

## The Organized Pseudolegal Commercial Argument (OPCA) Litigant Case

By Jonnette Watson Hamilton

### Case Commented on:

*Meads v Meads*, [2012 ABQB 571](#)

This decision by Associate Chief Justice John D. Rooke was the subject of much media attention when it was released. That attention was well deserved. The lengthy and well-researched decision fills a gap in the jurisprudence and scholarship on vexatious litigants by shining a spotlight on and systematically examining a category of litigants for whom Justice Rooke coined the collective term “Organized Pseudolegal Commercial Argument” (OPCA) litigants. These litigants are distinguishable from the more usual types of vexatious litigants because they use a collection of techniques and arguments sold by people Justice Rooke called “gurus.” His decision is valuable for several reasons: it collects all of the reported Canadian decisions dealing with OPCA litigants, it describes the indicia by which OPCA litigants can be recognized, it describes the concepts they have relied upon and the arguments they have made and why those arguments have all failed in every Canadian court, and it discusses what judges, lawyers, and litigants can do when faced with OPCA litigants.

In this post I will summarize Justice Rooke’s 736 paragraph, 156 page decision (plus two appendices). Hopefully the summary will be useful to those who do not want to read the entire decision. Those already familiar with the contents of the decision or interested only in commentary should skip past the summary and to the comments section (beginning on page 12 in the PDF version). I have not attempted to comment on each aspect of the lengthy decision but instead chosen to focus on three issues.

- 1) First, the lack of research into and scholarship on the OPCA phenomenon seems to be a real problem. Why is a superior court judgment the first systematic treatment of the subject, the first to describe the present state of the law?
- 2) It appears that family law is one of the contexts in which OPCA litigants can frequently, perhaps even disproportionately, be found. Even if their presence there is not disproportionate, are there factors in the family law context that suggest different responses are needed?
- 3) Justice Rooke indicates that OPCA litigants are very different from ordinary vexatious litigants. However, I wonder just how different some of them are. To what extent are some OPCA litigants —perhaps not those who have found their way into reported cases — merely desperate litigants who have conducted Internet searches looking for information helpful to their cases and who have seized on this OPCA material?

## **A. Summary of the Decision**

These matters came before Justice Rooke on an application by the wife's lawyer for the appointment of a case management judge in a divorce and matrimonial property action commenced by Mrs. Meads. After a hearing on June 8, Justice Rooke granted that application and appointed himself as the Case Management Justice. His written reasons were motivated by the materials filed or submitted by Mr. Meads, his arguments during and after the hearing, his conduct in court, and his litigation strategies. Based on the hearing and materials, Justice Rooke determined that Mr. Meads was an OPCA litigant.

Between the parties, Justice Rooke's reasons set the stage for ongoing case management. He addresses the issues raised by Mr. Meads to prevent the OPCA aspects of the litigation from hindering a resolution of the couple's divorce and matrimonial property actions.

But Justice Rooke's reasons are written for more than the two parties and their particular dispute. Justice Rooke takes advantage of the fact the Mr. Meads provided an assortment of OPCA documents, concepts, materials, and strategies and enabled him to review the law concerning OPCA concepts and strategies and the law's responses to them. In doing so, Justice Rooke draws on his experience as the senior administrative judicial official of the Court of Queen's Bench in Edmonton. He also reviews what appears to be all the reported Canadian case law that comments on OPCA litigants, OPCA gurus, and their misconduct, while noting the reported case law is only the proverbial tip of the iceberg because most encounters between the courts and OPCA litigants are not reported.

Because Justice Rooke's decision is intended as a resource, I will briefly outline the parts of his reasons that apply to OPCA litigants and litigation in general: 1) his detailed review of the OPCA community, its membership, organization, and history (at paras 74-198); (2) his identification of the unusual and stereotypic motifs that characterize OPCA litigation and litigants (at paras 199-263); (3) his survey of the Canadian case law that reports and rejects OPCA strategies and concepts (at paras 264-621); and (4) his suggestions for how judges, lawyers, and litigants might respond to litigants who advance OPCA concepts (at paras 622-675 and at various other places in the judgment). My paragraph references refer to the version of the judgment posted on the Alberta Courts' website (linked [here](#)), which sequentially numbers its paragraphs and has a detailed Table of Contents with hyperlinks to the corresponding paragraphs in the reasons.

### **1) The OPCA Phenomenon (at paras 74-198)**

In his review of the OPCA community, its membership, organization, and history, Justice Rooke begins by noting (at paras 68, 82) that members in the OPCA community are "surprisingly unified by their methodology and objectives," albeit otherwise diverse, from all occupations and from across the political spectrum. Members have highly conspiratorial perspectives, although they differ about who is a part of such conspiracies. They also believe that ordinary people have been unfairly cheated of or deceived about their rights. Justice Rooke identifies (at para 69) this belief that the ordinary people have been abused and cheated by some conspiracy as the basis for OPCA members "perceived right to break 'the system' and retaliate against 'their oppressors'."

