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The 'Colourless Green Ideas Sleep Furiously' Problem with Organized Pseudo-Legal Commercial Arguments

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Case Commented On: *Dove v Canada*, 2016 FCA 231 (CanLII)

The Federal Court of Appeal decision in *Dove v The Queen* is an unusual decision dealing with Organized Pseudo-Legal Commercial Arguments (OPCA). It's short, for one thing — only six paragraphs in total compared to the 736 paragraph decision in *Meads v Meads*, 2012 ABQB 571 (CanLII), the judgment in which Associate Chief Justice John D. Rooke coined the OPCA label. He defined OPCA litigants as "persons [who] 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." (at para 1). Second, it uses Noam Chomsky's most famous sentence to help explain what is wrong with the appellants' claims, rather than the usual words of legal censure. And third, it asserts that OPCA litigation is not a problem for the Federal Court of Appeal, in contrast to the more common judicial hand-wringing.

Although the Federal Court of Appeal decision is a scant six paragraphs long, the lower court decisions of Prothonotary Kevin R. Aalto — *Dove v Canada*, [2015] FCJ No 1187, *sub nom Bursey v Canada*, 2015 FC 1126 (CanLII) — and Justice Douglas R. Campbell — *Bursey v Canada*, 2015 FC 1307 (CanLII), [2015] FCJ No 1445 — are both available to fill in some blanks. Why two different names for this case? The Prothonotary and Federal Court dealt with five different cases brought by four different people: Wally Dove, Jason Dove, Michael Bursey, and Glenn Bursey. The five claims were consolidated in the Federal Court, and the claim of Wally Dove — the primary spokesman for all of the plaintiffs at all levels of court — was made the lead file. The only appeal before the Federal Court of Appeal, however, was that of Wally Dove, although the fate of all five actions was the same. All were dismissed, without leave to amend, and with costs awarded to the Crown.

The plaintiffs agreed that all five claims were essentially the same. Even though Justice Campbell in the Federal Court reproduced Mr. Dove's "Bill in Equity" (2015 FC 1307 at para 4) and 47 of the more than 100 paragraphs in the Statement of Claim (2015 FC 1307 Appendix), it is difficult to make out the essence of the plaintiffs' claims. Justice Campbell summarized the claims as the "belief that, by birth in Canada, a person acquires a proprietary interest in the resources of the country, under the wrongful control of Her Majesty the Queen, that founds a monetary claim which is calculable based on that person's date of birth" (2015 FC 1307 at para 8). This is essentially one of the "Tax-related Magic Hats" identified by *Meads v Meads* (at para 341) as the argument that "a person can pay for their income tax via a pro-rated share of government property." What the court actions were really about, according to Prothonotary Aalto, was the plaintiffs' dissatisfaction with paying income tax (2015 FC 1126 at para 8).

There were other commonalities with OPCA tactics and schemes described in *Meads v Meads.* For example, Prothonotary Aalto noted (2015 FC 1126 at para 6; see also paragraphs 57, 62, 65, 72, 73, and 98-102 in the Statement of Claim) that their claims that the document recording the registration of their birth was a security under the *Bank Act* that created multimillion dollar debts in their favour was one of the "Money for Nothing Schemes" described in *Meads v Meads* (at paras 529-550).

All of the claims were dismissed by the Prothonotary on the Crown's application to strike on the basis that they disclosed no reasonable cause of action. Their dismissal was upheld by the Federal Court who heard the five appeals *de novo*. The Federal Court of Appeal upheld the dismissal of Wally Dove's claim on appeal, simply stating that Justice Campbell made no mistake when he concluded that the Statements of Claim had "no reasonable prospect of success" and neither did Prothonotary Aalto when he concluded that "none of the Statements of Claim raise any cause of action and are bereft of any chance of success" (at para 2).

Having dismissed the appeal in only two paragraphs, it is the rest of what the Federal Court of Appeal had to say that is most interesting.

