Vexatious Litigants, *Meads*, and the Hermeticism of Law

by

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Abstract

Following from understandable concerns about costs of legal services, coupled with the need to ensure greater access to justice for citizens, it comes as no surprise that the number of Self-Represented Litigants, or SRLs, has been on the rise. But the ever-increasing presence of SRLs creates a tension in an already-overburdened legal system—between fostering access to justice on the one hand, and trying to manage an entire class of untrained users on the other.

This study examines a particular class of SRL, the so-called Organized Pseudo-Legal Commercial (OPCA) litigant, a descriptor introduced by Associate Chief Justice Rooke in *Meads v Meads*, a now seminal Alberta Court of Queen's Bench ruling. Specifically, this thesis reflects on how OPCA litigants are resistant to accepting highly standardized or entrenched legal methods of interpretation, and how the concept of judicial authority in certain respects *fails* to function in the case of OPCA litigants. This, in turn, impedes the access to justice ideal.

Related, this study examines how OPCA litigants (and SRLs in general) are "outsiders" to a legal system, where the judiciary and lawyers enjoy the status of "insiders." In this regard, this study employs an interdisciplinary analysis, drawing from realms such as religious studies, social psychology, and philosophy, to show how the law's "othering" of these litigants creates further alienation between the two sides.

While this study focuses on the above issues specifically in relation to the OPCA phenomenon, it is an analysis that ultimately has much broader implications in terms of the quest for greater access to justice. Ultimately, this study is intended to point to how issues relating to legal hermeneutics, judicial authority, and an insider/outsider dichotomy all have a significant bearing on the ever-elusive quest for meaningful access to justice.

Preface

This thesis is an original work by Patrick Hart. No part of this thesis has been previously published.

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INTRODUCTION – ACCESS TO JUSTICE, SELF-REPRESENTED LITIGANTS, AND VEXATIOUS LITIGANTS

"No doubt the same may be said of all professions. They are all conspiracies against the laity" – George Bernard Shaw[1]

I. The 'Access to Justice' Crisis

Vexatious litigants, judicial waste, and an overburdened administrative system are perennial concerns in Canada's legal system. So, too, is the need for meaningful access to justice. As Justice Karakatsanis lamented in *Hryniak v Mauldin*, "ensuring access to justice is the greatest challenge to the rule of law in Canada."[2] This challenge has of course only been exacerbated by the COVID-19 pandemic, as courts have struggled to function effectively and manage an ever-increasing backlog of trials during the pandemic.[3]

For those wishing to make use of the legal system, the current state of affairs is no more enviable. In many instances, Canadians lack the financial means to retain legal counsel, and thus have little choice but to try and navigate the judicial system themselves, as self-represented litigants (SRLs). And following from *Hryniak's* clarion call for greater access to justice, it comes as no surprise that the number of SRLs has been on the rise. But this creates a tension in an already-overburdened legal system—between fostering access to justice on the one hand, and trying to manage an entire class of untrained users on the other. In other words, the law must try to ensure that SRLs are able to navigate through a rather esoteric system,

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[1] "The Doctor's Dilemma," in *The Complete Prefaces of Bernard Shaw* (London: Paul Hamlyn, 1965) at 241.

[2] *Hryniak v Mauldin*, 2014 SCC 7 at para 1 [*Hryniak*].

[3] Yet in some ways, the pandemic has strangely fostered—or perhaps rather *forced*—some much-needed evolution in our legal system. As Trevor Farrow notes, "the global COVID-19 pandemic has brought more change in the past six months than perhaps has occurred in the past 60 years. A lot has been happening. Governments, courts, lawyers, law schools—everyone—has had to adapt, and adapt quickly" Trevor Farrow, "Ten Steps Forward on the Way to Justice for All" (20 October 2020), online: <medium.com/sdg16plus/ten-steps-forward-on-the-way-to-justice-for-all-c84cae998e1d>. See also See Richard Haigh and Bruce Preston, "The Court System in a Time of Crisis: COVID-19 and Issues in Court Administration" Osgoode Hall LJ 57 2021: 869; and The Honourable George R Strathy Chief Justice of Ontario, Remarks Delivered at the Opening of Courts Ceremony September 14, 2021, online: <www.ontariocourts.ca/coa/about-the-court/publications-speeches/opening-of-the-courts-2021/>.

recognizing that these litigants often do not possess any pre-existing capacity to do so effectively. As Richard Susskind puts it, "[f]rom a lay perspective, as well as appearing to be unaffordable, the courts seem to be excessively time-consuming, unjustifiably combative, and inexplicably steeped in opaque procedure and language."[4] The reason for this, of course, is that SRLs do not possess the same background knowledge and skills as the professed experts of the system: lawyers.[5]

The tension poses tremendous challenges. In essence, it is a tension between engaging with the epistemological plight of the average SRL on the one hand, and fostering the access to justice ideal on the other. In fact, part of the issue here concerns the very *meaning* of the phrase "access to justice." As Trevor Farrow and Lesley Jacobs point out, it is a concept that "has long been recognized as among the most basic rights of democratic citizenship," while also being "one of the least well understood in terms of its realization."[6] Accordingly, while the phrase "access to justice" is thrown about frequently, and is something that Supreme Court of Canada in *Hryniak* recognized as a paramount concern, it is also a concept that proves persistently elusive—it is a spectral ideal that is perpetually beyond our grasp.

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[4] Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2017) at 94.

[5] For the purposes of this study, I am presenting the issue as essentially an either/or—one is either represented by legal counsel, or is a SRL. While this dichotomy generally holds, at least in Canada, there is nuance to the issue that is admittedly not considered in this study. In part, this relates to the integration of paralegals into the legal system. In Canada, only the province of Ontario allows paralegals to lawfully represent individuals in certain situations (e.g. small claims matters, criminal cases involving Provincial Offences where the maximum is no longer than six months in prison, and administrative tribunals). This relates to the issue of access to justice, given that paralegals of course charge substantially less than lawyers. For some recent discussion in this regard, see Amanda Jerome, "Paralegal motion to have AG take control of legal services denied spot at LSO annual meeting" (6 May 2022), online: < https://www.thelawyersdaily.ca/articles/36102/paralegal-motion-to-have-ag-take-control-of-legal-services-denied-spot-at-lso-annual-meeting>. While I will not delve into the issue here, the role of paralegals relates more broadly to the topic of multidisciplinary practices, in which delivery of services is provided lawyers teamed with other types of professionals. See, for example, Paul D Paton, "Multidisciplinary Practice Redux: Globalization, Core Values, and Reviving the MDP Debate in America" (2010) 78:5 Ford L Rev 2193.

[6] Trevor CW Farrow & Lesley A Jacobs, "Introduction: Taking Meaningful Access to Justice in Canada Seriously" in Trevor CW Farrow & Lesley A Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law* (Vancouver: UBC Press, 2020) 3 at 3 [Farrow and Jacobs, "Meaningful Access to Justice"].

Nonetheless, for the purposes of this study, I follow the general sentiment behind what Farrow and Jacobs refer to as "meaningful access to justice," which they describe this way:

> [Meaningful access to justice] is centred […] on the idea that access to civil justice is principally concerned with people's ability to access a diverse range of information, institutions, and organizations—not just formal legal institutions such as the courts—in order to understand, prevent, meet, and resolve their legal challenges and legal problems when those problems concern civil or family justice issues. Meaningful access to justice measures access for a person not necessarily in terms of access to lawyers and adjudicated decisions but rather by how helpful the path is for addressing and resolving that person's legal problem or complaint.[7]

Farrow and Jacobs outline a vital point concerning the ideal of access to justice. Access to justice is not simply about fostering literal access to the institutional structures of our legal system. More than that, robust or *meaningful* access to justice must entail unrepresented users of the system, or self-represented litigants (SRLs), acquiring and possessing adequate epistemic equipment, or hermeneutic and procedural skills that will enable them to use and participate in the legal system *efficiently*.

II. "Access to Justice" and Vexatious Litigants

The concept of "meaningful access to justice" both partially occasions and consistently lurks behind much of this study. As a deliberate choice, this study engages with just one phenomenon as an example of how, and why, the meaningful access to justice ideal is frequently obstructed. This phenomenon involves the judiciary's struggles with so-called "vexatious litigants."

While I will explore, to some extent, what the legal system *means* by the phrase "vexatious litigants," this study is not aimed at engaging in any sustained doctrinal analysis of the topic. Rather, I am interested in pursuing an interdisciplinary investigation and reflection on a particular 'species' of vexatious litigant: the so-called Organized Pseudo-

[7] Farrow and Jacobs, "Meaningful Access to Justice, *supra* note 6 at 7.

Legal Commercial Argument (OPCA) litigant. This classification of litigant was introduced by Associate Chief Justice Rooke in a seminal 2012 Alberta Court of Queen's Bench ruling, *Meads v Meads*.[8] The *Meads* ruling, and the OPCA label introduced in it, are the primary focus of this study, which is comprised of three substantive chapters.

In the first chapter, I provide a general overview of the rise in SRL activity, the vexatious litigant phenomenon, and more specifically, the development of the OPCA label or category in *Meads*. In large part, this chapter examines the way in which *Meads* articulates and *constructs* the OPCA designation and taxonomy. However, what will become evident in this section is that the OPCA taxonomy constructed in *Meads* has proven tremendously impactful, and has enjoyed a rather ubiquitous influence over vexatious litigant jurisprudence over the past decade. Last, but certainly not least, this chapter points in the direction of some important yet problematic issues that emanate from *Meads*, specifically in terms of the concept of authority and the insular nature of the judicial system.

The second chapter focusses on the concept of authority, and the manner in which *Meads* functions, and in certain respects *fails* to function, in a legal system that is constantly in pursuit of the access to justice ideal. In this chapter, consideration is given to how the OPCA label functions for the judiciary, how the notion of judicial "bias" emanates from *Meads*, and who the *Meads* decision is written for and interpreted by.[9] All of these issues are be considered in connection to the concept of authority, and how *Meads* in some ways functions to undermine judicial authority, thereby threatening to subvert the access to justice ideal.

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[8] *Meads v Meads* 2012 ABQB 571 [*Meads*].

[9] Somewhat related to this is the fact that for some SRLs, appeals to religious concepts and biblical texts is a tremendously significant component of how *they* understand the concept of authority. However, the topic of religious authority will only be given limited attention in this study. Among other things, a sufficiently robust discussion of the issue requires careful consideration of the *Charter* preamble's reference to the "supremacy of God." This is a persistently thorny issue for the judiciary, and will only be touched on briefly here. But it is categorically a topic deserving of much more sustained investigation in another study.

