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Ordinary Self-Represented Litigant or Organized Pseudolegal Commercial Argument Litigant?

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Case Commented On: *Alberta v Greter*, 2016 ABQB 293 (CanLII)

The September 2012 decision of *Meads v Meads*, 2012 ABQB 571, established a continuum of litigants, ranging from very commonly encountered self-represented litigants, to infrequently encountered vexatious litigants, through to the highly unusual sub-set of vexatious litigants that Associate Chief Justice J.D. Rooke labelled "organized pseudo-legal commercial argument" or OPCA litigants. For a number of reasons, it can sometimes be easy to conflate these categories. Vexatious and OPCA litigants are almost always also self-represented. And a few of the OPCA concepts and strategies that Justice Rooke described in *Meads* might the part of the ordinary self-represented litigant's way of coping with unfamiliar legal processes, documents and jargon. In addition, the rising tide of self-represented litigants can be overwhelming for judges, trying their tolerance and patience. All of this has been documented in the research reports of the National Self-Represented Litigants Project (NSRLP). But whatever the reasons, conflating these categories is almost always detrimental to the ordinary individual who represents him- or herself in court simply because they have no choice. Although there are not enough facts set out in the judgment of the Master in Chambers, Sandra Schulz, to be sure, I wonder if Angela Greter, the defendant in *Alberta v Greter*, is simply an ordinary self-represented litigant and not the OPCA litigant questioning the authority and legitimacy of the courts that Master portrayed her to be.

Alberta v Greter is a straight-forward case, involving a simple claim by the Province of Alberta for repayment by Ms. Greter of almost $70,000 in student loans that she had received between 2004 and 2012. Ms. Greter had completed her PhD, with a focus on animals significant to food production, from the Department of Animal Biosciences at the respected University of Guelph (ranked fourth in the world for veterinary science) in December 2012. Her student loans therefore became repayable, after a standard six-month grace period, in July 2013.

When the Province of Alberta sued Ms. Greter in June 2015, she had not made any payments on her student loans. This is not that unusual; according to the most recent Canada Student Loans Program review, default rates on Alberta student loans were between eleven and fourteen percent annually before drop in oil prices in late 2014. Ms. Greter filed a Statement of Defence in August 2015.

The Province applied for summary judgment in March 2016, arguing that Ms. Greter had breached her agreement to repay her student loans and had no defence to the Province's claim. The goal of a summary judgment application is to persuade the court that the other party has no chance of success and judgment should be given against them without a trial. According to the NSLRP and their recent report on "The Use of Summary Judgment Procedures Against Self-Represented Litigants: Efficient Case Management or Denial of Access to Justice", the number of summary judgment applications being brought against self-represented litigants increased by

1160% between 2004 and 2014, and, if the summary judgment application was brought by a party represented by a lawyer, as was the Province of Alberta in this case, the success rate in 2014 was 96%.

The Province's summary judgment application was first set to be heard May 2, 2016. Ms. Greter's husband appeared and asked for an adjournment, and a two-week adjournment to May 16, was granted. When the Province's summary judgment application was heard on May 16, it was uncontested; Ms. Greter did not appear or make any representations. Instead, she had advised the Province that she would not be appearing. Not surprisingly, the Province was granted its summary judgment for the student loans, interest and costs of $3,000, all based on the affidavit evidence it filed.

That sounds simple and speedy enough. The province waited two years to sue after the loans became repayable. Once the Province sued and a Statement of Defence was filed in a timely manner, the Province waited a further nine months to bring their summary judgment application. Their summary judgment application was heard, uncontested, on a date only two weeks after it was first scheduled by the Province to be heard. It seems to have been the only application made by either party in the action. The hearing itself probably would have been relatively brief because it was uncontested. The Master's written decision followed the application just over one week later, giving the Province everything it asked for.

So why did the Province say that Ms. Greter had used "freeman on the land" tactics before and during the litigation? (para 3) And why did Master Schulz accuse Ms. Greter of using strategies that *Meads v Meads* categorized as Organized Pseudolegal Commercial Arguments "which appear with troubling frequency in Canadian courts" and which are "a simply worthless scam that only causes harm and waste to all involved" (para 10)?