"Colourless green ideas sleep furiously"

Prothonotary Aalto described the plaintiffs' claims as attempts to build a cause of action "based on snippets and fragments" bound together "in pseudo-legal verbiage" (at para 2), and their "imaginary claims" as "pseudo-legal drivel" (at para 6). Justice Campbell in the Federal Court reproduced the plaintiffs' claims and let them speak for themselves. As an example, consider paragraph 14 from Wally Dove's claim, reproduced in the Appendix to Justice Campbell's decision as follows:

> 14. The applicant informed the Queen in council that he will only stand under recognition and designation as a Human Being. That the applicant has no obligation to seek to have a right conferred upon him by the defendant through a license or permit.…

The Federal Court of Appeal characterized the legal propositions that Wally Dove put forward as "incoherent and devoid of any legal meaning" (at para 3). Then, in a more imagination-seizing moment, the Court characterized those propositions as the legal equivalent of Noam Chomsky's famous sentence: "Colourless green ideas sleep furiously."

In *Syntactic Structures* (The Hague/Paris: Mouton, 1957) at 15, Noam Chomsky lists six sentences, of which the first two are:

> (1) Colourless green ideas sleep furiously.
> (2) Furiously sleep ideas green colourless.

The linguist followed this list with the point that "Sentences (1) and (2) are equally nonsensical, but any speaker of English will recognize that only the former is grammatical." His purpose was to demonstrate the distinction between syntax and semantics.

The Federal Court of Appeal has joined what has been referred to as "a small industry" spawned by that one grammatical but nonsensical sentence, "colourless green ideas sleep furiously." The sentence has been the source of poems and jazz song titles, and has even made it into *Bartlett's Familiar Quotations*. Because tolerance for this sort of thing is high in poetry, the sentence can

appear meaningful. Take for example, John Hollander's poem, "Coiled Alizarine", dedicated "for Noam Chomsky", originally published in *The Night Mirror* (New York: Atheneum, 1971):

> Curiously deep, the slumber of crimson thoughts:
> While breathless, in stodgy viridian,
> Colourless green ideas sleep furiously.

But I digress. The Federal Court of Appeal's point was that Wally Dove had assembled words, phrases, and concepts which had some meaning in their original context but none whatsoever in his use of them, just as each word in Noam Chomsky's famous sentence can be given a discrete meaning, but the sentence formed by those words is "devoid of intelligible content" (at para 3). Perhaps their analogy will make their point with the plaintiffs better than the usual words of legal censure.

"[T]he OPCA phenomenon is not a threat to the orderly administration of justice in this Court"

After all of the many claims by many courts from all provinces and levels that OPCA litigants are a major problem for the administration of justice, it is highly unusual for a court to say, as the Federal Court of Appeal does in this case, that "the OPCA phenomenon is not a threat to the orderly administration of justice in this Court at this time" (para 4). It is more usual for a court to talk about such claims "improperly clogging up the legal system to the cost and prejudice of those who would otherwise have to face and deal with them" (*Fiander v Mills*, 2015 NLCA 31 (CanLII) at para 40).

One might expect to see significant numbers of OPCA litigants in the Federal Court of Appeal if only because appeals from the Tax Court of Canada go directly to the Federal Court of Appeal. Justice Rooke had noted in *Meads v Meads* (at paras 169-170) that the first OPCA movement to appear in Canada were the "Detaxers", litigants focused almost entirely on avoiding income tax obligations. However, Justice Rooke also noted in his 2012 decision that fewer Detaxer claims were still being made due to the failure of all such claims, no matter their form, and the prosecution of some litigants for tax evasion.

Searches for "Organized Pseudo-Legal Commercial Argument", "OPCA", and "*Meads v Meads*" in the federal courts databases in CanLII, LexisNexis Quicklaw, and WestlawNext Canada turned up only 12 decisions since 2012. Seven of those were in the Tax Court of Canada, four were in the Federal Court, and only one — this case, *Dove v Canada* — was in the Federal Court of Appeal. Five were decided in 2013, two in 2014, one on 2015 and four (so far) in 2016. Although written decisions found in these databases may not tell the whole story, and number of cases is a rough proxy, these numbers suggest that OPCA litigants are rare not only in the Federal Court of Appeal, but in the federal court system as a whole.