The third chapter of this study proceeds directly from the second, and investigates, from a sociological perspective, the status of SRLs as "outsiders" to a legal system where the judiciary and lawyers enjoy the status of "insiders." Among other things, this chapter considers how different participants in the legal system possess manifold biases, how these participants label and identify both themselves and others, and how this can result in a lamentable "othering" that impedes the quest for meaningful access to justice. Moreover, I argue that the law is at least partially at fault for this state of affairs. In this regard, I employ an interdisciplinary analysis, drawing from realms such as religious studies, social psychology, and philosophy, to show how the law's "othering" of these litigants creates further alienation between the two sides.

In the concluding chapter, I address how this study forms only a partial analysis of a much broader topic, and return to the issue of access to justice, and how many of the issues discussed in this study have relevance that goes well beyond the OPCA phenomenon. Indeed, what I ultimately argue is that many of the issues that appear to relate specifically to the vexatious litigant or OPCA phenomenon are, in fact, issues that have much broader relevance. That is, the various issues tackled in this study are closely connected and relevant to *any* investigation or study that is concerned with the ever-elusive quest for meaningful access to justice.

In sum, there is no doubt that *Meads* has provided courts with a powerful weapon to combat vexatious litigant activity. But the degree to which the ruling engenders *productive* dialogue with these litigants is an entirely different matter. Indeed, it would appear that for a number of reasons, many of these litigants understand the legal system in an idiosyncratic way, and remain highly resistant to accepting judicial or state authority. In general, the present study is concerned with reflecting on this plight, and is aimed at generating some insights that might assist in not only understanding it, but also ameliorating it.

CHAPTER 1 – "ORGANIZED PSEUDOLEGAL COMMERCIAL ARGUMENTS" AND MEADS

I. Access to Justice, and Vexatious Litigants, and *Meads v Meads*

In the Canadian legal system, there is a tension between fostering the access to justice ideal, on the one hand, and adequately engaging with or understanding laypersons or SRLs, on the other. Perhaps the most acute challenge posed by this tension is the increase in what the courts refer to as *vexatious* litigants. Broadly speaking these are litigants who persistently initiate or continue with proceedings that have already been determined, or advance arguments that are spurious or devoid of merit. Notably, there appears to be a correlation between the rise in SRLs and an increase in vexatious litigants. As Justice Yves-Marie Morissette of the Quebec Court of Appeal observes, "the data…may in fact show, perhaps in a perverse way, that access to justice is consistently improving, with the regrettable side effect that the contingent of vexatious litigants is also increasing in size."[10]

At the same time, it is necessary to give some consideration to the very phrase "vexatious litigants." As a starting point, *Black's Law Dictionary* defines the term vexatious as "without reasonable or probable cause or excuse; harassing; annoying."[11] In my estimation, this is a compelling enough definition. Yet my appeal here to *Black's* here is also somewhat tongue-in-cheek. In this regard, it is worth noting that a common tactic for so-called "vexatious litigants" is to rely on *Black's* as a binding kind of authority, especially in

[10] Yves-Marie Morissette, "Querulous and Vexatious Litigants as a Disorder of a Modern Legal System" (2019) 24 Can Crim Law 265 at 307 [Morissette, "Querulous"].

[11] Bryan A Garner, ed, *Black's Law Dictionary*, 11th ed (St Paul, Minn: Thomson Reuters, 2019) sub verbo "Vexatious." Gerard J Kennedy explores this concept in some detail, noting the relationship between the term "vexatious" and the concept of "abuse of process." This leads Kennedy to suggest that "'abusive' is perhaps a more apt term to use in this respect than vexatious, especially as frivolous (another related term) and vexatious litigation is almost certainly going to be abusive." Gerard J Kennedy, "The Alberta Court of Appeal's Vexatious Litigant Order Trilogy: Respecting Legislative Supremacy, Preserving Access to the Courts, and Hopefully Not to a Fault" (2021) 58:3 Alta L Rev 739 at 740. Recognizing the legitimacy of Kennedy's discussion concerning the nuances in these terms, I will nonetheless tend to elide these terms (vexatious, abusive, and frivolous) in this study, for the sake of simplicity.

connection to its legal maxims. Unsurprisingly, courts tend to treat such reliance with a grain of salt; from the perspective of the judiciary, litigants misuse Black's, or overestimate the authoritative significance of its maxims. As Justice Rooke has put it, legal maxims in Black's "have as much binding authority and intellectual merit as fortune cookies."[12]

In Alberta, some legislative direction on this issue of "vexatious" conduct is contained in the *Judicature Act*[13], which focusses on the notion of *persistence* when it comes to identifying vexatious litigants. Further, s 23.1(1) of the *Judicature Act* permits a court to make its own unilateral motion to prohibit a vexatious litigant from instituting proceedings. This power was discussed by the Alberta Court of Appeal in *Jonsson v Lymer*[14], where the Court noted that "while some may disagree with the need for 'persistence,' that is the standard that has been selected by the Legislature. Persistence is important, because the more persistent the behaviour, the stronger is the inference that past behaviour predicts future behavior."[15] The ruling in *Jonsson* seems to have created a more onerous path for judges who wish to invoke 23.1(1), given also the Court of Appeal's emphasis that "the court should only initiate the process [of vexatious litigant applications] where the litigants have failed to do so after invitation and the overall interests of the administration of justice are engaged, or there is another justification for doing so."[16] The topic of vexatious litigants was also given tremendously detailed attention in *Unrau v National Dental Examining Board*.[17] There Justice Rooke articulated a preference for the term "abusive litigant" rather than "vexatious litigant."[18] For the sake of simplicity and consistency, however, I will generally employ the term "vexatious."

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[12] *Rothweiler v Payette*, 2018 ABQB 399 at para 49 [*Rothweiler*].
[13] RSA 2000, c J-2, s 23(2).
[14] 2020 ABCA 167 [*Jonsson*].
[15] *Jonsson*, *supra* note 14 at para 38.
[16] *Jonsson*, *supra* note 14 at para 85.
[17] 2019 ABQB 283 [*Unrau*].
[18] *Unrau*, *supra* note 17 at paras 73-81.

In any event, it is no doubt the case that there is a connection between vexatious litigants and the challenge of access to justice. This connection is articulated by Justice Stratas of the Federal Court of Appeal:

> Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.
>
> This isn't just a zero-sum game where a single vexatious litigant injures a single innocent litigant. A single vexatious litigant gobbles up scarce judicial and registry resources, injuring tens or more innocent litigants. The injury shows itself in many ways: to name a few, a reduced ability on the part of the registry to assist well-intentioned but needy self-represented litigants, a reduced ability of the court to manage proceedings needing management, and delays for all litigants in getting hearings, directions, orders, judgments and reasons.[19]

Put different, the presence and proliferation of what the courts identify as vexatious litigation (and vexatious litigants) poses one significant obstruction, among others, in the quest to attain meaningful access to justice.

Justice Rooke's lengthy ruling in *Meads v Meads*[20] attests to the growing systemic problem posed by vexatious litigants. Using *Meads* as a centrepiece, the following will examine both Justice Rooke's ruling and related academic commentary, with a view to apprehending the current state of scholarship in this area, and outlining some under-researched areas that the following two chapters of this study will examine.

In *Meads*, Justice Rooke penned a fulsome analysis on the judiciary's growing concern over a particular species of vexatious litigant: the "Organized Pseudolegal Commercial Argument" (OPCA) litigant. In fact, Justice Rooke's descriptor, OPCA, was a neologism, aimed partly at identifying a particular taxonomy of vexatious litigants:

> This Court has developed a new awareness and understanding of a category of vexatious litigant…while there is often a lack of homogeneity, and some individuals or groups have no name or special identity, they (by their own admission or by

[19] C*anada v Olumide*, 2017 FCA 42 at paras 19 and 20.
[20] *Meads*, *supra* note 8.

> descriptions given by others) often fall into the following descriptions: Detaxers; Freemen or Freemen-on-the-Land; Sovereign Men or Sovereign Citizens; Church of the Ecumenical Redemption International (CERI); Moorish Law; and other labels—there is no closed list. In the absence of a better moniker, I have collectively labelled them as Organized Pseudolegal Commercial Argument litigants, to functionally define them collectively for what they literally are. These persons employ a collection of techniques and arguments promoted and sold by 'gurus' (as hereafter defined) to disrupt court operations and to attempt to frustrate the legal rights of governments, corporations, and individuals.[21]

In terms of its depth and breadth, *Meads* is perhaps more of a compendium on the OPCA phenomenon than it is a judgment. Indeed, the underlying dispute in *Meads*—a fairly mundane divorce action involving a self-represented husband who employed vexatious litigation tactics—is ultimately little more than a backdrop for Justice Rooke's wide-reaching analysis on, and condemnation of, vexatious litigant activity.

Regardless, *Meads* has no doubt proven a seminal ruling in matters involving vexatious litigants. Donald Netolitzky has calculated that by 2019 *Meads* was "cited in 198 reported court and tribunal decisions...CanLII indicates Meads is the most cited post-2012 decision issued by the Alberta Court of Queen's Bench."[22] As at June, 2022, *Meads* has been cited in 333 other sources, as per CanLII.[23] In one way, this result is by no means surprising. By design, the judgment was intended to give advice on "how the court, lawyers, and litigants should respond to [OPCA] practices and the persons who advance and advocate these techniques and ideas."[24]

In another way, however, the widespread adoption of *Meads* in jurisprudence is something of an anomaly. The reason for this relates to the level of court that *Meads* arises from. Insofar as the ruling emanates from a superior, rather than appellate-level court, one

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[21] *Meads*, *supra* note 8 at para 1. As Donald Netolitzky notes, "prior to *Meads*, no standard label identified this litigation category. Many judges were unaware that what appeared to be an idiosyncratic litigant was instead an instance of a broader phenomenon." Donald J Netolitzky, "After the Hammer: Six Years of *Meads v. Meads*" (2019) 56:4 Alta L Rev 1167 at 1173 [Netolitzky, "After the Hammer"].

[22] Netolitzky, "After the Hammer," *supra* note 21 at 1186.

[23] See https://www.canlii.org/en/ab/abqb/doc/2012/2012abqb571/2012abqb571.html?autocompleteStr=meads&au tocompletePos=1#citing.

