “dry wit” in their decisions (Katie Daubs, “[Legal Decision with literary flourish and dry wit making the round...](#)” *Toronto Star*, March 29, 2013).

Justice Rooke's decision in *Meads* was not without some biting characterizations of Mr. Meads' arguments and tactics. He refers, for example, to the “bluntly idiotic substance of Mead's argument ...” (at para 77), his “bizarre response” to a suggestion of cooperation (at para 253), and his use of “gibberese” (at para 435). A very small number of barbs are aimed more at the person than his arguments, including “some, like Mr. Meads, appear unable to resist the temptation of wealth without obligation ...” (at para 543). But, in general, and considering the length of the proceedings and the decision, Justice Rooke limits his scorn to OPCA litigants and tactics in general, and especially those he called “gurus”, i.e., those who claim to know secret principles and law that is hidden from the public but binding on the state and courts and who promote and sell this supposedly secret knowledge as a commercial product in seminars, books, websites, and instructional DVDs.

Justice Rooke's decision in *Meads* not only identifies almost every OPCA indicia and deconstructs almost every OPCA concept and argument, but also explains why each cannot

succeed and what courts, lawyers and litigants can do if faced with OPCA litigants' tactics and arguments. The decision was clearly intended to be a resource for other judges and it has been used as such. According to CanLII, Westlaw and QuickLaw, *Meads* has been judicially considered for its points about OPCA litigation in seven written judgments since its release on September 18, 2012, and also in the unreported written decision in *R v Duncan*. Three of those cases involve income tax prosecutions; two involved other types of criminal or quasi-criminal offences. Two cases were bankruptcy matters (one almost entirely for taxes owed) and the final case involved a foreclosure. These cases testify to the importance and significance of *Meads*. They also indicate the extent to which OPCA litigants test judges' ability to discharge their judicial function.

II. The Post-*Mead* Cases

A. *R v Duncan*

R v Duncan was heard by Justice Fergus O'Donnell of the Ontario Court of Justice.

A minor alleged *Highway Traffic Act* offence — an unsignalled turn — led to an altercation with a police officer in the parking lot of Duncan's apartment building. A request that Duncan produce his licence led to an alleged refusal to do so, an attempt to arrest him, a struggle, and the arrest of Duncan for allegedly assaulting a police officer. Justice O'Donnell acquitted Duncan of the charge because there was no lawful basis for the stop and thus no lawful basis for the demand for identification and thus no lawful basis for the arrest for failing to produce identification. As the arrest was unlawful, even if Duncan resisted, he was entitled to do so. The acquittal was entered as the result of something equivalent to a motion for non-suit that was made at the conclusion of the Crown's case by the Court on Duncan's behalf. It was a happy outcome for Duncan, but it came at a large cost to his dignity.

There is no doubt these *Highway Traffic Act* proceedings did include a number of the indicia of OPCA litigation that were listed by Justice Rooke in *Meads*. Duncan talked about being a split person, with both natural person and administrator aspects (footnote 1); he provided an "affidavit of truth" objecting to the court's jurisdiction over him and denying he was a citizen of the country or province, a "person," or someone with a contract with the court (at para 9); he produced a "fee schedule" just before his altercation with the police (at para 12); etc. In *Meads* Justice Rooke describes the uses of these concepts and tactics (and more) in other cases (at paras 199-253).

Duncan is addressed by Justice O'Donnell throughout the judgment as "Mr. Duncan." He is described as "a rather pleasant young man" (at para 7), "a decent fellow who expressed himself well" (at footnote 5) and "a perfectly pleasant young man" (at para 9). Nevertheless, and apparently because of the acquittal and the publication of *Meads* between the first and second days of Duncan's trial, Justice O'Donnell had his fun with Duncan in his written reasons for judgment released five months after his oral judgment. Consider the following examples from those reasons:

- "There was some mumbo-jumbo about the natural person and the administrator and that one of them might have been Mr. Duncan and one might have been Matthew and one, but not both, of them might have been the person speaking to me in court (while seated)." (at footnote 1).

- “It has been said that, given enough time, ten thousand monkeys with typewriters² would probably eventually replicate the collected works of William Shakespeare.³ Sadly, when human beings are let loose with computers and internet⁴ access, their work product does not necessarily compare favourably to the aforementioned monkeys with typewriters.⁵”

²For readers under the age of thirty or so, the ‘typewriter’ was a mechanical device used for creating documents that pre-dated the computer and lacked some of the computer’s more annoying characteristics, in particular the computer’s facilitation of ‘cutting and pasting’, which is undoubtedly one of the four horsemen of the modern apocalypse and which has cost many trees their lives and many lawyers and judges their eyesight.

³“William Shakespeare” was a sixteenth century English poet and playwright of some skill. ...

⁴The “internet”, also known as the “world-wide web” is a bi-polar electronic Leviathan that has erupted on the world scene in the past two decades. ... For the purposes of this case, the relevance of the internet is its unpoliced “garbage in/garbage out” potential and its free-market-of-ideas potential to lure in otherwise pleasant and unsuspecting folk with all manner of absurdity and silliness.