OPCA litigation is apparently a money-making proposition, as explained by Justice Rooke (at para 73). The community of individuals he labels “gurus” promote and sell a commercial product in seminars, books, websites, instructional DVDs and other recordings. As Justice Rooke stresses repeatedly (e.g., at paras 77, 96), the audience for this commercial activity is the client, the potential OPCA litigant, who will be paying for and using the product. Why would people pay for this product? These gurus proclaim they know secret principles and law, hidden from the public but binding on the state, courts, and individuals. Apparently gurus claim that if you use their techniques, you will not have to pay tax or child and spousal support payments; you need not pay attention to traffic laws and will only be subject to criminal sanction if you agree to be; you will be able to access secret bank accounts and turn bills into cheques; etc. Justice Rooke characterizes these claims (at paras 75, 77) as “pseudolegal nonsense,” “contemptibly stupid,” “bluntly idiotic substance,” and “byzantine schemes which more closely resemble the plot of a dark fantasy novel than anything else.”

Justice Rooke names (at paras 85-145) six Canadian OPCA gurus, i.e. those people who are the source of new OPCA concepts or the venue for recirculating used ones. In his descriptions of these gurus he valuably lists all of the court cases involving each guru and their known followers, including their convictions on criminal charges, orders declaring them to be vexatious litigants, and cost awards against them in the tens of thousands of dollars.

In one section of his reasons (at paras 168-196) that has caught the eye of the media, Justice Rooke provides taxonomy of subsets of the OPCA community that he calls “movements.” Here he introduces us to the “Detoxes,” the first OPCA movement to appear in Canada, focussed on avoiding income tax obligations; the “Freemen-on-the-Land,” a newer Canadian innovation that is anti-government, libertarian and right wing; the Sovereign Man / Sovereign Citizen movement, the main American OPCA community (in)famous for its members’ violent conduct and “paper terrorism,” the Church of the Ecumenical Redemption International, an Edmonton area “pot church” claiming that marijuana is lynchpin of the Christian religion; and the Moorish Law movement, claiming that black Muslims who self-identify as “Moors” are not subject to state or court authority because they are governed by their own law or because they are the original inhabitants of North and South America.

## **2) Indicia of OPCA Litigants, Litigation, and Strategies (at paras 199-253)**

In this important part of his decision, Justice Rooke canvases the motifs found in the written materials and in-court arguments of OPCA litigants. One of his reasons for producing this comprehensive but still incomplete catalogue of indicia is that they are what distinguishes the OPCA litigant from other self-represented litigants. Justice Rooke notes (at para 199) “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.”

Justice Rooke offers the following catalogue of OPCA indicia, complete with cases that discuss them, as elements that suggest a closer review and specific court procedures may be warranted. He adds (at para 255) that a typical OPCA litigant’s submission will incorporate many of these indicia.

## A. On documents:

1. The use of highly stereotypic formats for litigants' names, such as:
  - the addition of atypical punctuation, usually colons and dashes;
  - the addition of a clan, family or house (: : : dennis-larry: : of the meads-family: : .);
  - the use of two names, one with only upper case letters and the second with only lower case or a mixture of cases.
  
2. Markings and formalities, such as:
  - a thumbprint;
  - more than one signature and in unusual colours;
  - postage stamps;
  - unnecessary notarization;
  - A4V or "accept(ed) for value" stamped at a 45 degree angle.
  
3. The use of specific phrases and language, such as:
  - the litigant as a "flesh and blood man," a "freeman-on-the-land" or "freeman", a "free will full liability person," a "sovereign man," "sovereign citizen" or "sovrán";
  - the litigant as a person or not a person, an ambassador, a postmaster general, a member of a fictitious Aboriginal group, or a "private neutral non-belligerent";
  - the litigant as only subject to a category of law, typically "natural law," "common law" or "God's Law";
  - identification of municipality, province, or Canada as a corporation
  - identification of the court as an admiralty or military court;
  - a demand for payment only in precious metals.
  
4. The use of obsolete, foreign or otherwise irrelevant legislation and legal documents, such as:
  - the *Uniform Commercial Code (U.C.C.)* of the United States of America;
  - the American Constitution;
  - UNIDROIT and UNCITRAL guidelines;
  - the 1948 Income Tax Act;
  - legislation governing oaths;
  - the Canadian Bill of Rights;
  - an out-of-date version of the American *Black's Legal Dictionary*.
  
5. Atypical mailing addresses, such as:
  - omission or variation of the postal code;
  - fictitious nation states.

## B. In court conduct

1. Demands, such as:
  - to see the oath of office of a judge, lawyer, or court official;
  - to see the 'bond information' of a lawyer;
  - that the Crown provide proof that it has authority to proceed;
  - that the court state whether it is addressing the litigant in one of two roles.