[24] *Meads*, *supra* note 8 at para 54.

might think that its precedential value is limited. Further, given that most of the ruling is unrelated to the particular facts of the case, one might be inclined to view much of Justice Rooke's decision as *obiter*, (i.e. incidental to the decision), and unconnected to any *ratio* (i.e. the principle or rule derived from the case).[25] Indeed, as Netolitzky observes, "*Meads* is sometimes characterized (or criticized) as a decision that is substantially *obiter dicta*."[26]

To be sure, Netolitzky's observation is offered neither as a condonation or condemnation of the precedential utility of *Meads*. Moreover, it is widely acknowledged in law that the art of distinguishing between *obiter* and *ratio* is in any event a matter of persistent debate. In this regard, there is merit to Lord Asquith's irreverent summary: "The rule is quite simple: If you agree with the other bloke you say it is part of the *ratio*; if you don't you say it is *obiter dictum*, with the implication that he is a congenial idiot."[27] Regardless, it is clear that *Meads* has become a touchstone in jurisprudence and scholarly writing on vexatious litigants.[28] Consequently, the ruling itself warrants further discussion, particularly in terms of its introduction of a vexatious litigant taxonomy, and its formulation of strategies for dealing with such litigants.

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[25] Paragraphs 60 to 675 of *Meads* are essentially unrelated to the circumstances involving Mr. and Mrs. Meads.

[26] Netolitzky, "After the Hammer," *supra* note 21 at 1203-1204.

[27] Lord Asquith, "Some Aspects of the Work of the Court of Appeal" (1950) 1 Journal of the Society of Public Teachers of Law 350 at 359 [Asquith, "Some Aspects of the Work"].

[28] As alluded to earlier, Justice Rooke's foray into the topic of vexatious litigants is not limited to *Meads*. The previously-mentioned *Unrau* decision us an even lengthier, 1059-paragraph ruling, that undertook a painstakingly detailed examination of vexatious litigant orders, and the court's inherent jurisdiction to apply for and grant these orders. *Unrau* has since been cited with some frequency by other courts, including some appellate-level jurisprudence. See, for example: *Canada (Attorney General) v Fabrikant*, 2019 FCA 198 at para 48; *Green v Bell et al*, 2021 MBCA 81 at para 6; and *Green v University of Winnipeg*, 2021 MBCA 60 at para 3. While I will not address *Unrau* here in any detail, it would appear that the Alberta Court of Appeal's ruling in *Jonsson* might well temper the impact of *Unrau* in certain respects going forward. Addressing the judiciary's powers in relation to vexatious litigants, the court in *Jonsson* cited its earlier decision in *Lymer v Jonsson*, 2016 ABCA 32, and affirmed that "vexatious litigant proceedings are to be 'on notice'; anyone charged with vexatious conduct must be given a fair opportunity to respond." *Jonsson*, *supra* note 14 at para 40. The court also levelled a somewhat-hidden critique of *Unrau* in a subsequent footnote, stating that "this decision [i.e. *Lymer v Jonsson*] remains good law and is binding on trial courts in Alberta, despite what was suggested in *Unrau v National Dental Examining Board*." *Jonsson*, *supra* note 15 at paras 40 and fn 1. It would thus appear that the Alberta Court of Appeal's approach to curbing vexatious litigant activity is more reserved than that expressed by Justice Rooke in cases like *Unrau* (and perhaps also *Meads*).

II. *Meads* and the Creation of the OPCA Taxonomy

As noted earlier, the OPCA neologism was formulated by Justice Rooke as an umbrella concept, or a taxonomy for promulgators of vexatious litigant tactics. Be that as it may, the various constituent *members* of the OPCA category did not arise out of a vacuum. On the contrary, while Justice Rooke addresses certain subgroups, or "movements"[29] in the capacious OPCA category, these subgroups have their own histories and genealogies. While *Meads* included descriptions of five subgroups of vexatious litigants, the descriptions were not intended to be exhaustive. Nor, for that matter, are these five subgroups entirely discrete or unrelated to one another. Indeed, as will be seen below, some subgroups possess shared or similar beliefs of some kind of anti-authoritarian nature.

The first group, "Detaxers," are individuals who in various iterations aim at avoiding income tax obligations.[30] In many instances, Detaxers appeal to some vague Judeo-Christian beliefs in pursuit of their goal. In one case, for example, a father and son argued that "as 'Children of God,' they fall within an exempt group who may structure their affairs in such manner as to avoid any requirement to pay income tax."[31] Unsurprisingly—and without even appealing to Jesus's injunction in Mark's gospel to "render to Caesar the things that are

[29] *Meads*, *supra* note 8 at para 168.

[30] See *Meads, supra* note 8 at paras 169-171. See also Donald J Netolitzky, "The History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada" (2016) 53:3 Alta L Rev 609 at 616-624 [Netolitzky, "History"]; Christopher S Jackson, "The Inane Gospel of Tax Protest: Resist Rendering Unto Caesar—Whatever His Demands" (1996) 32:2 Gonz L Rev 291 [Jackson, "The Inane Gospel"]; and Mike Drach, "Screw the Taxman: The Weird Ideas of Tax Cheaters" (24 April 2006), online: <www.digitaljournal.com/article/36197>. With respect to this particular group, it is also worth noting that the label "Detaxer" is not a self-identifier employed by those who *courts* describe in that fashion.

[31] *R v Tyskerud*, 2013 BCPC 27 at para 240 [*Tyskerud*].

Caesar's"[32]—the accused father and son were found guilty of various counts of failing to report or understating taxable income.[33]

A second group, Sovereign Citizens, often claim that law is entirely contractual in nature and that courts are limited to applying admiralty law.[34] Moreover, Sovereign Citizens typically adhere to a very particular notion of "common law" (which they tend to capitalize as "Common Law"). Justice Rooke addressed this position in *Meads:*

> OPCA litigants often draw an arbitrary line between "statutes" and "common law", and say they are subject to "common law," but not legislation. Of course, the opposite is in fact true, the "common law" is law developed incrementally by courts, and which is subordinate to legislation: statutes and regulations passed by the national and provincial governments.[35]

For Sovereign Citizens, common law generally derives from religious authority, specifically the authority of God and the Christian bible.[36] Among other things, Sovereign Citizens are known for "intimidation of state and court personnel, and their misuse of legal processes to

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[32] Mark 12:13-17, RSV. See also Jackson, "The Inane Gospel," *supra* note 30 at 291, fn 1. Another case of note in this regard is *Pappas v The Queen*, 2006 TCC 692 [*Pappas*]. There, a husband and wife referenced the supremacy of God as grounds for claiming that the "government cannot and should not continue to force its citizens of conscience and religious conviction to be citizen tax collectors." Justice Miller's ruling wryly alluded to Mark's injunction while simultaneously conceding the sincerity of the appellants' religious belief: "while I may entertain some doubts as to the true Christian dogma regarding tax collectors, I will for purposes of this decision accept that Mr. Pappas' religious belief re: tax collectors is well founded; that is, it is contrary to his religious belief to be a tax collector." *Pappas*, at paras 6 and 11. Despite this concession, Mr. and Mrs. Pappas failed to convince Justice Miller that they were therefore relieved from their tax obligations.

[33] *Tyskerud*, *supra* note 31 at paras 458-459. A notable quasi-detaxer case in the United States was *United States v Snipes*, 611 F 3d 855, 860 (11th Cir 2010), in which actor Wesley Snipes argued that he was a "fiduciary of God" and thus exempt from paying taxes. His argument did not succeed.

[34] See *Meads*, *supra* note 8 at paras 176-182. In the United States, this claim derives in part from the Sovereign Citizen belief that "the gold fringe on a courtroom flag means that the court only has military or maritime jurisdiction." Colin McRoberts, "Tinfoil Hats and Powdered Wigs: Thoughts on Pseudolaw" (2019) 58:3 Washburn LJ 637 at 638 [McRoberts, "Tinfoil Hats"].

[35] *Meads*, *supra* note 8 at para 326. Justice Rooke adds that "persons who claim to only be subject to the 'common law' also do not appear to mean the *current* common law, but typically instead reference some historic, typically medieval, form of English law, quite often the *Magna Carta*, which, as I have previously observed, is generally irrelevant." *Ibid* at para 327.

[36] See Susan P Koniak, "When Law Risks Madness" (1996) 8:1 Cardozo Stud L & Lit 65 at 71 [Koniak, "Madness"]. See also *Meads*, *supra* note 8 at para 221. The topic of authority will be addressed further in the following chapter.

engage in 'paper terrorism.'"[37] This subgroup has a longstanding presence in North America, with much scholarship being devoted to it.[38]

The Freemen on the Land, or simply Freemen, are sometimes viewed as a Canadian iteration of the Sovereign Citizens.[39] Netolitzky, however, offers a more nuanced and specific account of the group's genealogy, noting that the group "was effectively the sole creation of guru Robert Arthur Menard, a British Columbia street comedian, who argued that all government obligations may be rejected by foisted unilateral agreements that withdraw consent."[40] Relatedly, Freemen exhibit anti-authoritarian and anti-government sentiments, and frequently claim that any state or court action affecting them requires their express consent.[41] Like Detaxers and Sovereign Citizens, Freemen often appeal obliquely to Judeo-Christian beliefs. Likewise, they pay no mind to biblical injunctions that would appear inconsistent with their anti-authoritarian predilections—in particular, they appear to have little concern with the apostle Paul's admonishment to the Romans to "be subject to the governing authorities."[42]

The Church of the Ecumenical Redemption International (CERI) is a more parochial subgroup than the Detaxers, Sovereign Citizens, or Freemen. Having a central location in the Edmonton area under the leadership of Edward Jay Robin Belanger, the CERI "dates back at

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[37] *Meads*, *supra* note 8 at para 181.

[38] See Koniak, "Madness," *supra* note 36; Francis X Sullivan, "The 'Usurping Octopus of Jurisdictional/Authority': The Legal Theories of the Sovereign Citizen Movement" (1999) 1999: 4 Wis L Rev 785; Michelle Theret, "Sovereign Citizens: A Homegrown Terrorist Threat and its Negative Impact on South Carolina" (2012) 63:4 SCL Rev 853 [Theret, "Sovereign Citizens"]; Stephen A Kent, "Freemen, Sovereign Citizens, and the Challenge to Public Order in British Heritage Countries" (2015) 6 Intl J Cultic Studies 1 [Kent, "Freemen"]; Joshua P Weir, "Sovereign Citizens: A Reasoned Response to the Madness" (2015) 19:3 Lewis & Clark L Rev 829 [Weir, "Reasoned Response"]; Michael Mastrony, "Common-Sense Responses to Radical Practices: Stifling Sovereign Citizens in Connecticut" (2015) 48:3 Connecticut Law Review 1013 [Mastrony, "Common-Sense"]; Edwin Hodge, "The Sovereign Ascendent: Financial Collapse, Status Anxiety, and the Rebirth of the Sovereign Citizen Movement" (2019) 4 Frontiers in Sociology [Hodge, "Sovereign Ascendent"].

[39] Hodge, "Sovereign Ascendent," *supra* note 38 at 2.