⁵Lest anyone misunderstand me, this is by no means intended to compare Mr. Duncan to a monkey. As I have noted, Mr. Duncan seemed a decent fellow who expressed himself well (other than when rambling a bit too long about jurisdiction, as noted herein) and whose principal shortcomings appeared to be too much free time with internet access and too little discernment in whose example he followed. The reference to monkeys with typewriters is intended solely to point out that technological “advances” are sometimes used to such ends that one wonders if perhaps the Luddites didn’t have a point.

- “Mr. Duncan provided me with an ‘affidavit of truth’, a rather substantial volume that appeared to me to be the result of somebody doing a Google search for terms like ‘jurisdiction’ and the like and then cobbling them together in such a way that it makes James Joyce’s Ulysses look like an easy read. This hodgepodge of irrelevancies relied upon by Mr. Duncan was one of the misbegotten fruits of the internet. Finding it was a waste of Mr. Duncan’s time; printing it was a waste of trees and my reading it was a waste of my time and public money.” (at para 9).
- “We did not finish Mr. Duncan’s trial on the first day. As I left court that day and contemplated returning in the autumn to finish the trial, it occurred to me that I would have to write rather a lot to address the various procedural issues raised by Mr. Duncan in his tome and his verbal arguments. Now, don’t get me wrong about this; I’d be happy to write until the cows came home about matters of substance relating to the guilt or innocence of the defendant and the liberty interests of a citizen vis a vis the constabulary, but the idea of having to disentangle all of the palaver, nonsense and gobbledygook in the document Mr. Duncan presented to me was not particularly appealing.” (at para 19)
- “There is an ancient proverb to the effect that “those whom the gods would destroy, they first make mad”. The prospect of disentangling Mr. Duncan’s adopted argument and his volume of internet-derived gibberish made me wonder if, for some reason, the gods had me in their cross-hairs.” (at para 20)
- “There is no merit to Mr. Duncan’s jurisdictional argument. Such arguments are a waste of the court’s time and resources, a selfish and/or unthinking act of disrespect to other litigants and deserving of no further attention, energy or comment.” (at para 22)
- “With his whole life ahead of him, one can only hope that Mr. Duncan will not only eschew formal adherence to that line of thinking, but will forsake all of the odds and ends and bits and pieces that accompany it and similar silliness.” (at footnote 6)

- “Near the beginning of his comments to me at the outset of this trial, Mr. Duncan proclaimed that he had no obligation to produce identification to the police officers. In that moment, before he continued down the Alice in Wonderland garden path of trusts and jurisdiction and dollar amounts and contracts and natural persons and administrators, Mr. Duncan momentarily hit upon the concept that would ultimately lead to his acquittal, albeit not by the rather circuitous and, with all due respect, silly path he wanted to go down.” (at para 30)
- “Mr. Duncan did not strike me as a fool and individual acts seldom define people, but the red binder he offered to the officers and the “affidavit of truth” he offered to me in court were regrettable descents into foolishness and Mr. Duncan would be well-advised to be more discriminating on what parts of the internet he models himself upon in the future.” (at para 31)

And on the publication of *Meads* between the first and second days of Duncan’s trial and how it might have led to the sort of “palaver” quoted above, consider the following excerpts:

- “If December 7, 1941 is a day that will live in infamy, for anyone faced with “freemen on the land” or similar litigants, 18 September, 2012 is a day that will shine in virtue. On that day, Mr. Justice J.D. Rooke, the Associate Chief Justice of the Alberta Court of Queen’s Bench, delivered a judgment in the matrimonial case of *Meads v Meads* 2012 ABQB 571.” (at para 21)
- “... Justice Rooke’s comprehensive judgment on what he labels “Organized Pseudolegal Commercial Argument Litigants” (of various iterations), wonderfully frees me from having to address any more effort to the jurisdictional arguments raised by Mr. Duncan.” (at para 21)

Justice O’Donnell did not address any effort to the jurisdictional arguments raised by Duncan. He did not describe those arguments. He did not refute them with law. He did not quote their refutation by *Meads*. Instead, he viewed *Meads* as a license to ignore them.

B. *R v Tyskerud*

In our opinion, the best use of *Meads* to date is that by Judge J.P. MacCarthy in the 460 paragraph judgment in *R v Tyskerud*, [2013 BCPC 27 \(CanLII\)](#). The accused, a father and son, were charged with income tax evasion. *Tyskerud* is a case that appears to involve what Justice Rooke called a “guru.” In discussing a variety of typical OPCA techniques and arguments used by the father, Judge MacCarthy specifically notes that the accused attended some courses presented by the Paradigm Education Group to learn about the concept of a natural person (at para 42). The father testified that he drew on several sources, including Paradigm, to create documents such as his “Statutory Declaration Truth of Identification- Documentation Number MY-7748229.”

As Judge MacCarthy notes (at para 309), one of the gurus that Justice Rooke identified by name in *Meads* is Russell Porisky, founder of the Paradigm Education Group. As part of his review of court decisions arising from the prosecution of Porisky for tax evasion and counselling others to commit fraud, Justice Rooke stated (at paras 88, 89, 93-94, citations omitted):

Recently, a more complete window into the operations of an OPCA guru and his customer base has been provided by the trial and conviction ... and sentencing of

Russell Porisky and Elaine Gould for tax evasion and counselling others to commit fraud. ...

Porisky operated a business, named "The Paradigm Education Group", that advanced a concept that it was possible for a potential taxpayer to:

... structure their affairs so that they were a "natural person, working in his own capacity, under a private contract, for his own benefit". Paradigm taught that money earned under this arrangement was exempt from income tax.