Apparently Ms Greter sent the Province two documents and a copy of a letter and she filed one document in the Province's court action. All were included in the Province's affidavit evidence and all were either quoted at length or attached as appendices to Master Schulz's judgment: a "Notice of Default" dated December 8, 2013 (Appendix A); a "User Agreement Fee Schedule Notice" dated February 22, 2014 (Appendix B); a copy of a letter dated February 28, 2014 to a collection agency (para 26); and a "Rebuttal to Service Alberta, Crown Debt Collections" (Appendix C).

There is no question that these four documents adopt the form and content of some of the typical OPCA documents described in *Meads v Meads*. Master Schulz described the "Notice of Default" as a "foisted unilateral agreement debt elimination scheme" (paras 11-22), described in *Meads v Meads* (paras 447-72, 487-504) and *Bank of Montreal v Rogozinsky*, 2014 ABQB 771 (CanLII). The "User Agreement Fee Schedule Notice" is an example of another type of foisted unilateral agreement which purports to set penalties and costs for interactions between litigating parties in advance (paras 23-25), also described in *Meads v Meads* (paras 505-23). The copy of the letter to the collection agency was an example of the "double/split person" OPCA strategy (paras 26-28), also detailed in *Meads v Meads* (paras 417-46). Lastly, the one court document filed by Ms. Greter, the "Rebuttal to Service Alberta, Crown Debt Collections", followed up on her earlier Notice of Default (para 29).

Based on the OPCA strategies evident in these four documents, the Master concluded that Ms. Greter had no viable defence and that "[s]he has simply attempted to deny and evade her

obligations to repay the government loans that financed her education and present career" (para 30).

But was there nothing at all of substance in the three documents that Ms. Greter sent the Province and the one document that she filed with the court?

Ms. Greter appears to have had two issues with the Province's claim. The first related to her understanding that she would receive $20,000 in loan relief. Apparently a change in the student loan relief program restricted the amount of her loan that was forgiven to $6,000 (para 9). Ms. Greter and Student Aid Alberta exchanged emails and correspondence about this issue in 2013. There is no indication in the judgment that there was anything unusual or amiss with the exchanges in 2013 on this issue. And this issue is not explicitly mentioned in the four documents appended to or quoted in the judgment. This issue appears to be irrelevant to the charge of using OPCA strategies.

The second issue is at the heart of the OPCA accusation and more difficult to discern in the midst of all of the incomprehensible language and concepts included in Ms. Greter's four documents. The copy of the letter to an unnamed collection agency provides a hint. And the Student Aid Alberta website, under "Default Consequences", warns that there are "serious consequences" if a recipient of student loans misses payments. One of the listed serious consequences is that "Your loans will be sent to a collection agency." Now "sent to a collection agency" might mean sold to a collection agency at a discounted price, making the collection agency the owner of the debt. Or it might mean that the Province remains the owner of the debt and simply pays the collection agency a fee or percentage of any amounts recovered. Ms. Greter's documents indicate that she was concerned that the Province had sold her debt to the collection agency.

For example, her "Notice of Default" includes, in paragraph 2, a request for "Proof of claim that the Student Aid Alberta Service Centre is the current holder of the above mentioned original debt instrument and that it has not been on-sold to another party" (Appendix A). The other demands in this document, such as the request for an accounting for the Province's loss and for production of the original promissory note, are understandable if the concern is that the Province sold her debt to a collection agency. The "Rebuttal to Service Alberta, Crown Debt Collections" (Appendix C) essentially looks for the same things. The letter to the collection agency is much more bizarre but it does include a claim that Ms. Greter did not agree to pay the collection agency (para 26).

It is true there is nothing at all relevant to this issue in the "User Agreement Fee Schedule Notice" (Appendix B). The "User Agreement Fee Schedule Notice" is inexplicable except as a part of a package of materials, the rest of which seemed to be relevant to a concern that the Province had sold the debt. Although totally over-the-top in many ways (such as the demand for a billion dollars in silver "if injected or any private organic matter such as blood/tissue or DNA samples are forcibly removed from me under duress"), part of the "User Agreement Fee Schedule Notice" does resemble "Schedule C: Tariff of Recoverable Fees" in the Alberta Rules of Court, AR 124/2010.