[40] Netolitzky, "History," *supra* note 30 at 624-625. Netolitzky notes, however, that "many of Menard's ideas are clearly taken or derived from other sources," including Detaxers and Sovereign Citizens. *Ibid*, at 625-626.

[41] See *Meads*, *supra* note 8 at paras 172-175.

[42] Romans 13:1, RSV.

least to the early 2000s and appears to have begun as a splinter of the Church of the Universe, a 'pot church.'"[43] As with the above-noted groups, CERI's members typically reject state authority, adhering rather to the authority of the Christian bible—specifically the King James version.[44] CERI's claims include, among others, that its members' vehicles are not subject to applicable legislative rules, because they are actually operating what are termed "ecclesiastical pursuit chariots."[45] To date, courts have not been convinced by this argument.

The final group, Moors, possess a key characteristic shared by the previously-mentioned groups: a rejection of state authority.[46] As Justice Rooke notes, adherents to "Moorish Law" assert that they "are not subject to state or court authority because they are governed by separate law, or are the original inhabitants of North and South America."[47] As with Detaxers, Sovereign Citizens, Freemen, and CERI, there are no cases in which Moors have succeeded in advancing their arguments before the courts or tribunals.[48]

What is common to all of these five subgroups is that each employs "vexatious pseudolegal strategies intended to frustrate the operation of the court."[49] These strategies run

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[43] Netolitzky, "History," *supra* note 30 at 627.

[44] *Meads*, *supra* note 8 at para 294. As an aside, it bears noting that in the area of biblical studies, use of the King James version is generally viewed as antithetical to good scholarship. Most contemporary translations, no matter how flawed, are typically seen as superior to the King James translation. A notable exception to this is studies where the King James translation, i.e. its literary form, is itself a specific object of study. As New Testament scholar Bart Ehrman notes, "as a piece of writing, [the King James Bible] is arguably the most significant work every produced in English. But it is decidedly not a good study Bible. That is for several reasons: one is that the manuscripts of the New Testament it is based on (going back to the Textus Receptus – i.e. the original edition by Erasmus) were not ancient or of high quality. The other is that the language used is from over 400 years ago, and can be easily misunderstood – or not understood at all." Bart Ehrman, "Problems With the Language of the King James Version" (12 April 2022), online: <ehrmanblog.org/problems-with-the-language-of-the-king-james-version/>. Regardless, the curious attachment that some groups (e.g. CERI) have to the King James translation is a worthwhile area for further investigation.

[45] See *Meads*, *supra* note 8 at paras 186.

[46] See Kent, "Freemen," *supra* note 38 at 4.

[47] See *Meads*, *supra* note 8 at paras 190. While Justice Rooke writes that "the Moorish Law community is a predominately American offshoot of urban American black muslim churches such as a Nation of Islam," sociologist Stephen Kent notes to the contrary that "as worded [by Justice Rooke], one might get the incorrect impression that the original Moorish Nation Temple of Science (soon called the Moorish Science Temple of America) was an offshoot of the Nation of Islam/Black Muslims. It was not, although it began only a few years before the Nation of Islam's founding and held to similar goals." Kent, "Freemen," *supra* note 38 at 5, n 7.

[48] See, for example, *Shakes v Canada (Public Safety and Emergency Preparedness)*, 2011 CanLII 60494 (IRB).

[49] *Meads*, *supra* note 8 at para 254.

the gamut from perhaps-innocent misunderstandings of legal concepts to ideas that are fundamentally bizarre. Such strategies include, for example, distinguishing between an authentic and a 'strawman' persona, naming judges as "fiduciaries," unilaterally imposing fines on parties, appealing to religious concepts and biblical texts, and 'money for nothing' schemes.[50]

While none of these strategies prove successful before the courts, they contribute significantly to what Justice Morissette identifies as a "real and threatening burden for other parties and for all stakeholders in the administration of justice (be they the parties themselves or lawyers, judges, court administrators and court personal)."[51] Given this, and given the omnipresent concern over the scarcity of judicial resources, courts (notably Justice Rooke in *Meads*) and academics have presented a variety of prescriptive tools for combatting or curbing OPCA-activity.

III. Aftermath of *Meads* and Approaches to Curbing OPCA Activity

Justice Rooke's ruling in *Meads* was not solely aimed at *identifying* OPCA tactics. More than that, he prescribed various strategies for judicial *responses* to those tactics. Among other things, he encouraged courts to strike frivolous actions or pleadings where appropriate, order elevated costs or security for costs, issue fines, or declare that certain litigants are vexatious (which thus restricts their ability to initiate or continue legal proceedings).[52]

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[50] With apologies to Dire Straits. For discussion of these strategies in *Meads*, see *Meads, supra* note 8 at paras 417-550. These strategies have also been explored in great detail in Netolitzky's work. See for example, Netolitzky, "History," *supra* note 30; Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments [OPCA] in Canada; An Attack on the Legal System" (2016) 10 JPPL 137 [Netolitzky, "Attack"]; Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments in Canadian Inter-Partner Family Law Court Disputes" (2017) 54:4 Alta L Rev 955 [Netolitzky, "Family"]; Donald J Netolitzky, "Lawyers and Court Representation of Organized Pseudolegal Commercial Argument [OPCA] Litigants in Canada" (2018) 51:2 UBC L Rev 419 [Netolitzky, "Lawyers"]; Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments as Magic and Ceremony" (2018) 55:4 Alta L Rev 1045 [Netolitzky, "Magic"]; and Netolitzky, "After the Hammer," *supra* note 21.

[51] Morissette, "Querulous," *supra* note 10 at 266.

[52] *Meads*, *supra* note 8 at paras 587-613.

Given both its descriptive and prescriptive elements, *Meads* was undoubtedly a watershed moment in law, as it provided the judiciary with a tool to counter the proliferation of OPCA litigants in the judicial system. From the judiciary's perspective, at least, it seems that judges could not have been more grateful. This is nowhere more evident than in Justice O'Donnell's comical remarks in *R v Duncan*:

> 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. This concern, however, was dissipated in mid-September, 2012 when the gods made their benevolent nature clear. 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* […] 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.[53]

While Justice O'Donnell's remarks are an outlier in terms of the fanciful expression of gratitude for *Meads*, there is no doubt that the ruling has proven useful to courts in Canada and beyond—as at January, 2022, it is the third most-cited Alberta Court of Queen's Bench decision, standing at 319 citations.[54] Given that the ruling does not come from an appellate level court, and that its precedential status is thus more limited, the impact of *Meads* is especially noteworthy.[55] In part, this is a testament to how Justice Rooke's comprehensive

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[53] *R v Duncan*, 2013 ONCJ 160 at paras 20-21. Justice O'Donnell's rhetorical flourish might evoke a broader discussion on judicial opinions, in terms of the pros and cons involved in writing "traditional" versus "nontraditional" judicial opinions. See Ryan Benjamin Witt, "The Judge as Author/The Author as Judge" (2009) 40:1 Golden Gate U L Rev 37 at 42. While Justice Rooke's ruling in *Meads* is also deserving of consideration in this regard, this issue will only be tangentially addressed in this study. In any case, Justice O'Donnell's regard for *Meads* is echoed in spirit, if not tone, by Justice Adamson: "Justice Rooke dealt with these [pseudolegal arguments] exhaustively in *Meads*...in part so judges in future would be spared that burden and so that these litigants would not succeed in their apparent aim of bogging down the justice system with nonsensical arguments which would have to be dealt with piecemeal by each and every judge the appear before." *R v Ainsworth*, 2015 ONCJ 98 at para 6.

[54] See online: CanLII <www.canlii.org/en/#search/sort=citationCount&id=abqb>.

[55] The operation of *stare decisis* is pithily, if irreverently, described by Master Funduk this manner: "I am bound by decisions of Queen's Bench judges, by decisions of the Alberta Court of Appeal and by decisions of the Supreme Court of Canada. Very simply, Masters in Chambers of a superior trial court occupy the bottom rung of the superior courts judicial ladder. I do not overrule decisions of a judge of this court. The judicial pecking

analysis augments the judicial utility of *Meads*. As Netolitzky notes, *Meads* is "a one-stop resource for courts facing persons who advance OPCA schemes. The goal was more than to simply collect and rebut pseudolaw, but also to provide a field guide to recognize these people, document and explain the strange ways OPCA litigants operate."[56]

In some respects, at least, Justice Rooke's approach to the OPCA problem in *Meads* mirrors the recommendations of commentators engaged in the study of vexatious litigants, and in particular Sovereign Citizens. Joshua Weir, for example, argues that "the best strategy seems to be keeping these people out of the system if at all possible. The more quickly and unceremoniously courts and other public agencies can dismiss their frivolous filings, the better. Motions to dismiss their spurious lawsuits should be granted liberally, with as little expense to the defence as possible."[57] Comparably, Michael Mastrony advocates for a legislative response, calling for "legislation to deal with the practice of filing fraudulent liens to harass and intimidate individuals. A comprehensive approach will address this practice by providing administrative remedies for before and after these liens are filed, as well as imposing criminal and civil penalties for individuals that file these fraudulent liens."[58]

Tacking a somewhat different tack, Colin McRoberts suggests a diverse strategy—McRoberts presents "four general approaches for more active responses to pseudolaw"[59]:

> (1) a rules-based approach, automatically providing pseudolegal litigants with information about the failure of similar claims; (2) a judicial approach, by which courts respond to pseudolegal arguments in more detail and on the record; (3) a practitioner approach, in which lawyers take more responsibility for communicating law to the public; and (4) an academic approach, studying pseudolaw more actively and testing the efficacy of various solutions. Dividing these approaches by actors—

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order does not permit little peckers to overrule big peckers. It is the other way around." *South Side Woodwork v RC Contracting*, 1989 CanLII 3384 at paras 52 and 53.

[56] Netolitzky, "After the Hammer," *supra* note 21 at 1168. Netolitzky also points out, however, that the ruling should not be viewed as a fully comprehensive account of OPCA activity in the courts, and estimates that "*Meads* only captured a little over a quarter of the potentially relevant jurisprudence." *Ibid*, at 1172.

[57] Weir, "Reasoned Response," *supra* note 38 at 869.

[58] Mastrony, "Common-Sense," *supra* note 38 at 1033.

[59] McRoberts, "Tinfoil Hats," *supra* note 34 at 659.

> court staff, judges, practitioners, and academics—shows how much room there is for complementary solutions to pseudolaw.[60]

While McRoberts's suggestions have merit, and partially reflect the approach advocated by Justice Rooke (among others), there is a sense in which the first three approaches are to some extent inevitably doomed to fall on deaf ears. This is especially the case when it comes to the *judiciary's* relationship with these vexatious litigants. As Michelle Theret notes, "Courts may have a tendency to disregard sovereign citizen arguments due to their nature, creating a rift between the court and the litigant."[61] Indeed, Theret describes a rift that is quite real, and highlights the need for different approaches to the vexatious litigant or OPCA problem.