Porisky and Paradigm advanced this scheme on a commercial basis. ... Paradigm operated as something of a pyramid scheme; Porisky also qualified "educators" to further proselytize his approach... At least one of these educators is now also the subject of criminal litigation ... as are other participants in the Porisky tax evasion ring... Many other persons who used Porisky's techniques have already been convicted of tax evasion ...

Additionally, and in what can only be described as an exercise in pure arrogance, Porisky demanded 7% of the next two years income from his subscribers in exchange for his or his educator's assistance ... The tax liberator had become a tax collector.

The accused in *Tyskerud* characterized Paradigm in benign terms, viewing the group as legal and human rights educators (at para 312). The father denied that they were disseminators of tax protestor information. However, Judge MacCarthy was able to use Justice Rooke's review of the tax evasion and related cases generated by the teachings of Russell Porisky to conclude (at para 312) that "the central focus of these self-styled education programs was to evade income tax." However, Judge MacCarthy is careful to admonish himself (at para 314) that it would be an error "to find any accused guilty by association. ... The presumption of innocence must be maintained." Instead he uses the information from *Meads* — summaries of reported decisions for the most part — to provide a context for the accused's arguments.

Judge MacCarthy also took seriously (*Tyskerud* at para 317) Justice Rooke's admonition (*Meads* at para 202) that the indicia typically found in OPCA litigation "do not prove a claim or action is invalid, or that a litigant is vexatious." Many of the indicia of OPCA litigation were present in the *Tyskerud* case: see paras 318-324. Many of the arguments made by the accused were refuted in *Meads* and Judge MacCarthy quotes extensively from *Meads* (at paras 325 – 369) in order to reject the arguments advanced by the accused which failed in other cases identified in *Meads*. There is nothing in Judge MacCarthy's decision or the language he uses that is disrespectful of the accused or that fails to take their arguments seriously.

C. *Cassa v The Queen*

Another case involving income tax evasion and OPCA gurus is *Cassa v The Queen*, [2013 TCC 43 \(CanLII\)](#). This particular decision, by Justice Diane Campbell acting as a case management judge, granted a motion by the Respondent to strike the Appellant's Further Amended Notice of Appeal filed in January 2013. But this decision was only part of a large group of appeals, half involving self-represented litigants and half involving litigants represented by legal counsel. There was a "thread of similarities" in the wording in hundreds of these appeals — "de-taxer"

language — leading Justice Campbell to conclude these Appellants have received “counsel” from a “guru.”

Justice Campbell’s ruling on the motion to strike shows little patience with the appellant, Cassa — and she relies on the existence of “self-represented litigants who are making an honest attempt to advance their appeals through the Court system in a timely manner” (at para 14) to justify her lack of time for Cassa’s “‘song and dance’ routines.” She characterizes his oral submissions as amounting to “nothing more than an absurd blend of the ridiculous arguments he included in his appeal documents” (at para 9). His arguments are labelled “unintelligible, incomprehensible, meaningless, irrelevant and factually hopeless” (at para 14). She notes that Cassa referred to the *Meads* decision as “prejudicial and premature” in what she took as an attempt to persuade her to ignore *Meads*. She concluded (at para 12) “that suggestion is as absurd as many of his other assertions.” Cassa’s use of the double or split person concept is characterized (at para 13) as an “absurd argument” and “total and utter nonsense.” Justice Campbell states (at para 13): “My method of dealing with any attempt by the Appellant to employ this nonsense in my Court was to simply ignore it.”

D. *R v Martin*

R v Martin, [2012 NSPC 115 \(CanLII\)](#) is a third income tax evasion case with the suggestion of involvement by a guru. Judge Del W. Atwood ruled on the accused’s application for disclosure, an application he did not grant but did consider on its merits even though it was neither diligent nor timely. In this case, it was not the judge who relied on *Meads* but the Crown prosecutor. Apparently the focus of the Crown was on pigeon-holing Martin as an OPCA litigant and the argument adopted by the Crown in its written brief was that Martin, as an OPCA litigant, had brought unmeritorious applications in the past and therefore his present application should be assessed as being unmeritorious, as well. Judge Atwood not only noted the formal fallacy in this argument, but jumped to the defence of Martin (at para 9):

In this case, Mr. Martin has raised a triable issue: at what point in time did the CRA audit of his business evolve into an offence-focussed investigation? The Crown’s submissions regarding the purported authorship of Mr. Martin’s present argument — allegedly a Mr. Kimery, an individual who has, himself, been involved in litigation with the CRA in another province — were similarly unhelpful, as they amounted merely to an *ad hominem* rebuttal. In my view, it matters naught who helped Mr. Martin put together his application; what matters here is the legal merit of the application. Mr. Martin’s application this time around had merit and was arguable. What it lacked was persuasive evidence.

While acknowledging that *Meads* is an “immense benefit to trial Courts in managing cases defended by improperly guided, self-represented or agent-represented parties,” Judge Atwood correctly adds that *Meads* underscores the critical importance of maintaining focus on the merits of the case (at para 9). Like Judge MacCarthy in *Tyskerud*, Judge Atwood took seriously Justice Rooke’s admonition that the indicia typically found in OPCA litigation “do not prove a claim or action is invalid, or that a litigant is vexatious.”