2. Documents presented without prior service or warning, such as:
  - documents that make the court a fiduciary, agent, or impose a contract on the judge or court official;
  - a ‘fee schedule’.
3. Peculiar comments that relate to names and identification, such as:
  - stating they are an agent or representative of an entity such as a ‘person’ of the litigant’s name, a ‘legal fiction’ or ‘fictitious corporation’ with the litigant’s name, an estate named after the litigant, etc.;
  - claiming copyright or trade-mark in their own name.
4. Denials of court authority or jurisdiction, such as:
  - a direct denial that the court has authority over the litigant;
  - identification of some physical elements of the courtroom that supposedly indicates the court is a military or admiralty court;
  - a declaration that the litigant’s presence or participation is “under duress.”
5. Other in-Court motifs, such as:
  - asking if the court is trying court to create a contract with the litigant;
  - refusing to enter or premature leaving a courtroom;
  - ritual responses such as “I accept that for value and honour,” “You are intimidating me” and “You are enticing me into slavery.”

### **3) OPCA Concepts and Arguments in Canadian Case Law (at paras 264-621)**

Justice Rooke begins this section (at para 264-65) by noting that there are only a limited number of OPCA concepts, with old schemes often recycled using different terminology. He then describes (at paras 267-550) a number of implausible concepts that are common to OPCA litigants, including:

A. The litigant is not subject to court authority, an idea with three variations (at paras 267-350):

1. The jurisdiction of the court is restricted to certain specific domains, because the court is an admiralty court or a military court, or because its jurisdiction is less than that of a notary public, or because religious authority trumps the court’s jurisdiction.
2. The authority of the court is eliminated due to some defect, such as the lack of a judicial robe or the “wrong” version of the Bible in the courtroom or a supposed defect in the 1931 Statute of Westminster.
3. An OPCA litigant is immunized from the court’s actions, an idea with three main categories:
  - (a) No legal obligation can be enforced on the OPCA litigant without his or her agreement, an argument with a variety of odd reasons advanced: e.g.
    - because they belong to an exempt group, such as that of “a sovereign, flesh and blood living man” or that of citizens of citizens of “Texas, an independent nation-state” or that of a fictitious Aboriginal group;
    - because they unilaterally declare themselves immune (especially from income tax liability) because they are a “Freeman-on-the-Land” or “sovereign citizen”;

- because they are subject to a different law, such as a medieval, judge-made “common law” that trumps and excludes legislation or the *Uniform Commercial Code (UCC)* of the United States or the law of the American *Black’s Law Dictionary*, 2nd edition;
- because they are a conscientious objector or “tax protester.”

(b) A person has two legal aspects or can be split into two legal entities, as evidenced by the structure of the name or its upper- or lower-case letters, and the wrong aspect is identified in the court documents, and

(c) An OPCA litigant can unilaterally bind the state, a state actor, a court, or other persons with a ‘foisted’ agreement.

Justice Rooke also includes (at paras 351-738 ) a description of the inherent authority of provincial superior courts in order to explain why OPCA litigants are subject to their jurisdiction. He discusses inherent jurisdiction, procedural jurisdiction, and subject jurisdiction and how and why the jurisdiction of Canada’s superior courts defeats OPCA strategies.

#### B. Obligation Requires Agreement (at paras 379-416)

The idea that all legally enforceable rights require that a person agree to be subject to those obligations takes two forms:

1. the argument that every binding legal obligation, including those between state actors, emerges from a contract, an argument that denies the authority of legislatures to impose unilateral obligations;
2. the argument that consent is required before an obligation can be enforced so that a person is immune if they simply say they have not consented to be subject to the law and the courts or if the contract is a “foisted” agreement or if they indicate their non-consent with a mantra such as “I accept that for value and consideration and honour.”

#### C. Double/Split Persons (at paras 417-46)

Another common OPCA concept is that an individual can exist in two separate but related states, a concept expressed in many different ways. The “physical person” aspect is often described with a “dash colon” or “family/clan/house of” motif. The other aspect is a non-corporeal aspect such as a “straw man,” a “corporation,” a “corporate fiction,” a “dead corporation,” a “dead person,” an “estate,” a “legal person,” a “legal fiction,” an “artificial entity,” a “procedural phantom,” a “slave name,” or a “juristic person.” Some gurus see the non-corporeal aspect as state-created; others claim only it can be affected by the state. Some assert that these two linked imaginary personalities can interact with one another and create trust relationships and contracts.