But what about the substance of Ms. Greter's concern that the Province had sold her debt to a collection agency? Master Schulz does deal with this issue. She states that "[s]ale of a debt, or "securitization" is irrelevant to whether the original creditor may enforce that debt" (para 18) and she cites five cases as authority for that statement of the law. However, none of those five cases

appears to be good authority for the proposition that the sale of a debt by the original creditor is irrelevant to whether that original creditor may enforce the debt.

Three of the cases that Master Schulz cites are from the province of Quebec and appear to be decided under the provisions of the Civil Code of Québec rather than the common law that governs debt collections in Alberta: *Banque Royale du Canada c Tremblay*, 2013 QCCQ 12827 (CanLII) at para 15, affirmed 2013 QCCA 2035 (CanLII) at para 7; *Banque de Nouvelle-Écosse c Paquin*, 2014 QCCQ 10119 (CanLII); and *Xceed Mortgage Corporation/Corporation hypothécaire Xceed c Pépin-Bourgouin*, 2011 QCCS 2116 (CanLII) at paras 15-25. In addition, *Banque Royale du Canada c Tremblay* deals with bank securitization of credit card debt and *Pépin-Bourgouin* merely states that if the debt in that case had been sold, different evidence was needed, but Xceed denied selling the debt (paras 21-22). The point for which the fourth case, *Bank of Nova Scotia v Lee*, 2013 ONSC 6698 (CanLII) at paras 9, 12, was cited was also irrelevant to the issue. Lee alleged that a mortgage included a promissory note which had been assigned, but the evidence showed there was neither a note nor an assignment. The court held that even if the Bank's mortgage portfolio had been securitized, the mortgage itself would still be valid. It said nothing about who should be paid, and deals with a different factual scenario, mortgages. The fifth case, *Bank of Montreal v Rogozinsky*, 2014 ABQB 771 (CanLII) , again involves an argument about credit card debts being monetized and sold on the bond market for multiples of their original value. The main point (at para 46 in *Rogozinsky*) was that the source of the loan was irrelevant to whether the debtor had to repay it. Like the other four cases, it says nothing about who the debtor had to pay. None of these cases discuss whether the debts at issue were assigned and notice of the assignment given to the debtor.

Of course, the Province probably does not sell its unpaid student loans to collection agencies. It more likely pays collection agencies on an hourly or other basis to collect the debt. But it is surely understandable that if a person is being chased by both a collection agency and Student Aid Alberta, the question of who to pay to satisfy the debt might easily arise. In any event, it appears that Ms. Greter talked to a lawyer for the Province a few weeks ago and is satisfied that the province is still the debt holder: see Douglas Quan, "Graduate slammed for invoking 'pseudolegal' tactics to avoid repaying $64,000 student loan", *National Post*, May 31, 2016.

According to that newspaper article, Ms. Greter believes that the court "grossly misrepresented" what she was seeking. All she wanted was assurance from the Province it was still the debt holder and that it hadn't sold the debt to another party. And because, like most self-represented litigants, she could not afford a lawyer right after graduating, she turned to the Internet. In this she was not unusual. About one-third of Canadians confronted with everyday legal problems, such as debt problems, do search online for help: Trevor C.W. Farrow et al., *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016) at 7-9. But as the Final Report of *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants* noted (at 10), there are significant limitations and deficiencies to this on-line material. Like the Court Guides Assessment project it references, this NSRLP report found that there are a multiplicity of websites offering legal information, most using jargon and unexplained legal terms, often with no means of differentiating which is the most legitimate. One might think that Ms. Greter should be better equipped than many self-represented litigants to distinguish bad information from good, given her PhD, but those of us inured to the legal profession's jargon and concepts tend to forget (unless we teach Property Law to first year law students) just how incomprehensible and mystifying the language and procedures of the law can be.