E. *R v Lavin*

The uncontested bail hearing conducted by P. Kowarsky, Justice of the Peace, and described in his 207 paragraph decision in *R v Lavin*, 2013 ONCJ 6 (QL) is one of the more problematic post-

Meads treatments of an OPCA litigant. Lavin was charged with obstructing a peace officer, using a permit and licence plate not authorized for the vehicle he was driving, driving while under suspension, operating a motor vehicle without insurance, and driving a motor vehicle without a currently validated permit. The Crown was prepared to consent to the release of Lavin on his own recognizance. However, on what appear to be three separate occasions when Lavin appeared before the Justice of the Peace, he refused to recognize the jurisdiction of the court. After Lavin was removed from the courtroom on the first occasion, the Crown was still willing to consent to his release on his own recognizance, subject to Lavin acknowledging his name, informing the Court that he understood the conditions of his release, agreeing to comply with all the conditions, and signing the recognizance. From the portions of the transcript quoted by the Justice of the Peace, it does not appear that Lavin was prepared to comply with the Crown's proposed conditions, although it is not clear that he explicitly declined to do so. The Justice of the Peace refused to order Lavin's release and detained him. He also found Lavin to be an OPCA litigant.

According to the transcripts quoted in the decision, Lavin repeatedly refused to recognize the authority or jurisdiction of the court. He made many statements to the effect of: "Sorry, I don't recognize you. I don't recognize the Crown. I don't recognize any of these people in this court." The following exchange is also quoted:

68 THE COURT: Sit down. All right. This is a gentleman who has now indicated to me that his name is David Lavin, appeared before me yesterday in this court. He had disrupted the proceedings in the court.

69 DAVID LAVIN: I'm sorry, Your Honour [sic], for and on the record, I'm sorry.

70 THE COURT: If you continue to talk, I'll have you removed from the court, do you understand that? One more word from you until I ask you to respond and you will be removed from the court. Do you understand that?

71 DAVID LAVIN: I'm under - I do so under duress, threat and intimidation.

72 THE COURT: Take him down, please.

73 MR. POON: Can we come back tomorrow, Your Worship?

74 THE COURT: No, no, no. I'm going to deal with it in his absence and then I'll call him up and I'll ask, perhaps, if possible, to have the record indicate what I've said so you can take a seat for a moment. All right.

The day before the Justice of the Peace had indicated to Lavin in open court what the conditions of his release would be and Lavin said he needed 10 or 15 minutes to think about it. When the matter came before the court again, this is what happened (at para 78):

Once again, for the purposes of the record and to ensure that I was dealing with David Lavin, I asked him to provide the court with his first and last name. Again, he started talking in some form of gibberish that made no sense and has no legal standing in this court. For that reason, I had him removed from the court, and, in

the interests of justice, I ordered the matter to return before me today in order for the bail, once again, to be considered.

It is at this point that the Justice of the Peace turns to *Meads* which he describes (at para 79) as the “seminal case on matters of this kind” and a case “dealing with a similar litigant.” He continues on (at paras 82 – 97) to quote from *Meads*, but picking and choosing isolated passages that are general statements and (with the exception of paras 95-96) not the detailed list of indicia or court cases or available remedies that comprised the main part of Justice Rooke’s decision. For example, see the following paragraphs that suggest that Lavin is violent because some OPCA litigants sometimes are:

86 From the accused's behaviour in this court, it appears that in the words of Justice Rooke;

"These persons employ a collection of techniques and arguments ..."

87 I'm quoting.

"... to disrupt court operations and to attempt to frustrate the legal rights of governments, corporations and individuals."

88 At paragraph 3:

"One of the purposes of these reasons is through this litigant to uncover, expose, collate and publish the tactics employed by the OPCA community as part of a process to eradicate the growing abuse that these litigants direct towards the justice and the legal system we otherwise enjoy in Alberta and across Canada."

89 And at paragraph 198:

"Moreover, members of the OPCA community have proven violent."

90 And he adds that;

"Always an important fact."

The last straw for the Justice of the Peace appeared to be when Lavin questioned whether signing the recognisance would create a binding contract. According to *Meads*, a common OPCA litigation concept is that every binding legal obligation emerges from a contract, and consent is required before an obligation can be enforced (*Meads* at para 379). In other words, there can be no binding unilateral obligations imposed by the state through its legislation or by its courts; bilateral contracts have an elevated importance (*Meads* at para 382).

172 DAVID LAVIN: If, if I give my signature, right, if I, if I put my signature down on a piece of paper, am I entering into a binding contract?

173 THE COURT: Absolutely.

174 DAVID LAVIN: Okay. So under duress and threat and intimation, I'm being coerced into signing a contract, am I not, sir?

175 THE COURT: There will be no order for judicial interim release. I will order that this gentleman be held in pre-trial custody until such time as he has been dealt with according to law. I am satisfied ...

Matters did end better for Lavin, however. In an Addendum to the judgement, the Justice of the Peace notes that Duty Counsel requested the matter be adjourned to the Plea Court on the following day and the Justice of the Peace acceded to that request. On the following day Lavin entered a guilty plea to the obstruction of justice charge and received a Conditional Discharge with a Probation Order for 6 months, including 30 hours of community service. He also pleaded guilty to driving while his licence was under suspension and operating a motor vehicle without insurance and was fined.