#### D. Unilateral Agreements (at paras 447-528)

Some OPCA litigants attempt to “unilaterally foist obligations on other litigants, peace officers, state actors, or the court and court personnel” (at para 447). Justice Rooke lists common examples of these agreements: some purport to appoint someone a fiduciary; some establish a contractual relationship or declare an OPCA person no longer has an obligation, such as to pay

income tax; some purport to unilaterally settle lawsuits or legal claims, without court direction; and some provide a system of predetermined fines. This strategy is almost always expressed in documentary form, often with dramatic language and warnings. OPCA gurus appear to have a large role in creating these documents, which are often mailed to court or government officials or emailed to large numbers of people.

Foisted unilateral agreements are used by OPCA litigants in a variety of ways, such as:

- to claim the failure to refuse or refute the “agreement” — often a “fee schedule” targeting court and government actors, especially peace officers, and claiming disproportionate penalties — creates an obligation;
- to resist a foreclosure;
- to register a lien or interest against property held by the agreement’s target;
- to transfer or assign some kind of obligations to someone else;
- to claim copyright and/or trade-mark of their own name — apparently use of any of Mr. Mead’s protected names is supposed to cost “the sum certain amount of \$100,000,000.00 per each occurrence” if you receive a document with the heading “NOTICE BY DECLARATION and AFFIDAVIT OF CONSEQUENCES FOR INFRINGEMENT OF COPYRIGHT TRADE-NAME/ TRADEMARK. And same are accepted for value and exempt from levy”, a document reproduced in full in Appendix B to Justice Rooke’s decision.

#### E. Money for Nothing Schemes (at paras 529-50)

A limited number of “money for nothing” schemes pretend to provide a mechanism by which the OPCA litigant can obtain unconventional benefits.

1. Accept for Value / A4V: The gurus who promote the most common “money for nothing” scheme claim that each person is associated with a secret government bank account which contains millions of dollars. The bank account’s number is usually a number assigned by the state, such as a Social Insurance Number. If you have the correct combination of government documents — the “unlocking spell” — you can access your secret bank account. Or if an A4V litigant writes or stamps the correct notation on a bill or court order, that “unlocking spell” transforms it into a cheque drawn from the secret account.

2. Bill Consumer Purchases: In this “money for nothing” scheme, the OPCA litigants claim that documents called “Bill-Consumer Purchases” would discharge a debt. This scheme appears to be based on a distorted view of the “consumer bills and notes” component of the *Bills of Exchange Act*, R.S.C. 1985, c. B-4.

3. Miscellaneous Money for Nothing Schemes: Claims have been made that only physical cash or “hard currency” has value and therefore a loan that was a result of a cheque or electronic transaction did not have to be repaid.

After an exhaustive review of the large number of Canadian cases dealing with these and other OPCA concepts, together with detailed description of how each failed in the courts and the statutes and case law which rebut each, Justice Rooke concludes that the concepts put forward by OPCA litigants have never gained purchase in a Canadian court. Provincial and federal courts of appeal have upheld every trial decision that rejected OPCA concepts and the Supreme Court of Canada has denied leave to appeal in at least nine of these cases.

In “Legal Effect and Character of OPCA Arguments” (at paras 551-585), Justice Rooke summarizes why none of these schemes or arguments have ever succeeded in a Canadian court:

- an OPCA argument that denies court authority cannot succeed due to the court’s inherent authority;
- an OPCA argument that denies court authority is intrinsically frivolous and vexatious;
- an OPCA argument that denies court authority may be contempt of court authority
  - denial of tax obligation evades tax;
  - denial of firearms restrictions proves intent for illegal possession;
  - denial of court authority may prove the intent to engage in contempt of court.

#### **4) Responses to OPCA Strategies, Litigants and Gurus (at paras 256-63, 586-621)**

In several different places in his decision Justice Rooke identifies the variety and range of responses to OPCA litigants and litigation that Canadian courts have adopted. He encourages (at para 586) “[a]ny judge who faces OPCA litigation [to] consider deployment of all tools in this arsenal, and others that may be developed for this difficult litigant category.”

Justice Rooke offers suggestions for procedural responses by court clerks and judges to suspected OPCA documents and conduct (at paras 256-263). For court staff, he recommends they reject documents that do not conform to established requirements; mark non-compliant materials as "received" rather than "filed"; and forward materials with OPCA characteristics to a judge for review before filing.

In the courtroom, he notes (at para 261) that additional in-court security is usually warranted, including searches for and removal of prohibited electronic recording equipment and, in the event of supporters disrupting proceedings or posing physical threats, the closing of the courtroom to the public.

He identifies seven different types of civil responses to OPCA strategies that have been used by the courts in this section of his judgment (Part VI), which I have combined with his ideas in a later section (Part VII) about other possible courses of action:

##### **A. Judicial Responses**

###### **1). Strike Actions, Motions, and Defences (at paras 587-90):**

Proceedings are struck based on incomprehensible arguments and allegations and actions and defences are struck based on the court’s inherent jurisdiction to control its own process and prevent abuse.