IV. Under-researched Areas of Study on *Meads* and Vexatious Litigants

Segueing in part from Theret's remarks, I would suggest that there are several interrelated issues that are either underrepresented or entirely unaddressed in scholarship on vexatious or OPCA litigants. I will outline four of them here: (a) the issue of authority, and the problem of a seemingly insurmountable "dialectic of normative commitments" between certain litigants and the judiciary; (b) the presence and significance of pejorative language or tone in some jurisprudence and literature; and (c) the inherently insular, esoteric, and parochial nature of the legal system, which problematically functions as an impediment to the 'access to justice' ideal; and (d) the judiciary's inability to explicitly reflect (in jurisprudence, at least) on the social contract and other socio-political or philosophical issues relating to law's legitimacy.

(a) A "Dialectic of Normative Commitments"

[60] McRoberts, "Tinfoil Hats," *supra* note 34 at 659. See also Caesar Kalinowski IV, "A Legal Response to the Sovereign Citizen Movement" (2019) 80:2 Mont L Rev 153 [Kalinowski, "A Legal Response"]. Kalinowski suggests that the best way to deal with such litigants is to "[explain] the legal shortcomings of the Sovereign Citizen ideology…[to] dissuade Sovereign Citizens themselves from continually reasserting the same meritless arguments, and inform the general public of their actual constitutional rights." *Ibid*, at 157.

[61] Theret, "Sovereign Citizens," *supra* note 38 at 885.

One area requiring further study involves the common argument that "there is some form of religious authority or law that trumps that of the court."[62] Apart from simply asserting that litigants are *wrong* to articulate such a view, the courts, at least, are unable to engage in any sustained discussion about the law's own authoritative legitimacy. A key reason for this is articulated by former Chief Justice McLachlin:

> Case law [on religion]...has included those cases in which the sources of authority and content of religious conscience actually clash with the prevailing ethos of the rule of law. I wish to call this tension between the rule of law and the claims of religion a 'dialectic of normative commitments.' What is good, true, and just in religion will not always comport with the law's view of the matter, nor will society at large always properly respect conscientious adherence to alternate authorities and divergent normative, or ethical, commitments. Where this is so, two comprehensive worldviews collide. It is at this point that the question of law's treatment of religion becomes truly exigent. The authority of each is internally unassailable.[63]

This "dialectic of normative commitments" proves to be a thorny issue for the courts, and the topic of authority, specifically *judicial* authority, is one that needs to be considered further in this context. Recognizing such a gap, chapter 2 of this study will focus largely on the issue of authority, specifically in connection to the OPCA phenomenon.

(b) Pejorative Language and Vexatious Litigants

Another under-developed area of discussion relates to the disparaging and pejorative tone of some jurisprudence and scholarship on vexatious litigants. McRoberts touches on this problem:

> There are many other catch-all labels, from the relatively descriptive ("freemen on the land" and "detaxer" are common in Canada) to the pointedly pejorative ("paper terrorist" has gained ground in the United States). The relatively descriptive labels

[62] *Meads*, *supra* note 8 at para 276.

[63] Beverley McLachlin, "Freedom of Religion and the Rule of Law: A Canadian Perspective" in Douglas Farrow, ed, *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy* (Montreal & Kingston: McGill-Queen's University Press, 2004) 12 at 21. See also Stephen A Kent and Robin D Willey, "Sects, Cults, and the Attack on Jurisprudence" (2013) Rutgers J L & Religion 14:2 307 at 308. Benjamin Berger points to another way of articulating this dilemma: "whether it intends to or not, the very nature of law is that it kills other normative arrangements" Benjamin L Berger, *Law's Religion: Religious Difference and the Claims of Constitutionalism* (Toronto: University of Toronto Press, 2015) at 103 [Berger, *Law's Religion*].

> suffer from the same drawbacks as "sovereign citizen." The pejorative labels actively impair outreach, encouraging pseudolawyers to withdraw deeper into their refusal to engage productively with the real legal system and its representatives.[64]

Beyond McRoberts' identification of the issue, however, there is limited attention given to this concern. Relatedly, what appears to have gone largely unnoticed in commentary on *Meads* is that the OPCA neologism is, in itself, inherently pejorative. No self-represented litigants *ever* reference the OPCA label (or pseudolaw) as a self-identifier.[65] Chapter 2 of this study will address this issue in further detail, and will also touch on a related issue: the *audience* of *Meads.* Given that *Meads* is at least partially directed towards the OPCA community, it is worth considering the way in which judicial rulings intersect with literary theory, and how a technical, lengthy, and elaborate decision like *Meads* stands to be *interpreted* by a wide range of readers—the judiciary, lawyers and legal scholars, and laypeople.

(c) The Inherently Insular and Esoteric Nature of the Legal System

A third and related issue of importance concerns the inherently insular and esoteric nature of the legal system. To many who are "outsiders" to the law, its procedures, operation, and principles are notoriously enigmatic and inscrutable. Conversely, those who are ostensibly 'experts' in the law—lawyers, judges, and those working in the administration of the legal system—are "insiders" to this world that outsiders find unsurprisingly alien. Yet this reality stands in stark contrast to the earlier-noted call for greater access to justice. Employing the sociological categories of "insiders" and "outsiders," chapter 3 of this study will delve further into this tension, and explore the way it impedes the legal system's ostensible pursuit of increased access to justice.

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[64] McRoberts, "Tinfoil Hats," *supra* note 34 at 642.

[65] A similar point could be made for the label "Detaxer"—regardless of whether the label is descriptively accurate, it is not one that litigants would employ as a self-identifier.

(d) The Judiciary's Inability to Delve into Philosophical Issues

A fourth and final area deserving of more attention relates broadly to political philosophy and the nature of the social contract. Interestingly, this is obliquely touched on in *Meads*, as Justice Rooke's ruling begins with an epigraph from *Leviathan*, Thomas Hobbes' famous work on the structure of society and legitimate government:

> *Where there is no common power, there is no law, where no law, no injustice. Force, and fraud, are in war the two cardinal virtues.* […]
>
> *The laws are of no power to protect them, without a sword in the hands of a man, or men, to cause those laws to be put in execution.* […]
>
> *And law was brought into the world for nothing else but to limit the natural liberty of particular men in such manner as they might not hurt, but assist one another, and join together against a common enemy.*[66]

What is curious about Rooke's invocation of Hobbes is that the remainder of *Meads* contains no elaboration on the citation, nor any discussion of its relationship to the class of litigants that Justice Rooke is dealing with in *Meads*. In a sense, it is prudent of Rooke to refrain from going too far down that rabbit hole. If he were to include in his reasons a sustained discourse on the justification for state authority—and more so *judicial* authority—he might inevitably have ventured into areas of political philosophy that could undermine the power and authority of the court. Thus, even though Justice Rooke *alludes* to social contract theory in quoting Hobbes, he ultimately does not delve into the topic in *Meads*. While this topic will not be canvassed in any great deal in this study, the spectre of it will resonate throughout.[67], and I will touch on it once more in the conclusion.

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[66] *Meads*, *supra* note 8.

[67] In part, this relates also to the role of the preamble in the *Charter*. As noted previously, a sustained discussion of the preamble goes beyond the scope of this study, though I will return to the importance of the topic in the conclusion. On a general level, however, I would suggest that for those who adhere to some form of monotheistic belief, the preamble is seen in a favourable manner, one that serves as something of a lubricant when it comes to acceding to the legitimacy of social contract and the authority of the state. The reason for this is that the introductory words of the *Charter* provide an ordinary monotheistic reader with the comforting impression—mistaken as it is—that the state itself recognizes a higher power, and recognizes its own place in a

CHAPTER 2 – MEADS AND THE TENUOUS NATURE OF JUDICIAL AUTHORITY

I. Authority, Judicial Decisions, and *Meads*

The function of authority is a mysterious phenomenon. Yet oddly enough, its *dys*function is perhaps less mysterious. In fact, in those instances of dysfunction one finds the most fertile ground upon which to better understand how authority *properly* functions. As Bruce Lincoln puts it, "the best way to study something like authority is not when it operates smoothly and efficiently, for its success in some measure depends on naturalizing itself and obscuring the very processes of which it is the product."[68]

To be sure, one could readily identify countless instances where authority fails to operate "smoothly and efficiently." But there is a particular site of authoritative dysfunction that I wish to examine in the realm of law. Specifically, I am interested in exploring the operation of judicial authority in connection to the *Meads* ruling.[69] Specifically, I wish to explore how aspects of the *Meads* decision, and the *reception* of the decision, that can tell us something about the tenuous nature of judicial authority.[70]

In pursuit of this inquiry, the following is comprised of four main parts. First, I will canvass some of the aspects on *Meads* that are most relevant to the issue of authority. In

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hierarchy of authority. At the same time, my observation here is admittedly antithetical to some of the discussion in this study. That is, I recognize that there are instances where the *opposite* occurs: certain litigants can attempt to co-opt the preamble in a way that disrupts the social contract, or subverts the operation of juridical authority. See, for example, *Gauvreau v Lebouthillier*, 2021 ABQB 172 [*Gavureau*].

[68] Bruce Lincoln, *Authority: Construction and Corrosion* (Chicago: University of Chicago Press, 1994) at 11 [Lincoln, *Authority*].

[69] *Meads*, *supra* note 8. In taking this particular tack, I am aware that the scope of this discussion is rather limited. I am not delving into other iterations or expressions of legal or judicial authority here, whether legislation, oral discussions between judges and other participants in the courtroom setting, speeches or talks by members of the judiciary, ritualistic practices in the courtroom setting, or even *oral* judicial decisions. All of these certainly form part of a broader discussion on legal authority, but will not be addressed here.

[70] I use the word "reception" here deliberately. What I am pointing to here is the field of literary theory concerned with how diverse readers interpret or make meaning from a literary text. See, for example, Terry Eagleton, *Literary Theory: An Introduction* (Minneapolis: University of Minnesota Press, 1983) at 54-90 [Eagleton, *Literary Theory*]. While I will touch further on the topic of reception theory further below, it is worth noting that it has proven especially fruitful in the field of religious studies, especially in connection to the interpretation of religious texts.

doing so, I will be highlighting and expanding on some aspects of the decision that were discussed in the previous chapter. Second, I will address the formation of *Meads*, in terms of its purpose and occasion. This part will also discuss the unconventional literary nature of *Meads*, and some implications that follow. Segueing from that, the third section will address some practical and theoretical challenges that *Meads* poses, giving consideration to how it has been understood and received by certain audiences. More specifically, this component investigation will invoke ideas related to reception theory, which focusses on the *reader's* role in literature.[71] Last, I will present a sort of synthesis of the preceding issues—namely the aims, genre, and reception of *Meads*—in an effort to demonstrate how and why judicial authority fails to resonate with the very group of litigants that is part of the intended audiences of the ruling.[72] This, in turn, will pave the way for chapter 3 of this study, which gives greater consideration to the esoteric nature of law, and the status of "insiders" and "outsiders" to the legal system.