F. *Scotia Mortgage Corporation v Gutierrez*

The decision by K.R. Laycock, Master in Chambers in *Scotia Mortgage Corporation v Gutierrez*, [2012 ABQB 683 \(CanLII\)](#) involved a foreclosure action, so-called “Dollar Dealers,” and another OPCA guru. The land being foreclosed upon was transferred by the homeowners to 1158997 Alberta Inc for a nominal \$1.00. The former homeowners paid rent to 1158997 and 1158997 pocketed that rent without making any mortgage payments. The slower the foreclosure practice, the more the Dollar Dealers profited.

The issue in this decision in the *Gutierrez* case was whether or not Derek Johnson, the principal shareholder and director of 1158997, would be permitted to address the court on behalf of the numbered company. 1158997 had been declared a vexatious litigant in at least two other cases because of arguments made by Johnson when he appears in court on behalf of the company: *Exceed Mortgage Corporation and Exceed Funding Corp v 1158997 Ltd.*, Action No. 1001-08610 (December 3, 2010) per Justice Wilson, and in *HSBC Finance Mortgages Inc. v Strand* Action No. 1001-14143 (February 9, 2011) per Justice Streckaf.

Master Laycock characterized Johnson as a snake oil salesman (at para 26) and found that Justice Rooke’s description of OPCA litigants in *Meads* described Johnson. However, Master Laycock mentions none of the indicia of OPCA litigation, only characterizing Johnson’s arguments as “nonsense” and delaying tactics. The Master relies on (at para 30) passages from *Meads* that describe vexatious litigants — much more commonly encountered than OPCA litigants — and their impact in general:

OPCA strategies as brought before this Court have proven disruptive, inflict unnecessary expenses on other parties, and are ultimately harmful to the persons who appear in court and attempt to invoke these vexatious strategies. (*Meads* at para 71)

Without some indication of how Johnson’s documents or arguments match Justice Rooke’s description of OPCA litigants’ techniques and concepts, it is difficult to see that the use of *Meads* is justified. *Meads* is used to support denying Johnson the opportunity to represent 1158997, but the reasons for denying him the opportunity to speak seem to have more to do with 1158997 previously being found a vexatious litigant when represented by Johnson and what Master Laycock sees as his victimization of the former homeowners.

G. *Re Stancer*

A renewed application for absolute orders of discharge from bankruptcy was granted by Master R.W. McDiarmid in *Stancer (Re)*, [2012 BCSC 1533 \(CanLII\)](#). It appeared that the bankrupt had written a letter five years earlier that stated “The person names on all your documents is a legal fiction corporate name created by the Province of Ontario as evidenced by the Birth Certificate #83-408072-01, registered August 22, 1951, which is the legal property of the Province of Ontario” (at para 29). This and other statements in the letter led Master McDiarmid to characterize the bankrupt as an OPCA litigant (at para 30) and note that it was regrettable that the bankrupt used OPCA tactics because she therefore failed to address the issues she needed to address in order to obtain her discharge.

However, the bankrupt also made oral submissions to Master McDiarmid and he stated that it appeared “she had resiled from what I will call the OPCA jargon” and addressed the court on the merits (at para 31). It is not at all clear why *Meads* was mentioned in this decision. There is a hint that it was because of the bankrupt’s 2007 use of some language that Justice Rooke identified as indicia of OPCA litigants that her discharge was denied in the past.

H. *Re Grattan*

In *Grattan (Re)*, 2012 NBQB 332, [2012] NBJ No 353 (QL), Registrar M.J. Bray dealt with an application for discharge that was opposed by the Canada Revenue Agency which had filed proofs of claim for \$375,998 for unpaid income tax and \$92,950 for unpaid HST. The case is similar to *Re Stancer*, with old written indicia of OPCA concepts and current contriteness, but a harsher outcome was reached.

The Registrar found the bankrupt to be an OPCA litigant (at para 6). The only indicia of that which was referred to in the decision was a 2004 letter to the CRA which was quoted (at para 10):

NOTICE:

I, Cory Grattan declare that I am the Son of the Almighty Creator, As such, I am one with my Father in his Kingdom.

That I Cory Grattan is not a CANADIAN CITIZEN!

That I am not a citizen of the CROWN in the right of CANADA! And as such, that I am not a Federal Citizen!

Do not assume, that I Cory Grattan is CORY GRATTAN.

Tax avoidance is noted (at para 7) to be one of the primary goals of OPCA litigants. This general statement is followed (at para 8) by a quote from *Meads* (at para 79)

... these are little more than scams that abuse legal processes. As this Court now recognizes that these schemes are intended for that purpose, a strict approach is appropriate when the Court responds to persons who purposefully say they stand outside the rules and law, or who intend to abuse, disrupt, and ultimately break the legal processes that govern conduct in Canada. The persons who advance

these schemes, and particularly those who market and sell these concepts as commercial products, are parasites that must be stopped.

The Registrar then tells us (at para 9) that “[i]n incurring a substantial tax debt, the Bankrupt was not an honest and unfortunate debtor but one of a group who deliberately conspired to avoid their legitimate responsibilities by advancing bogus arguments unknown in law.” No reason is offered for this conclusion, save and except the quoted 2004 letter to the CRA.