The newspaper article states that Ms. Greter feels that "this ruling really misrepresents my side. … I'm concerned by how this could be misinterpreted in the public arena." Apparently she is considering an appeal, even though the same article also states that she has set up a repayment plan. There seems to be no doubt that the Province is owed what Master Schulz ordered they be paid. An appeal would be hopeless — and perhaps seen as vexatious. And Master Schulz did not misrepresent the four documents that Ms. Greter sent the Province or filed with the court. They used OPCA strategies and concepts, they have been debunked by dozens of recent cases and, as *Meads v Meads* and every case since *Meads v Meads* has made more than clear, their use does attract strong sanctions and penalties. And frankly, the newspaper article, which repeats Master Schulz's critiques as well as Ms. Greter's concerns, gives far more publicity to her experience in this case than did the Master's judgment itself.

Nonetheless, there are aspects of Master Schulz's judgment — in addition to the lack of authority for the substantive point about who to pay — which are cause for concern.

One is the identification of Ms. Greter with the Freemen-on-the-Land. Apparently in its arguments before Master Schulz, the Province alleged that "Ms. Greter had also used 'freeman on the land'" tactics before and during the collection litigation" (para 3). Freemen-on-the-Land is one of six categories of OPCA litigants identified in *Meads v Meads*. Justice Rooke describes them as a Canadian movement whose membership's focus is strongly anti-government, with libertarian and right wing overtones (*Meads v Meads* at para 172). That anti-government focus is lacking in the documents appended to or quoted by Master Schulz in this case. Just why Ms. Greter's documents or actions attracted that label from the Province, or why it was repeated by Master Schulz, is unclear.

Another is Master Schulz's description of Ms. Greter's documents as disclosing OPCA strategies and concepts that are worthless scams "that only causes harm and waste to all involved" (para 10). While the "harm and waste" point may be true in almost all litigation involving OPCA litigants, there is little evidence of either in this case. I have already detailed the steps in this case and how they seemed simple and speedy enough, with the Province getting everything it asked for, without a contest, within two weeks of the initial date set for hearing its application, and they did so on the basis of the evidence in one affidavit. If there was any waste or harm, it is not disclosed in the judgment (and the Province did not seem shy about putting forward other OPCA evidence). There is little in the judgment to suggest that Ms. Greter pursued the OPCA strategies beyond delivering three documents to the Province before the court action was started and filing one with the Court. It seems she did publish her "User Agreement Fee Schedule Notice" on a website, but Master Schulz indicates she did not attempt to actually use that document (para 25). Compared to the dozens of cases summarized in *Meads v Meads*, the use of OPCA strategies in this case seems minimal.

Finally, and building on the Master's threat of "punitive steps" and sanctions "such as being declared a vexatious litigant" had Ms. Greter attempted to use the "User Agreement Fee Schedule Notice" (para 25), there is the concluding paragraph of the judgment, where Master Schulz talks directly to Ms. Greter:

> As a final note to Ms. Greter, I caution her against further attempts to use OPCA concepts. Alberta originally sought double costs in its Statement of Claim, but did not pursue elevated and punitive court costs in its oral submissions at the summary judgment application. If Alberta had maintained that claim I would have granted the double costs award sought, or ordered solicitor and own client indemnity costs against Ms. Greter. This reflects this Court's categorical rejection of pseudolaw as a means to advance false claims or to frustrate the administration of justice, the operation of the courts, and the enforcement of legal obligations. (para 33)

Ms. Greter filed only one OPCA document with the court. Her husband asked for one adjournment on her behalf and she did not make any other interlocutory applications. She did not appear at the summary judgment application, even advising the Province that she would not be attending. Her concern with who owned her debt and who she should pay is explicable and not obviously a "false claim". To state that these actions "frustrate the administration of justice, the operation of the courts, and the enforcement of legal obligations" seems to dramatically overstate the impact of those actions.

Whether Ms. Greter was an OPCA litigant deserving of the punitive court sanctions that Master Schulz would have granted, or an ordinary self-represented litigant who initially made some mistakes, is a question that cannot be easily answered based on the facts in the judgment.