###### **2) Punitive Damages (at paras 591-93)**

Where specifically sought by the party opposing an OPCA litigant, punitive damages may be appropriate for pre-trial misconduct. For example, liens filed on the basis of a foisted unilateral agreement, an OPCA scheme already identified by the courts and dismissed as ineffective, should attract punitive damages.



### 3) Elevated Costs (at paras 594-600)

OPCA litigation has historically led to elevated cost awards and Justice Rooke provides (at para 597) a list of criteria for such an award which includes:

- ‘reprehensible, scandalous or outrageous’ conduct by a litigant;
- proceedings based on groundless allegations;
- doing something to hinder, delay or confuse the litigation;
- attempting to deceive the court and defeat justice;
- the need to deter similar conduct by other OPCA litigants.

Courts have made gurus liable for costs where a guru participates and instigates OPCA litigation. Justice Rooke insists that “innocent parties must be indemnified for the legal costs associated with OPCA litigation” (at para 631).

### 4) Security for Costs Orders (at paras 601-02)

Orders for security for costs are available if the target of the OPCA strategy applies for payment into court of security for costs, especially if the OPCA litigants states he or she stands outside the authority of the court.

### 5) Fines (at paras 603-607)

The Alberta Rules of Court allow a judge to order “a party, lawyer or other person” to pay the court clerk a penalty where a person fails to comply with the rules or a practice note or direction of the Court without adequate excuse, and the contravention or failure to comply, in the Court’s opinion, has interfered with or may interfere with the proper or efficient administration of justice. As Justice Rooke notes (at para 606) “[p]ractically any OPCA document fails to comply with the formal and content requirements of the Rules.” The ability to fine “other persons” makes this a flexible tool.

### 6) One Judge Remaining on a File (at paras 608-11)

Justice Rooke argues that it makes sense that a single judge should usually supervise an ongoing court proceeding in which OPCA activities have emerged because OPCA litigation is often associated with complex and unorthodox court documentation and litigation procedures and a difficult history, both inside and outside the courtroom, so that significant time and effort is required to become familiar with the materials and events and because many OPCA litigants — particularly those who are attempting to apply ‘everything is a contract’ and ‘dual/split person’ schemes — are potentially very uncooperative. A judge can seize themselves of the matter, or be assigned as a case management judge.

### 7) Vexatious Litigant Status (at paras 612-13)

The vexatious character of OPCA litigation may be a basis for an application for an order restricting a litigant’s freedom to initiate or continue an action. Vexatious litigant declarations have been reported against two Canadian OPCA gurus, as well as numerous OPCA litigants. This is a limited remedy even in the context of litigation in the courts because vexatious litigants are still allowed to bring (repeated) motions for leave to commence or continue actions.

### 8) Deny Status as a Representative (at paras 614-18)

Representation by gurus as agents or other representatives is often prohibited by legal profession legislation. Even when it is not, the courts have quickly denied representative status to those who claimed not to be subject to the rule of law or

who had demonstrated an intention not to be bound by the rules of court. Some movement members have been found to be so ineffectual and incompetent that they have been denied agent status on that basis. Court decisions have been based on more than in-court conduct; out-of-court statements, such as webpages, have been used to evaluate whether a person was an appropriate agent for a party.

9) Segregate OPCA issues and proceedings (para 631)

Justice Rooke believes that “a key element of an appropriate and successful response to OPCA litigation” is that proceedings specific to OPCA litigants — such as judicial review of suspect documents, show cause hearings, court security procedures, contempt, security for costs, elevated costs and damages, and declaration of vexatious litigant status — be segregated, where possible, to minimize their effect on the innocent other parties involved.

10) A “show cause” hearing (at para 632)

Justice Rooke identifies a ‘show cause’ hearing — where the OPCA litigant is invited to demonstrate that he or she has a case — as a potentially appropriate tool for identifying genuine arguments masked by OPCA litigation.

11) Explanations of court costs and the court’s contempt authority (at para 637-38)

In Justice Rooke’s experience, OPCA gurus do not educate their customers about court cost awards and OPCA litigants often seem to believe there are no potential negative consequences to their using OPCA strategies.

12) Reject OPCA materials as irrelevant (at para 640)

Many OPCA documents are only relevant for costs awards, vexatious litigation and litigant status, contempt, and criminal offences and should be rejected for other purposes.

## B. Lawyers

1) Refuse to notarize OPCA documents (at paras 643-45)

Alberta Justice has instructed lay notaries to not endorse documents of this kind (*Papadopoulos v Borg*, 2009 ABCA 201 at para 3) and the court has made it clear to the Law Society of Alberta that this kind of action is inappropriate for an officer of the court.