The Registrar notes (at para 11) that “the Bankrupt argues that he now recognizes the error of his previous ways, is working as a school bus driver and attempting to provide for his family. I have no reason to doubt the sincerity of this statement but the previous actions cannot be ignored.” He doubts that the bankrupt will try to evade taxes in the future but states that general deterrence is an important consideration and “the element of intention in the original wrongdoing cannot be ignored” (at para 12). But because the bankrupt was the sole support of a young family and the CRA’s demand for \$25,000 would see him remain in bankruptcy for ten years, the bankrupt was ordered discharged upon payment of \$10,000. In the end, his characterization as a (former) OPCA litigant seems to be irrelevant except in so far as it was used to justify a finding about the intentional nature of the tax evasion.

III. The World for OPCA Litigants Post-Meads

The use of *Meads* in these eight cases reveals several problems of a doctrinal nature. One is the way a mere reference to *Meads* is used as an excuse to simply ignore a litigant’s arguments. Another is the way that *Meads* has been used to position a litigant’s arguments at the extreme of the OPCA litigant category, even if they do not belong there. A third is the blurring of the categories of self-represented litigants, vexatious litigants and OPCA litigants — the pseudolegal commercial element is not always present.

We see the first problem — the use of *Meads* as a license to simply ignore what a litigant said — most notably in *R v Duncan*, where Justice O’Donnell gleefully notes (at para 21) that “Justice Rooke’s comprehensive judgment on what he labels “Organized Pseudolegal Commercial Argument Litigants” (of various iterations), wonderfully frees me from having to address any more effort to the jurisdictional arguments raised by Mr. Duncan.” However, Justice O’Donnell did not address the jurisdictional arguments raised by Duncan at all. He did not describe those arguments, he did not refute them, and he did not quote from *Meads* to show why those arguments had failed in previous cases. A bare reference to *Meads* is put forward as a sufficient reason to ignore the arguments altogether. The same is true of *Cassa*, where Justice Campbell stated (at para 13): “My method of dealing with any attempt by the Appellant to employ this nonsense in my Court was to simply ignore it.”

The second problem, the demonization of the litigant, can be seen in two of the cases. In *Lavin*, an uncontested bail hearing, the Justice of the Peace quoted (at paras 89 and 90) isolated and general passages from *Meads* to suggest that Lavin was violent because some OPCA litigants have sometimes been violent. This suggestion of violence arguably made it easier to hold the accused in custody. In *Duncan*, Justice O’Donnell characterizes Duncan as part of the freemen-on-the-land movement (at paras 6 and 21), even while acknowledging that Duncan denied he was part of that group (at footnote 6). The freemen-on-the-land movement is presented in *Meads* (at para 172, 175, 181, 182) as the most extreme type of OPCA litigant, on a par with the American Sovereign Man community:

The Freeman-on-the-Land are a comparatively newer movement. From reported caselaw, individuals who self-identify with this movement appear active across Canada. The membership's focus is strongly anti-government, and has libertarian and right wing overtones.

Alarming, certain members of the Freeman-on-the-Land movement believe they have an unrestricted right to possess and use firearms ... In that, and many other ways, the Freeman-on-the-Land parallel the American Sovereign Man community. Both engage in a broad range of OPCA activities directed towards almost any government or social obligation. Both habitually use 'fee schedules', and advance claims and liens against state, police, and court actors. Many apply the 'everything is a contract' approach and so are extremely uncooperative, in and out of court.

In the United States, Sovereign Men are notorious for their violent conduct, intimidation of state and court personnel, and their misuse of legal processes to engage in "paper terrorism": Robert Chamberlain & Donald P. Haider-Markel, "'Lien on Me": State Policy Innovation in Response to Paper Terrorism" (2005) 58 Political Research Quarterly, pp. 449-460; Erick J. Haynie, "Populism, Free Speech, and the Rule of Law: The "Fully Informed" Jury Movement and Its Implications" (1997) 88 The Journal of Criminal Law and Criminology pp. 343-379; Susan P. Koniak "When Law Risks Madness" (1996) 8 Cardozo Studies in Law and Literature, pp. 65-138. The FBI classifies Sovereign Men as a domestic terrorist movement.

In *Duncan*, characterizing the "rather pleasant young man" that Duncan was said to be (at para 7) as part of the freemen-on-the-land group appears to be only a rhetorical flourish because Duncan was acquitted. However, it has that "guilty by association" whiff to it that has no place in a criminal proceeding, as Judge MacCarthy was careful to note in *Tyskerud* (at para 314). That same "guilty by association" tactic was used in *Martin* by the Crown — and squashed by the judge — when the prosecutor argued that Martin was an OPCA litigant who had brought unmeritorious applications in the past and therefore his application in the case at bar could be assessed as unmeritorious. Conflating all OPCA litigants with the most extreme elements of that diverse group is also problematic because of the third problem, the conflation of OPCA litigants with vexatious or even merely self-represented litigants.