II. The Significance of *Meads* and its Authoritative Utility

Comprised of 736 paragraphs and 159 pages, the length of Justice Rooke's ruling in *Meads* is perhaps one of its most distinctive features.[73] Much of its content, moreover, is unconnected to the fact scenario before the Court—as noted previously, the bulk of the decision is devoted to addressing a vexatious litigant concern that had become particularly endemic in the courts.[74] Nonetheless, while the focus of this study relates primarily to the more broad-

[71] As Eagleton summarizes, "reception theory examines the reader's role in literature," recognizing that "without him or her there would be no literary texts at all...For literature to happen, the reader is quite as vital as the author." Eagleton, *Literary Theory*, *supra* note 70 at 74.
[72] I am omitting any discussion of authority involving theories connected to psychology. While this is a discipline well worth considering in the context of the matters discussed here, it is beyond the purview of this study.
[73] In this chapter, I am sidestepping issues relating to the *authorship* of the decision. I recognize, however, that there is much to consider in connection to this issue, and will address it to some extent in chapter 3.
[74] Specifically, paragraphs 60-675 of the decision are essentially unrelated to the particular facts of the case.

ranging contents and implications of the decision, it is of course vital to not lose sight of the underlying facts and context of the decision. In other words, Justice Rooke's ruling did not arise out of a factual vacuum.

(a) The Underlying Divorce Action and the Litigation Strategies of Mr. Meads

The background to the *Meads* case involved Crystal Meads and Dennis Meads, who were in the midst of a divorce action. In this respect, at least, the fact scenario was routine and largely unremarkable, at least so far as courts are usually concerned. What distinguished the situation from many other divorce actions, however, was the conduct of Mr. Meads, who was self-represented in the matter. Over the course of the litigation, Mr. Meads had filed a number of "unusual documents"[75] that were muddling the progression of the divorce. Following from this, Mrs. Meads' legal counsel applied to have a case management justice appointed to the case.[76] Justice Rooke's ruling was issued in the wake of that application, and was in part aimed at reigning in Mr. Meads' obfuscating maneuvers, which were hindering the action.

Mr. Meads' tactics involved, first and foremost, submitting to the court that he "was not Dennis Meads, the 'corporate identity', but was present as Dennis Larry Meads, a 'flesh and blood man.'"[77] But this was only the tip of the iceberg when it came to Mr. Meads' unorthodox submissions. Going further, Mr. Meads articulated his peculiar understanding of the judicial structure, and how judicial authority ultimately derived from a higher theological authority, God:

> For the record, I, Dennis Larry Meads, and for the record a child of the almighty God Jehovah, and not a child of the state. For the lord and saviour Jesus the Christ is my spiritual advocate and in this instant matter at hand, and that God's laws rule supreme in my life and this court, and I, Dennis Larry Meads, being a flesh and blood man pray that the judge, you sir Mr. Rooke, Justice Rooke, and court follows this claim in God's law, and if they should they decide not to they should make the claim right now

[75] *Meads, supra* note 8 at para 11.
[76] *Meads, supra* note 8 at para 8.
[77] *Meads, supra* note 8 at para 13.

> that they are above God's law and prove beyond the breath they let out pray again that the almighty God, all of us and protect us all, will abide with us in his laws.[78]

While Justice Rooke indicated to Mr. Meads that he would be applying "the laws of Canada," Mr. Meads persisted in his commitment to an altogether different hierarchical structure, and suggested that the Court was in fact an admiralty court, meaning that its jurisdiction was limited to water, not land, and that Meads himself was a "freeman on the land."[79]

Yet to be sure, Mr. Meads's status as a freeman on the land did not mean that he was *rejecting* the operation of the law. Instead, he was simply insisting that the Court operate in accordance with *his* framing of the law, or rather, *God's* laws:

> But I do sir want to work with law, and not statutes and rules that have come up from man over time. I understand they work for the bulk of the people, but ... I'm representing myself and what I speak about I believe in. There are rules above man's rules, and God's laws is where your laws originated from, so let's go back to the Maximus [of the Law, i.e. the Bible], and deal with it as quickly as possible.[80]

In Mr. Meads' view, it was the Christian bible that was the "Maximus of the Law," and thus "the binding basis of all law."[81]

Needless to say, Mr. Meads' views were not shared by Justice Rooke. Moreover, Justice Rooke found Mr. Meads' tactics to be symptomatic of an increasingly pervasive and troubling phenomenon in the courts: the proliferation of what Justice Rooke referred to as Organized Pseudo-legal Commercial Arguments (OPCA). As noted earlier, the circumstances of Mr. and Mrs. Meads essentially functioned as an occasion to address this phenomenon, as Justice Rooke delivered a ruling oriented towards addressing various OPCA arguments,

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[78] *Meads, supra* note 8 at para 22.
[79] *Meads, supra* note 8 at para 24.
[80] *Meads*, *supra* note 8 at para 25.
[81] *Meads, supra* note 8 at para 33.

judicial responses to these arguments, and recommendations on how lawyers, judges, and even litigants ought to understand and respond to them.[82]

(b) The OPCA Phenomenon in Meads and its Relation to Judicial Authority

As noted earlier, *Meads* is a massive ruling in terms of its length. Most of this length relates to a discussion of the OPCA phenomenon and its various ideologies and strategies, which have been parsed in laudable and elaborate detail in the work of Donald Netolitzky.[83] As discussed in chapter 1, OPCA strategies run the gamut from perhaps-genuine misunderstandings of legal concepts to outlandish theories that seemingly defy logic. In sum, these strategies include practices such as distinguishing between an authentic and a 'strawman' persona, naming judges as "fiduciaries," unilaterally imposing fines on parties, and appealing to religious concepts and biblical texts.[84] What is important for the purposes of this chapter, however, are two items of note. First, it is vital to emphasize that Justice Rooke in fact *constructed* the OPCA designation and taxonomy. The significance of this lies in the fact that the OPCA neologism carries with it certain implications relating to the operation of judicial authority. Second, it is evident that appeal to religious concepts and biblical texts is, of course, a tremendously significant component of how OPCA litigants understand the concept of authority.[85]

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[82] With respect to the particular circumstances of Mr. and Mrs. Meads, it would seem that Justice Rooke's ruling had a beneficial impact. The denouement to Mr. and Mrs. Meads' divorce action appears to have been uneventful: following from the issuance of the ruling, Mr. Meads retained counsel, and "the divorce proceeding continued in a conventional manner." Netolitzky, "Family," *supra* note 50 at 974.

[83] See, for example, Netolitzky, "Family," *supra* note 50; Netolitzky, "History," *supra* note 30; Netolitzky, "Attack," *supra* note 50; Netolitzky, "Lawyers," *supra* note 50; Netolitzky, "Magic," *supra* note 50; and Netolitzky, "After the Hammer," *supra* note 21.

[84] *Meads, supra* note 8 at paras 417-550.

[85] I should note, however, that the topic of religious authority will only be given limited attention here. It is acknowledged that a sufficiently robust discussion of the issue requires, among other things, careful consideration of the *Charter* preamble's reference to the "supremacy of God." This is a persistently thorny issue for the judiciary, and will only be touched on briefly here. But it is categorically a topic deserving of much more sustained investigation in another study.

(c) The Creation of the OPCA Neologism

There is a pivotal aspect of *Meads* that is taken for granted. Prior to Justice Rooke's ruling, there existed no classificatory model that captured the kind of activity discussed in *Meads*. Accordingly, it is important to emphasize a point introduced in the previous chapter: Justice Rooke's descriptor, OPCA, was a neologism.[86]

The connection between *Meads* and the creation of the OPCA neologism is explicitly addressed by Justice Rooke in the opening paragraph of the ruling:

> As we shall see, while there is often a lack of homogeneity, and some individuals or groups have no name or special identity, they (by their own admission or by descriptions given by others) often fall into the following descriptions: Detaxers; Freemen or Freemen-on-the-Land; Sovereign Men or Sovereign Citizens; Church of the Ecumenical Redemption International (CERI); Moorish Law; and other labels—there is no closed list. In the absence of a better moniker, I have collectively labelled them as Organized Pseudolegal Commercial Argument litigants ["OPCA litigants"], to functionally define them collectively for what they literally are. These persons employ a collection of techniques and arguments promoted and sold by 'gurus' (as hereafter defined) to disrupt court operations and to attempt to frustrate the legal rights of governments, corporations, and individuals.[87]

What is clear from the outset, then, is that the OPCA label, and the taxonomy that flows from it, are legal constructs. This is an important consideration that I will return to later in this study. For the time being however, what is important to note is simply this: the OPCA neologism was created by Justice Rooke in the interests of organizing what had previously been a slipshod area of jurisprudence. And without doubt, this taxonomy has proven itself useful: the fact that *Meads* has been so frequently cited in vexatious litigant jurisprudence is in no small part a testament to how utilitarian the OPCA taxonomy is—at least from the perspective of the *law*.

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[86] As Netolitzky notes, "prior to *Meads* no standard label identified this litigation category. Many judges were unaware that what appeared to be an idiosyncratic litigant was instead an instance of a broader phenomenon." Netolitzky, "After the Hammer," *supra* note 21 at 1173.

[87] *Meads*, *supra* note 8 at para 1.