2) Triage: Identification of legal issues (at paras 646-47)

A lawyer has a duty “... to identify the real issues in dispute and facilitate the quickest means of resolving the claim at the least expense” (*Rule 1.2(3)(a)*). Lawyers for targeted litigants can assist judges in understanding what real legal issues are buried in the mass of documents usually filed by OPCA litigants.

3) Education of judges (at paras 648-55)

In parts of Alberta and Canada with less exposure to OPCA litigants, their concepts, and in-court (mis)conduct, lawyers may find it useful to provide some background and evidence to a judge, with Justice Rooke’s reasons serving as a useful starting point. Justice Rooke encourages lawyers to research relevant case law and submit background evidence on OPCA litigation and concepts that explains the particular strategies advanced in a specific dispute. He identifies (at para 650) the following information in particular, some easily obtainable because OPCA litigants often post in online forums run by OPCA gurus:

- OPCA motifs, such as those identified in his decision;
- materials from the OPCA litigant that the court has not received;
- information about the OPCA litigant's guru or host movement;
- expert evidence of persons familiar with OPCA fingerprints, concepts, schemes, and gurus;
- communications by the litigant within the OPCA community, and
- known security risks of a relevant OPCA movement.

#### 4) Education of OPCA litigants (at paras 656-57)

Justice Rooke encourages lawyers representing targeted litigants to try to inform an opposing OPCA litigant about court costs awards and provide them with cases that directly relate to arguments the OPCA litigant is trying to advance.

#### 5) Applications to strike (at para 659)

If the action does not disclose a reasonable cause of action or a defence does not disclose a defense known to law, apply to strike the claim or defence. Lawyers should also apply to strike irrelevant submissions and pleadings and to categorize documents as irrelevant except for the purpose of costs.

#### 6) Pursue punitive damages and elevated cost awards (at para 660)

The vexatious and abusive character of OPCA concepts meets the criteria for awarding punitive damages and elevated cost awards, including solicitor-and-own-client costs, and lawyers should pursue these awards to minimize the harm to their clients.

#### 7) Other responses

Justice Rooke's list of possible court responses suggest a few other useful actions that lawyers can take:

- apply for payment into court of security for costs, especially if the OPCA; litigant or guru denies the authority or jurisdiction of the court
- apply for a case management judge as soon as possible;
- bring any physical threats to the court's attention.

### C. 'Target' Litigants (at para 622)

Justice Rooke confirms that most of the responses open to targeted litigants' lawyers are also open to targeted litigants and they should pursue the same remedies.

### D. OPCA Litigants (at paras 663-68)

Justice Rooke explicitly directs some comments towards OPCA litigants. He asks that they familiarize themselves with:

- the explanations he has provided for why every OPCA concept and scheme of which the Court is aware is invalid;
- the concept of court cost awards;
- the fact that compliance with existing court orders avoids a finding of contempt of court;
- the fact that payment of outstanding income tax avoids significant late payment penalties and interest due for unpaid amounts;
- questions to ask of the gurus who are giving them advice, such as:

- why the guru has little, if any, wealth, when he says he hold the keys to untold riches;
- whether the guru can identify even one reported court decision where their techniques proved successful;
- how their ideas differ from those rejected in Justice Rooke’s decision.

#### E. OPCA Gurus (at paras 669-75)

It is in writing directly to the OPCA gurus that Justice Rooke is most scathing (and literary). He likens them to the “evil counsellors” and “the falsifiers” in the *Inferno* by Dante at Cantos 26-30. He also quotes William S. Burroughs advice to hustlers in the *Naked Lunch*: “Hustlers of the world, there is one Mark you cannot beat: The Mark Inside.” Justice Rooke also warns gurus of the harm they cause, whether they believe what they are selling is lies or the truth.

## COMMENTS

There is much that could and should be said about the content of Justice Rooke’s decision. In this post, however, I raise only three preliminary points, primarily for the purpose of raising more questions about the OPCA phenomenon.

### 1) More research and scholarship is needed on OPCA litigation

As I noted in my opening paragraph, Justice Rooke’s well-researched decision fills a gap in the scholarship on vexatious litigants by introducing the category of litigants he calls “Organized Pseudolegal Commercial Argument” litigants and analyzing the phenomenon systematically. After noting (at para 653) that the OPCA community seems to have attracted very little academic and legal commentary, Justice Rooke goes on to identify (at para 654-55) several helpful American sources. Apparently the IRS maintains a detailed index of “frivolous tax arguments” and American lawyer Daniel B. Evans maintained “[The Tax Protestor FAQ](#)” until February 2011, and it is still a comprehensive index of American OPCA concepts and gurus. Justice Rooke also mentions two web forums — the “[James Randi Educational Foundation](#)” and “[Quatloos! Cyber Museum of Scams & Frauds](#)” — as including challenges to and debates with OPCA gurus.