The third of the doctrinal problems these seven cases reveal is the blurring of lines between self-represented litigants and OPCA litigants and, even more so, between vexatious litigants and OPCA litigants. *Meads* established a continuum of litigants, ranging from the commonly encountered ordinary self-represented litigant, through to the infrequently encountered almost always self-represented vexatious litigant, to the highly unusual organized pseudolegal commercial argument (OPCA) litigant who is almost always self-represented and who, by definition, engages in vexatious litigation. These categories are best kept separate because of the large number of possible responses to OPCA litigants that are put forward in *Meads* (including punitive damages, elevated cost orders, fines segregated proceedings, etc. (at paras 587-675)), because of the often derisive response of courts to OPCA litigants, and because there are so many self-represented litigants compared to so relatively few vexatious litigants and OPCA litigants. It is unfortunately not unusual for self-represented litigants to be treated with contempt; see Dr. Julie Macfarlane, "[The Truth is Raw](#)". Conflating them with OPCA litigants risks increasing the likelihood of such treatment.

Meads was controversial, in part, because of a perceived overlap between OPCA litigants and self-represented litigants — see in this respect the comments of Dr. Julie Macfarlane on [“Avoiding conflation: OPCA’s and self represented litigants”](#) and [“The “Scourge” of Self-Representation?”](#). For example, in noting that OPCA litigants have now been identified as a category of vexatious litigant, Justice Rooke noted that “What remains is to manage these problematic *self-represented and vexatious litigants* in an effective manner” (*Meads* at para 641, emphasis added). Justice Rooke did distinguish self-represented litigants from OPCA litigants by noting that “persons who engage in OPCA litigation tend to adopt certain stereotypic motifs in their written materials and in-court conduct [and the] *vast majority* of these indicia are *almost never* shared by other self-represented litigants, including those who may have difficulty communicating their positions and arguments, and by litigants who are affected by cognitive and psychological dysfunction” (*Meads* at para 199, emphasis added). But he also explicitly noted that “OPCA litigants are typically self-represented” (*Meads* at para 628) and that “[d]ealing with an OPCA litigant is difficult and frustrating. The fact that they are almost always self-represented adds to the challenge” (*Meads* at para 658).

While very few self-represented litigants are OPCA litigants and not all OPCA litigants are self-represented litigants, all OPCA litigants are vexatious litigants by definition: “OPCA schemes are inherently vexatious” (*Meads* at para 65; see also paras 256 and 629). According to *Meads*, what separates the vexatious litigant from the OPCA litigant is apparently the same thing that separates the self-represented litigant from the OPCA litigant, namely, the adoption of “certain stereotypic motifs in their written materials and in-court conduct” (*Meads* at para 199). Although not listed in *Meads*, the identifying characteristics of vexatious litigants are found in the *Judicature Act*, [RSA 2000, c J-2](#), Part 2.1 and have been elaborated upon in many decisions including, most recently, one by Justice Rooke in *Onischuk v Alberta*, [2013 ABQB 89](#). In *Gutierrez*, *Meads* was used to support denying Johnson the opportunity to represent 1158997, but the reasons for denying him the opportunity to speak seem to have more to do with 1158997 previously being found a vexatious litigant when represented by Johnson. The approach in *Gutierrez* can be contrasted with that of Justice Atwood in *Martin*, who rejected the Crown’s argument that, because Martin had brought unmeritorious applications in the past, his present application should therefore be assessed as being unmeritorious. If a litigant does persist in bringing unmeritorious applications, the vexatious litigant provisions of legislation such as Alberta’s *Judicature Act* should be used.

IV. Judicial Restraint and the OPCA Litigant

In three of the post-*Meads* cases the use of OPCA tactics and concepts appears to have strongly affected the judge’s perception of that litigant and the manner in which the judge discharged his or her role. In *Duncan* Justice O’Donnell inserted himself squarely in the judgment and communicated clearly (if some think wittily) his irritation and resentment at the task the OPCA litigant imposed upon him, his disdain for the position presented and a total lack of empathy for Duncan’s attraction to the OPCA strategies. In *Cassa* Justice Campbell was similarly impatient with her OPCA litigant and in *Lavin* the Justice of the Peace appears to have viewed the making of OPCA arguments as tantamount to contempt of court. Other judges appear to have been less threatened by OPCA indicia, with Judge McCarthy in *Tyskerud* continuing to treat the litigant’s position seriously and Judge Atwood in *Martin* viewing the potential role of an OPCA guru as essentially irrelevant to the determination of the legal position.

Is there a problem with judges using the existence of OPCA indicia to justify the evisceration of the party or her positions? We have a great deal of sympathy for judges who become frustrated

or disconcerted by litigants who do not recognize their authority or who do not engage with good faith in the judicial process. Such litigants require time, patience and an ability to employ the power of the court in a careful and judicious fashion. What does a Justice of the Peace do at a bail hearing with a litigant who in essence refuses to participate? This is not an easy problem to solve.

In our view, however, a judge's response to OPCA litigants – or indeed to any person appearing in the courtroom – must remain rigorously civil, professional and respectful. It must remain within the constraints of legal adjudication, both factual and legal. Any other approach violates the dignity of participants and, most importantly, undermines the ability of our system of law to act as a form of social settlement. It reinforces the perception of OPCA and some other litigants of the legal system as “other,” as so removed from their own position and perspectives that it has no actual authority over them. For them the legal system remains the gunman writ large.