III. The Intention, Genre, and Language in *Meads*

Ordinarily, judicial rulings are occasioned by a particular set of facts placed before the court for adjudication. Even "reference cases" involve a court being asked for an advisory opinion on one specific legal issue or another. *Meads*, however, does not align with this traditional style of judicial rulings. In part, this relates to the lofty aims of the decision. Indeed, while the purposes of the ruling involved, in part, the determination of the application that had been filed by Mrs. Meads—her application for case management was the immediate occasion behind the issuance of the ruling—Justice Rooke explicitly acknowledged a broader motivation behind the decision:

> There is [another] reason for a broad-based decision and analysis. It so happens that Mr. Meads has provided a remarkable and well developed assortment of OPCA documents, concepts, materials, and strategies. These materials also illustrate particular idiosyncrasies that this and other Courts have identified as associated with the OPCA community and OPCA litigation. Phrased differently, Mr. Meads' materials and approach provide an ideal type specimen for examination and commentary, which should be instructive to other OPCA litigants who have been taken in by these ideas, opposing parties and their counsel, as well as gurus. Mr. Meads' submissions also make an excellent subject for a global review of the law concerning OPCA, the OPCA community and its gurus, and how the court, lawyers, and litigants should respond to these vexatious practices and the persons who advance and advocate these techniques and ideas.[88]

There is little doubt that this approach was, and is, a peculiar in jurisprudence. As John-Paul Boyd puts it, "the judgment in *Meads* is a treatise, a manifesto, and a cri de coeur addressing a certain sort of disaffected, maverick litigant which has been clogging up Canada's courts with contrived, pseudolegal arguments and irrational, histrionic demands for a number of years."[89] Comparably, Netolitzky views *Meads* as "a one-stop resource for courts facing persons who advance OPCA schemes. The goal was more than to simply collect and rebut pseudolaw, but also to provide a field guide to recognize these people, document and explain

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[88] *Meads*, *supra* note 8 at paras 53-54.

[89] John-Paul Boyd, "Alberta Associate Chief Justice Releases Dissertation on Maverick Litigants," CanLII Connects, online: <www.canliiconnects.org/en/commentaries/27647>. Similarly, Edwin Hodge identifies *Meads* as "an extensive dissertation on the tactics, beliefs, and legal practices of the Canadian [Sovereign Citizen] movement. Hodge, "Sovereign Ascendant," *supra* note 38 at 4.

the strange ways OPCA litigants operate."[90] More than that, Netolitzky suggests that *Meads* is perhaps best understood as what he calls a "review judgment":

> Outside its broad though traditional components, *Meads* operates as what might be called a 'review judgment.' That name relates to 'review articles' or 'review papers', a category of academic publications which collect and summarize previously published studies, rather than reporting on new facts, experimentation, or analysis…*Meads* is plausibly an early example of a new class of expert decision.[91]

There is definitely merit to Netolitzky's identification of *Meads* as a "review judgment."[92] At the same time, there are a number of implications that follow from this style of judicial decision. Not all of these are positive, a point that Alice Woolley and Jonnette Hamilton make clear:

> An unusual judgment like *Meads*, which is closer to an academic article on the OPCA phenomenon than to a traditional judicial decision, poses certain conceptual problems. It involves a judge taking a position on general concepts with application across a variety of cases without that position being necessary to the case that was decided. That gives a litigant some reason to perceive Justice Rooke as committed to that position in a way that a judge might not be if only having issued a more usual and restricted judgment.[93]

There are two fundamental issues arising from these remarks. The first of these concerns the judicial concept of bias, including the legal test for determining whether or not a judicial bias exists. The second issue relates to the public's perception of, and confidence in, the judiciary. While these are clearly interrelated, I believe that they should not be entirely conflated with one another—it is to this issue that I will turn to next.

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[90] Netolitzky, "After the Hammer," *supra* note 21 at 1168. Netolitzky also points out, however, that the ruling should not be viewed as a fully comprehensive account of OPCA activity in the courts, and estimates that "*Meads* only captured a little over a quarter of the potentially relevant jurisprudence." *Ibid*, at 1172.

[91] Netolitzky, "After the Hammer," *supra* note 21 at 1204-1205. It is worth noting here that *Meads* is not the only such instance of what Netolitzky would describe as a review judgment. On the contrary, Netolitzky places the *Unrau* ruling, mentioned in chapter 1, in the same category. See *Unrau*, *supra* note 17.

[92] To be clear, I think that Netolitzky is right to classify *Meads* and *Unrau* in a manner that distinguishes them from more 'traditional' judgments. In fact, the literary nature of *Meads* as a judicial ruling warrants a much deeper discussion, one that addresses issues relating to legal discourse, genre, and literary reception theory. See A Ferguson, "The Judicial Opinion as Literary Genre" (1990) 2:1 Yale JL & Human 201 [Ferguson, "Judicial Opinion"], and Richard Posner, Law and Literature: A Misunderstood Relation (Cambridge: Harvard University Press, 1988).

[93] Alice Woolley and Jonnette Watson Hamilton, "Consequences of being an OPCA Litigant?" (10 May 2013), *ABlawg*, online: <ablawg.ca/2013/05/10/consequences-of-being-an-opca-litigant/> [Woolley and Hamilton, "Consequences"].

(a) Meads, Legal Bias, and Perception of Bias

Giving further consideration to Woolley and Hamilton's remarks, I believe that the authors point to a concern that goes further than asking whether the *Meads* ruling exposes Justice Rooke, specifically, to a significant and ongoing risk of being found to possess a bias against OPCA litigants at *law*. On this front, I do not believe that Justice Rooke has encountered (or will encounter) much turbulence.[94] But bearing in mind the lengthy, meandering and pontificating nature of the *Meads* ruling, it is altogether different to ask whether the public *perception* of Justice Rooke has been altered on account of the *Meads* ruling. This, I think, is a distinct issue that warrants consideration. The Supreme Court addressed its gravity in *Therrien (Re)*:

> The judicial function is absolutely unique…the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law.[95]

Following in part from this, I would argue that there exists an important distinction between the *legal* presence of judicial bias and the public *perception* of judicial bias. To be sure, in every instance where a *legal* determination of judicial bias is found, one finds a concomitant *perception* of judicial bias. The reverse, however, does not hold. In other words, not every *perceived* instance of judicial bias reaches the threshold of establishing a judicial bias *at law*.

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[94] The Supreme Court test for judicial bias is set out in *Wewaykum Indian Band v Canada*: "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly." *Wewaykum Indian Band v Canada*, 2003 SCC 45, at para 60. The issue is also canvassed by in *Meads*, as Justice Rooke states: "OPCA litigants claim judicial bias, influence, or conspiracy. However, a litigant who advances that kind of claim has an obligation to provide positive evidence to support the alleged conspiracy" *Meads*, *supra* note 8 at para 292. I recognize, however, that there is some circularity in *citing Meads* as an authority on this issue of bias that has emanated from this very same ruling.

[95] *Therrien (Re)*, 2001 SCC 35 at paras 108, 110. See also *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11.

And for many, including lawyers and judges familiar with the operation of the law, this is a state of affairs that many might find acceptable. But it is not without pitfalls. Indeed, a *perceived* bias, irrespective of whether it constitutes a *legal* bias, can nonetheless undermine public confidence in the legitimacy, and hence authority, of the judicial system, and disrupt the state's ability to maintain the "rule of law."

I do not believe this to be an abstract or hypothetical concern. On the contrary, when it comes to the impact of *Meads*, there are a number of occasions where Justice Rooke's connection to the decision has led to him being identified as a tremendously biased judicial 'crusader.' One example of this can be seen in *ANB v Hancock*, where the applicant brought a motion to have Justice Rooke recuse himself on account of bias. Although the application was denied, it is worth noting the manner in which the applicant expressed his concern to and about Justice Rooke: "since you made the decision [in *Meads*] you have a sort of personal stake in upholding that decision, correct, and…I feel you might not be totally objective."[96] Irrespective of the applicant's inability to meet the legal threshold for establishing the presence of bias, his underlying concern about Justice Rooke's connection to *Meads*, and its possible impact on Justice Rooke's objectivity, is not entirely baseless.[97]

Other decisions further evidence the nefarious connection that some litigants draw between *Meads* and Justice Rooke. In *Rothweiler v Payette*, for example, Justice Rooke noted how the plaintiff, Brenden Rothweiler, leveled "much criticism at the *Meads v Meads* decision, of which I am the author. He calls it 'distasteful,' 'tyrannous,' and questions the

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[96] *ANB v Hancock*, 2013 ABQB 97 at para 26.

[97] For further case comment, see Woolley and Hamilton, "Consequences," *supra* note 93. Woolley and Hamilton's conclusion, which I believe is essentially correct, is that the legal test for judicial bias was not met, and Justice Rooke ought not be required to recuse himself in OPCA-tinged matters simply on account of his connection to *Meads*. At the same time, and as noted earlier, the unusual literary nature of *Meads* engenders certain conceptual problems. In this regard, while Justice Rooke's ruling is exquisite in its nuance and reflects painstaking research, the fulsome nature of the ruling only amplifies the perceived personal attachment that Justice Rooke might have to it. As Ferguson asserts, "judges…explain every action with an individual writing, *which then becomes the self-conscious measure of their performance*." Ferguson, "Judicial Opinion," *supra* note 92 at 202 (emphasis added).

decision's relevance since it was ordered in relation to a divorce action."[98] With respect to Rothweiler's latter point, at least, he is not entirely wrong. Netolitzky comments on the suggestion that *Meads* is largely *obiter*:

> *Meads* is sometimes characterized (or criticized) as a decision that is substantially *obiter dicta*. In a technical sense, that is arguably true, if one uses the definition that any finding of fact and law outside the rationale used to reach a decision, the *ratio decidendi*, is *obiter*, surplusage, and therefore may safely be ignored. That said, in Canada, judicial commentary outside the exact facts and law applied to dispose of a case does have a variable and contextual influence and effect.[99]

Setting aside the previously-noted challenges involved in distinguishing *ratio* from *obiter*,[100] I concur with Netolitzky, and would suggest that *Meads* cannot easily be disregarded as *obiter*. Nonetheless, criticisms along the lines of Rothweiler's touch at a thorny issue, and further evidence the unusual nature of *Meads* as a judgment.

In any case, returning to how litigants might *perceive* Justice Rooke's involvement in *Meads* as an indicator of judicial bias, one can find two other examples of this in more recent jurisprudence. In *Ubah v Canadian Natural Resources Limited*, the plaintiff viewed *Meads* as a sign that Justice Rooke believed "every self-represented litigant needs to be taught a lesson and punished…no matter what."[101] Comparably, in *R v Stephan*, the accused disagreed with earlier decisions of Justice Rooke, notably *Meads*, and viewed such rulings as evidence of bias against them:

> Justice Rooke had no interest in pursuing justice, but was simply advancing his political agenda to the detriment of the people he views as self

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[98] *Rothweiler*, *supra* note 12 at para 17.

[99] Netolitzky, "After the Hammer," *supra* note 21 at 1203-1204. See also "*Meads vs Meads* = Orbiter [sic] Dicta = Non-Binding Opinion" (5 May 2015), online: <member.suewrongdoers.com/meads-vs-meadsorbiter-dictanon-binding-opinion/>. Further, at least one litigant has expressly submitted to the Court that *Meads* is—or ought to be—treated as *obiter.* See *Crossroads-DMD Mortgage Investment Corporation v Gauthier*, 2015 ABQB 703 at para 22 [*Crossroads*], and *Gauthier v Starr*, 2016 ABQB 213 at para 25 [*Gauthier*].