Part of the reason that OPCA litigation is not seen as a problem in the Federal Court of Appeal may be that the federal courts seem to be slow to use the OPCA label. In *Dove v Canada*, Pronthonotary Aalto called the plaintiffs "quintessential OPCA litigants" (2015 FC 1126 at para 1) and their causes of action "of the cloth of standard OPCA litigant claims" (at para 5). Nonetheless, he did acknowledge "Dove's earnest belief that [those claims] amount to causes of action." (at para 5) He awarded costs against the plaintiffs of $500 per action, a total of $2,500.

In contrast, in the Federal Court, Justice Campbell did not mention *Meads v Meads* or the OPCA concept. Justice Campbell did state that "Mr. Dove presented an honest commitment to, and belief in" the claims he made (2015 FC 1307 at para 4), as had the Prothonotary (2015 FC 1126 at para 5). In response to the Crown's argument for an elevated costs award to discourage "this type of abusive litigation," Justice Campbell stated he had "no reason to conclude that the present litigation is an abuse of process" because the plaintiffs brought their actions "on the basis of an honest belief and similar claims have not been determined by this Court" (2015 FC 1307 at para 11). The rarity of such claims in the specific court — as opposed to in prosecutions for income tax evasion in provincial courts — was therefore a factor.

And in the Federal Court of Appeal, where the Crown asked that the plaintiffs be declared to be OPCA litigants as that term is defined and used in *Meads v Meads*, the Court refused, saying (at para 4):

> It is true that Mr. Dove's claim shares some of the characteristics attributed to OPCA litigants, but the OPCA phenomenon is not a threat to the orderly administration of justice in the Court at this time.

According to *Meads v Meads*, an OPCA litigant is one who expresses "a general rejection of court and state authority…" (at para 4). Justice Rooke went on to state that OPCA litigants are unified by:

> 1. a characteristic set of strategies (somewhat different by group) that they employ,
>
> 2. specific but irrelevant formalities and language which they appear to believe are (or portray as) significant, and
>
> 3. the commercial sources from which their ideas and materials originate.
> This category of litigant shares one other critical characteristic: they will only honour state, regulatory, contract, family, fiduciary, equitable, and criminal obligations if they feel like it. And typically, they don't. (at para 4)

It would seem that what is missing from *Dove v Canada* is the "general rejection of court and state authority", although there is no indication, for example, of whether the costs awards in the lower courts were paid by the plaintiffs. However, it may be difficult to conclude that anything is missing in this case from the definition of OPCA litigants in *Meads v Meads* because the Federal Court of Appeal ends its judgment with a warning to Wally Dove and his fellow plaintiffs. They are warned not to blame their lack of success in the federal courts "on the bad faith and corruption of the judges who hear and decide their cases and on the collusion of the lawyers who represent the Crown and the judges and prothonotaries who have heard their cases" (at para 5). The Federal Court of Appeal went on to say that "[s]uch allegations have consequences and if Mr. Dove continues in his present vein, he will have to deal with those consequences" (at para 5). The Court specially cites *Abi-Mansour v Canada (Aboriginal Affairs),* 2014 FCA 272 (CanLII) at paras 9-15 for the consequences of repeated unsupported allegations of bias, characterized in that case as attacks on "one of the pillars of the judicial system" (at para 12) and as "an abuse of process" (at para 14). In addition, in *Meads v Meads*, Justice Rooke specifically noted that some OPCA litigants "claim judicial bias, influence, or conspiracy" (at para 292).

The only reason stated by the Federal Court of Appeal for why this litigation was not OPCA litigation was that "the OPCA phenomenon is not a threat to the orderly administration of justice in this Court" (at para 4). That reason seems to go more to quantities within one particular court, rather than to qualities, impact on parties on the other side, or prevalence in courts across Canada.

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