LawPRO Webzine

Stumped by "organized pseudolegal commercial argument"? What ABQB Chief Justice Rooke wants from you.

Among the top ten cases (decided in ANY year) accessed on CanLII in 2012 was an Alberta Queen's Bench decision granting a routine motion to appoint a case management justice in a family proceeding. The written reasons in *Meads v. Meads* (2012 ABQB 571 (CanLII)), however, took 736 paragraphs, and the decision seems destined to become a Canadian classic.

In his reasons appointing himself as the case manager, Chief Justice J.D. Rooke undertook a meticulous categorization and analysis of several iterations of what he labeled "organized pseudolegal commercial argument" (OPCA). Apparently, litigants who favour these litigation strategies have plagued Canadian courts (notably in Alberta and British Columbia – but Ontario has not been immune) for several years. Many of these litigants – who may call themselves "Detaxers", "Freemen-on-the-land", "Sentient-Men", "Sovereign-Men", or "Moors"- typically purchase legal advice or precedent documents from vendors Rooke J. calls "gurus". Gurus rarely appear on behalf of their customers; rather, they purport to teach quasi-magical advocacy techniques designed, primarily, to challenge the court's jurisdiction over at least some portion of the litigant's identity.

The decision makes for entertaining reading; but the frustration, expense, and delay that these litigants create for the bench, the bar, and opposing parties are real.

Justice Rooke's rationale for devoting what must have been weeks of work to the drafting of these motion reasons is multifaceted:

1. **A primer for judges and counsel:** By creating a written catalogue of these strategies, he has created a primer for bench and bar, allowing future victims of these litigants to quickly understand (to the extent possible!) what they are up against.

2. **Deterrence for litigants:** Rooke J. has sought to demonstrate to would-be adopters of these tactics, through his review of the OPCA jurisprudence, that these approaches are unsuccessful.

3. **Sanction suggestions:** The decision provides support, at least in obiter, for fairly significant sanctions against these litigants: Not only does Rooke J. recommend that they bear enhanced costs penalties, but he suggests that, in appropriate cases, they be fined (by the Registrar) for non-compliant filings.

4. **Procedural recommendations**: Justice Rooke seems to have determined that making allowances for these litigants serves only to legitimize their methods. To avoid doing this, he makes certain procedural recommendations, including: that the court refuse to accept documents that litigants attempt to hand up to judges in open court; and that unorthodox filings be accepted (and marked) as relevant only to future costs determinations, and NOT as standard filings.

Readers who make it to the end of the Chief Justice's opus are also rewarded with practical tips for counsel. First, lawyers can avoid being part of the problem by refusing to notarize (and thereby legitimize) OPCA documents. When faced with an OPCA litigant as an opponent, counsel can minimize everyone's pain by:

1. performing "legal issue triage": OPCA litigants, according to the court, bury legitimate legal issues requiring the court's attention in a "…bog of cryptic documentation, spurious argument, irrelevant legal maxims, and stereotyped and caricatured court conduct." Counsel have a duty to spare the court the work (and their own clients the cost) of wading through this bog, by identifying legitimate legal issues and making those the sole focus of their opposing arguments;

2. educating the court about the OPCA phenomenon, including by calling expert evidence about these tactics, identifying appropriate decision precedents (including *Meads*), and recommending

useful sanctions;

3. collecting evidence that can assist the court in identifying the “guru” peddling the particular formula adopted by the litigant; and

4. recommending an enhanced security presence in the courtroom in appropriate circumstances (because some of these litigants are potentially dangerous, may need to be escorted from courtrooms by force, or may attend court with a rowdy entourage).

Why is all this relevant from a risk management or LAWPRO perspective? First, having an OPCA litigant for an opponent almost always increases the cost and difficulty of litigation for a client, and this risk must be appropriately managed. Second, many OPCA litigants tend to include opposing counsel in the litigation net.

Still feel the need to read *Meads v. Meads* for yourself? I thought you might.