In one of his excellent books on legal ethics, *Legal Ethics and Human Dignity* (Cambridge: Cambridge University Press, 2007), Professor David Luban argues that the purpose of our criminal justice system is to protect the dignity of an accused, to ensure that even as a person is brought to justice that she is not humiliated. Whatever wrong a person has been accused of committing, she must not be “silenced and ignored” with her “story and viewpoint [treated] as insignificant” (p. 72). Rather, any declaration of guilt upon her must follow only from a process in which she had the right to challenge the truth and legitimacy of any story the state is telling about her, and to tell her own story in her defence. It is only after her own story has been accounted for, and the state's case nonetheless proven, that the state may rightfully impose a legal sanction upon her.

The process of fair adjudication of legal disputes, in both criminal and civil trials, also permits the legal system to make the very sort of authority claims that OPCA litigants deny. The legal system's authority claim is that even when a person denies the morality or desirability of a legal rule or result, the fact that that rule is enshrined in law gives one a reason to obey it; the mere fact that a rule is a law becomes a reason for acting in accordance with that law. On what basis can law make such a claim? It can do so because the law provides us with a means of peaceful co-existence, of a way of living together without need to resolve our disagreements – whether moral or prudential – through violence. Each person in a society may have a different view of the right way to live, but the fact that laws are enacted through a reasonably democratic process, and applied through a reasonably fair system of adjudication, gives that person a reason to subject his own conception of the good to that which the law contains.

Where the legal system does not treat those before it with dignity – as having a story and a point of view that are significant – it cannot make the same claim to authority. The result it is imposing in that instance does not follow from an accounting of the party's story in light of the rules of law. Rather, it follows from the exertion of force and authority by the state; that could give someone a reason to obey, but it does not do so because it has made a legitimate claim to authority.

The three judgments noted above, and in particular *Duncan*, do not treat the OPCA litigants who appear before them with dignity. It is acceptable and right to tell an OPCA litigant that their argument against the court's jurisdiction is not meritorious, even that it is frivolous or vexatious. But it is not acceptable to suggest that a judgment simply involves a “song and dance” routine (*Cassa*) or that the making of such arguments indicates that the person in question presents a risk of violence absent some reason to believe that he does so (*Lavin*). And it is certainly not a reason

to liken an OPCA litigant to a monkey (“Sadly, when human beings are let loose with computers and internet⁴ access, their work product does not necessarily compare favourably to the aforementioned monkeys with typewriters”) and then to pretend that you are not doing so by adding a footnote saying that you aren’t (“Lest anyone misunderstand me, this is by no means intended to compare Mr. Duncan to a monkey”). That the same passage adds a footnote explaining who Shakespeare is simply reinforces its clear message of humiliation: Duncan is stupid (he needs to be told who Shakespeare is!) and his arguments unworthy of serious attention. That message is reinforced by the judge’s suggestion that Duncan’s argument imposes such an inconvenience upon the judge that it feels like the gods have him in their crosshairs and his repeated reference to the silliness and foolishness of Duncan’s position.

Does this judgment give any reason for Duncan, or someone in his position, to view the proclamations of the legal system as worthy of his attention, as worthy of respect regardless of his own view of the right way to live? In my view it does not; indeed, it cannot given the contempt with which his commitments are treated. A judgment like this communicates that the judge is wise and Duncan foolish, the judge’s time is valuable and Duncan has wasted it and – most of all – the judge has power and Duncan does not. And, disappointingly, the power expressed in this sort of judgment seems raw – because I can – rather than an articulation of the authority of law.

One of the problems of the legal system, and one of the reasons why it can alienate its participants, is the extent to which the legal system cares only about the legally salient features of a person’s story. The law does not, for example, really care whether your spouse cheated on you unless somehow the fact of cheating has legal relevance. Yet for the person consulting a divorce lawyer the fact of the cheating may, in that moment, be the only thing that really matters. That is a frustration that the legal system may never be able to fix while discharging its function. At the same time, however, participants in the system, whether they are judges or lawyers, need to recognize that when they frame people only in terms of what is legally salient about them they have the ability to miss much of what is, in a personal or moral sense, truly important. Further – and this is the real point to be made here – when you have only considered the legally salient features of a person you truly know very little about him or her. Like Judge O’Donnell, we know nothing about Duncan. We don’t know if he is a good friend, a kind son, a considerate lover, a dedicated employee or a great person to have drinks with at the bar. We know only this: he made an unsignalled turn; he resisted an unjustified arrest; he defended himself in court using OPCA tactics and concepts that were without merit. A judge faced with that limited information ought to be properly restrained in that which he says about the litigant. Certainly Duncan deserved to be told that his arguments were wrong, just as he deserved his acquittal. Telling him that might simply have included quoting the relevant passages from *Meads* with their explanation of the relevant law. But Duncan did not merit being treated as someone of whom the judge had personal knowledge, and who could be judged accordingly – “a decent fellow who expressed himself well (other than when rambling a bit too long about jurisdiction, as noted herein) and whose principal shortcomings appeared to be too much free time with internet access and too little discernment in whose example he followed.” That sort of assessment cannot follow from the law’s necessarily limited focus.

Near the beginning of my academic career I (Woolley) taught the first year contracts course for several years, and of course taught many of Lord Denning’s judgments. While the students enjoyed them, and Lord Denning’s legal analysis always merited careful study (if not perhaps treatment as binding precedent), I think his example was not salutary. Daydreams about bluebells

and rickety chairs may be evocative, but humility and wisdom are better aspirations for judges than drawing pictures in the sky.

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