The only academic scholarship on the OPCA type of litigant that I have been able to locate is an article by Dr. Judy Lattas, a professor in the Department of Sociology, Macquarie University, on “Queer Sovereignty: The Gay & Lesbian Kingdom of the Coral Sea Islands” (2009) 1:1 *Cosmopolitan Civil Societies Journal* 128. She describes a micro-nationalist or sovereignty-claiming Gay & Lesbian Kingdom which seceded from Australia in 2004 when Emperor Dale Parker Anderson declared independence upon raising the rainbow pride flag on the Coral Sea Island of Cato. Dr. Lattas states (at para 129) that micro-nationalists are predominantly featured among those vexatious litigants “whose obdurate presence in the courtroom and the corridor threatens to jam up the system, making it unmanageable” and she analyzes the secessionist move as a technique — an ironically sovereignty-betraying technique — for remaining in dispute with government authorities.

There is a small but growing body of academic and legal commentary on the more usual types of vexatious litigants, but it does not discuss the OPCA or the indicia and concepts identified by Justice Rooke. There are two otherwise comprehensive law reform reports. The April 2006 [Final](#)

[Report on Vexatious Litigants](#) by the Law Reform Commission of Nova Scotia is the most recent and comprehensive account of the problem of vexatious litigants in Canada but makes no mention of the OPCA type. Another comprehensive and recent review was undertaken in Australia by the Parliament of Victoria and their Law Reform Committee issued their report, "[Inquiry into Vexatious Litigants](#)," in December 2008, but again without mention of any organized, commercial type of vexatious litigants.

There is also some psychiatric literature and a small amount of legal scholarship about the usual vexatious litigants as well. An up-to-date bibliography can be found in Didi Herman, "Hopeless cases: race, racism and the 'vexatious litigant'" (2012) 8(1) *International Journal of Law in Context* 27. Professor Herman of Kent Law School also reviews the small amount of legal literature that does exist, from the UK, Australia and the U.S.

Justice Rooke's decision may well be the impetus that gives rise to a body of legal literature on OPCA litigants' vexatious litigation. If not, debates on issues raised by this phenomenon may be stymied by a lack of reliable data. For example, without decent data, it is impossible to engage in any sort of balancing process, weighing the various access to justice aspects of the issues.

## **2) Vexatious litigation in the family law context**

The *Meads v Meads* case is itself a family law case. Justice Rooke's decision was rendered as a result of an application made in a divorce and matrimonial property action that Mrs. Meads initiated on January 11, 2011. Mrs. Meads' lawyer advised the court that, although Mr. Meads generally paid court-ordered spousal support, he was delaying the divorce with unorthodox documents and a refusal to disclose his financial records.

The Meads case thus raises the question of whether the family law context is one in which OPCA litigants can frequently, perhaps even disproportionately, be found. It also raises the issue of whether vexatious litigation in that context requires different types of responses?

What evidence is there of OPCA litigation in the family law context? In Canada, based on his research into reported cases, Justice Rooke noted (at paras 161-163) the various types of proceedings in which they appear in Canada and he listed spousal and child support and child custody as two of the seven types in which vexatious litigation can most often be found.

Other than Justice Rooke's research, however, the sparse anecdotal and empirical evidence is confined to the more usual vexatious litigant context. The numbers and issues raised by that commentary, however, does suggest research into OPCA litigation in the family law context is needed.

For example, in her review of vexatious litigants in the United Kingdom, Professor Herman noted there were 190 individuals on the Vexatious Litigant list published by the Court Service (Herman at page 32). Of the 190, just 44 — less than 25% — were women. However, because other empirical studies suggest more men than women may turn to civil litigation to solve problems and that would account for some of this discrepancy (Herman at page 32, citing R.L. Sandefur, "Access to Civil Justice and Race, Class, and Gender Inequality" (2008) 34:16 *Annual Review of Sociology* 34 1). This would also partly explain why fewer women engage in repeat litigation. Nevertheless, the significantly low numbers of women declared vexatious in the UK suggests further study is warranted into the possibly gendered nature of vexatious litigation, at least in the family law context.

In Australia, the specialized Family Court has more vexatious litigants than any other jurisdiction in Australia. Although research is inhibited by prohibitions on publications, according to one expert “the current family law court has three times the number of vexatious litigant orders than the other ten superior courts combined, in a third of the time” (Nikolas Kirby, “When Rights Cause Injustice: A Critique of the Vexatious Proceedings Act 2008 (NSW) (2009) 31 Sydney Law Review 163 at 169, note 38). See also Grant Lester, Beth Wilson, Lynn Griffin & Paul E. Mullen, “Unusually Persistent Complainants” (2004) 184 Brit. J. Psychiatry 352 (discussing research in Australia and Sweden).

In their written submission to the Law Reform Committee of the Parliament of Victoria ([Women's Legal Service Victoria, 4 July 2008 - pdf 198.54 Kb](#)), an Australian group providing women with legal and other support services noted significant parallels between family violence and stalking conduct and the types of behaviour exhibited by vexatious litigants. As they stated in their submission (at page 2), “[a] key feature of at least some vexatious litigation is an attempt to control the other party or maintain contact with him or her via persistent litigation. It appears that some vexatious litigants use the legal system as a vehicle for control and harassment of the other party.” In their [oral submissions to the Committee](#), Women’s Legal Services Victoria noted that the vexatious litigant might want to personally cross-examine the targeted spouse and continually engage them in litigious conduct in order to maintain contact. The Law Reform Committee of the Parliament of Victoria agreed, after hearing this and other evidence, that there are particular problems in family violence proceedings that specific legislation needed to address.

There is no reason to think that the experience in Canada is radically different than that in the UK or Australia. Disproportionality is not the only issue, however. In the family law context, additional factors include the safety issues of targeted women constantly being brought back to be face to face with this person. See, for example, commentary from the United States discussing the use of litigation as violence in the family law context: Leah J. Pollema, “Beyond the Bounds of Zealous Advocacy: The Prevalence of Abusive Litigation in Family Law and the Need for Tort Remedies” (2006-2007) 75 UMKC L. Rev. 1107; Christian Diesen, “The Justice Obsession Syndrome” (2007-2008) 30 T. Jefferson L. Rev. 487; Mary Przekop, “One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of Their Victims through the Courts” (2010-2011) 9 Seattle J. Soc. Just. 1053.

Consider, for example, vexatious litigant applications as a response. The lack of a central registry of vexatious litigants in Canada is a problem; a vexatious litigant can start a new action in a second province or territory, despite an order against them in one jurisdiction. It is then up to their target to bring an application to stop the proceeding, assuming they search for or know about a vexatious litigant order. But many targets of vexatious family law litigation will not want to be involved in applications to have their spouses declared vexatious litigants because they do not want to be held responsible for the declaration.

A system of graduated orders – litigation limitation orders – such as those used in the civil system in the UK and those recommended by the Law Reform Committee of the Parliament of Victoria (Recommendation No. 13 at Final Report 171) might be more suited to the family law context than the current vexatious litigant provisions which allow only one extreme solution — no access to any court without leave — which people are reluctant to use. In a previous ABlawg post, [“How persistent does a vexatious litigant have to be?”](#), I raised the question of whether vexatious litigant orders were seldom sought and difficult to obtain, granted in only the most

extreme cases. Graduated orders might help solve this reluctance. See the [written submission](#) of Professor Tania Sourdin, Professor of Conflict Resolution, University of Queensland to the Law Reform Committee of the Parliament of Victoria and Didi Herman, “Hopeless cases: race, racism and the ‘vexatious litigant’” (2012) 8(1) *International Journal of Law in Context* 27.

### 3) A new type of vexatious litigant?

Justice Rooke indicates (at para 199) that OPCA litigants are very different from ordinary vexatious litigants. It is true that the indicia, motifs, concepts and arguments OPCA litigants get from the OPCA gurus are unusual and identifiable. However, aside from the source of their materials, just how different some of the OPCA litigants are from the ordinary vexatious litigant? To what extent are some OPCA litigants merely desperate litigants who have conducted Internet searches looking for information helpful to their cases and seized on OPCA material, rather than (for example) one of my ABlawg posts?

Professor Herman argues that we can understand ordinary vexatious litigation as being about a passionate search for justice, as opposed to (or at least as well as) an “obsession”, and that rather than suffering from “delusions” many typical vexatious litigants may instead be very well aware of “reality” but simply not prepared to accept or succumb to it. To what extent does this describe at least some of the OPCA litigants?

Many of the groups who appeared before the Law Reform Committee of the Parliament of Victoria warned about casting the vexatious litigant net too widely. For example, the written joint submission of the [Public Interest Law Clearing House and Human Rights Law Resource Centre](#) argued (at para 52)

The common characteristics of vexatious litigants based on our experience and research include a lack of insight into the unmeritorious nature of the proceedings they bring to court, an inability by some to accept legal advice, and an almost obsessive need to keep returning to court seeking ‘justice’ after being rebuffed time and again. Vexatious litigants are also prone to creating an illusory web of conspiracy against them comprised of public figures, the judiciary, and any organisation or individual who they have come into conflict with. Some also have unrealistic expectations of the legal system and at times seek redress that is grossly disproportionate to their grievance.

If the ordinary vexatious litigant is “prone to creating an illusory web of conspiracy against them comprised of public figures, the judiciary, and any organisation or individual who they have come into conflict with,” how different are they from the OPCA litigant? Once again, more research and scholarship is needed.