[100] I am referring here to quote from Lord Asquith mentioned in the previous chapter: "The rule is quite simple: If you agree with the other bloke you say it is part of the *ratio*; if you don't you say it is *obiter dictum*, with the implication that he is a congenial idiot." Lord Asquith, "Some Aspects of the Work of the Court of Appeal" (1950) 1 Journal of the Society of Public Teachers of Law 350 at 359 .While the statement might appear glib or flippant on the surface, I would argue that there is some merit to Lord Asquith's view. However, a study of the relationship between *obiter* and *ratio* goes well beyond the scope of this study.

[101] *Ubah v Canadian Natural Resources Limited*, 2019 ABQB 692 at para 32. In *Ubah*, Justice Rooke declared the plaintiff a vexatious litigant, and made him subject to strict and global court access restrictions.

> litigants, detaxers, sovereign citizens, freemen or groups and individuals termed by himself as "OPCA Litigants" (Organized Pseudolegal Commercial Argument Litigants). This kind of bias has no place on the bench.[102]

While the position of the accused did not hold at law, an important point here still remains: the comprehensive and distinctive character of *Meads* carries with it some problematic implications, in terms of the resulting *perception* of Justice Rooke, at least in some quarters.[103] Furthermore, there is a polyvalent character to these implications. First, as evidenced above, the unusual nature of the *Meads* decision exposes Justice Rooke to increased allegations of judicial bias from certain litigants who are familiar with the ruling. Yet further to that, the unusual nature of Justice Rooke's decision occasionally places *other* members of the judiciary in the unenviable position of dealing with ancillary fallout from the ruling.[104] Put different, the unusual nature of the *Meads* ruling engenders a troubling by-product, as laypeople might be inclined to perceive the ruling as a judicial paragon of an oppressive legal system.

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[102] *R v Stephan*, 2019 ABQB 611 at para 32.

[103] See, for example, Edward Jay Robin Belanger, "Demand for Accommodation of Pat Hart a sworn officer of her Majesty," (23 July 2019) online: <www.youtube.com/watch?v=g5Bu8bSMhlg> [Belanger, "Demand For Accommodation"]. While this video was apparently directed to me, I have no connection to Mr. Belanger and have never communicated with him. To my knowledge, this video was occasioned by a chance encounter I had with an individual at the Edmonton courts in 2019. While I do not remember this individual's name, the topic of *Meads* came up, and I referenced my interest in the ruling. Seemingly, that individual had a connection to Mr. Belanger—within a month or so of that discussion, Mr. Belanger posted the above video (I thank Donald Netolitzky for reaching out to me to draw my attention to it). In any event, in this unsolicited Youtube video, Edward Jay Robin Belanger, a minister with the Church of the Ecumenical Redemption International, alludes to *Meads* in stating that "it would seem that Justice John Rooke, in league with many other judges in the province...have decided they get to violate their oaths. And they are doing so by slandering and smearing men and women that wish to exercise faith in Christ and the King James Bible by calling them conmen, King James Bible literalists, and fake Churches."

[104] In this regard, see, for example *Chutskoff v Bonora*, 2014 ABQB 389. In *Chutskoff*, one of the litigants provided written materials to the court in which he offered reflections on various commentary on SRLs and OPCA litigants. The court in *Chutskoff* noted that this litigant had included marginal handwritten notes that included remarks such as "Stupidity of professional response to problem they are responsible for creating," "SRL's treated with contempt for no reason," and "Biggest obstruction to access [to] Justice is Judicial misconduct." *Chutskoff* at para 77. See also *Harms v British Columbia (Attorney General)*, 2015 BCSC 1309, where one of the applicants "lapsed into…criticism and personal insults towards members of the judiciary, particularly Judge Birnie and Associate Chief Justice Rooke, when he lumped them in with…various conspirators, either as members or as working for the same goals as the conspiracy." *Harms*, at para 26.

In my view, all of this is symptomatic of an even more significant concern relating to the residual effect of *Meads*. Specifically, there is a sense in which some of *Meads'* target audience are persistently resistant to apprehending or absorbing the substance of the ruling. This, in turn, impacts how audiences perceive judicial authority. I shall turn now to these issues.

(b) Reception Theory and Judicial Decisions

While the above has discussed various aspects of what *Meads is* as a ruling, it is just as important to stress what it is *not*. Perhaps most notably, the *Meads* ruling does not subsist as part of an ongoing two-way dialogue with those most affected. This, of course, is the nature of judicial decisions, and is critically connected to the issue of authority. By the time a dispositive ruling is made, the time has long passed for litigants to engage in further dialogue with (or make submissions to) the judiciary. This is the curious but natural character of judicial discourse and authority. That is, while judicial decisions can form part of an ongoing dialogue between courts, lawyers, and legal academics, the people who stand to be most affected by any given ruling—litigants themselves—are eventually rendered mute. Their opportunity to participate in the dialogue ends once their submissions are made, and the authority of the law takes over.[105]

In the case of *Meads*, this point is especially acute, and extends even further. The ruling not only precludes further substantive submissions from Mr. Meads on the topic of "pseudolaw"; it is, moreover, a stern admonishment to an entire class of people who are not

[105] For the sake of simplicity, I am bracketing out any continued communication between litigants and the judiciary during the appeals process. To be sure, there is certainly some nuance to this issue. My point here is to emphasize the way in which a judicial decision is, so far as litigants are concerned, essentially a monologue, and not an invitation for further dialogue.

even party to the dispute between Mr. and Mrs. Meads. It is a clarion call to a wide audience, encouraging them to abandon a plethora of arguments that are ineluctably doomed to fail.[106]

In fairness, I do not think it is generally realistic or reasonable to expect anything more from the judiciary in this regard. Again, this is simply the nature of the system: a litigant does not enjoy a protracted role as a participant in legal discourse. On the contrary, for those who enter the system at all as litigants, their interactions with the judiciary are typically sporadic, discrete, and brief. Furthermore, they are almost entirely transactional. In other words, a litigant's entry into the system is occasioned specifically by a *pragmatic* interest, i.e. a litigant is involved in one particular situation or another that requires some form of judicial intervention. It is not premised on a litigant's *abstract* interest in the operation of the law, or in understanding or contributing to the ongoing generation or interpretation of legal principles.

Be that as it may, I believe that a case like *Meads* disrupts this traditional arrangement. And owing to the nature of this disruption, I would further suggest that the one-way dialogue is arguably problematic in terms of how it affects—and ultimately threatens to destabilize—the operation of judicial authority. The reasons for this destabilization are in part connected to the issue of *audience*, and who it is that encounters *Meads*. This is precisely the issue that I will turn to next.

(c) Empirical Readers, Encoded Explicit Readers, and Encoded Implicit Readers

In *Meads* (and in certain other jurisprudence, to be sure[107]), readers are faced with a daunting hermeneutic task. The challenge here relates not only to the length of the decision, but also its

[106] Some qualification of this statement is warranted. Interestingly, Justice Rooke actually throws down the gauntlet when it comes to those that he identifies as "OPCA gurus": "if you believe what you teach is true, then do not encourage others to be the ones to execute those concepts in the courts. Present your ideas and concepts yourselves. You will get a fair hearing, and as detailed a response as your ideas warrant." *Meads*, *supra* note 8 at para 674.

[107] See, for example, *Unrau*, *supra* note 17.

content. As a kind of "review judgment" that Netolitzky describes, the rhetoric in *Meads* is not crafted to be easily digestible to laypersons, despite being expressly *aimed* at an audience that lies well beyond the litigants who are parties to the case. This tension—between the interpretive challenge of the decision and the target audiences of the decision—is one that has an incontrovertible impact on the way readers are prone to frame the authoritative status of the decision. In an effort to explicate this tension, it is worth considering some specific concepts drawn from literary theory.

One dimension of this tension concerns the identity of the *readers*, and their positionality as interpreters of the decision. While the categories in reader-reception theory are to some extent varied, I will consider three of them here: the 'ideal' or 'informed' reader, the empirical reader, and the 'intended' or 'implied' reader. Terry Eagleton discusses some of what characterizes an 'ideal reader':

> The kind of reader whom literature is going to affect most profoundly is one already equipped with the 'right' kind of capacities and responses proficient in operating certain critical techniques and recognizing certain literary conventions; but this is precisely the kind of reader who needs to be affected least. Such a reader is 'transformed' from the outset, and is ready to risk further transformation just because of this fact. To read literature 'effectively' you must exercise certain critical capacities, capacities which are always problematically defined; but it is precisely these capacities which 'literature' will be unable to call into question, because its very existence depends on them.[108]

Without doubt, Eagleton's views are entirely applicable to legal literature, and a ruling such as *Meads*. Yet to illustrate the relevance of the point here, I would draw from another theorist, Stanley Stowers, who addresses the remaining categories, the empirical reader, and the intended or implied reader.[109]

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[108] Eagleton, *Literary Theory*, *supra* note 70 at 80. Alternatively, as Stanley Stowers puts it, an ideal reader possesses the "assumptions, knowledge, frame of reference, and horizon of expectations [that the text] assume[s] in order to be well or fully understood." Stanley Stowers, *A Rereading of Romans: Justice, Jews, and Gentiles* (New Haven: Yale University Press, 1994), at 21-22 [Stowers, *A Rereading of Romans*].

[109] Stowers uses slightly different terminology, referencing the empirical reader, the "encoded explicit reader" (i.e. the intended reader) and the "encoded implicit reader" (i.e. the ideal reader). I would further add that while Stowers employs his typology specifically in the context of biblical scholarship, his typology aligns with literary theory broadly, and most certainly has far-reaching applicability, including application to the area of law.

As described by Stowers, the empirical reader refers simply to *any* reader of work. With this category, there is no concern over whether or not the author intends or anticipates that the reader will interpret the work. Nor does it particularly matter whether the reader is more or less suited to being 'transformed,' as Eagleton puts it, by the work. An empirical reader could, then, be someone who is among the author's *intended* audience. On the other hand, she might not be an intended reader. Ultimately it does not matter: an empirical reader is simply *any* person who elects to read the work of the author.[110]

The remaining category, the intended or implied reader, refers to an audience that is contemplated by the author. This audience may be expressly referenced or signaled in the text, though in some instances, the intended reader is *not* explicitly identified in the text. Notably, Stowers suggests that one "normally expects continuity between the [intended] and [ideal] reader."[111] The reason for this, of course, is that an author would ordinarily assume that her intended audience possesses the hermeneutic capacity to generate a reasonable interpretation of the work. In other words, an author would usually anticipate that an intended reader is capable of producing "a number of different valid interpretations…[moving] within the 'system of typical expectations and probabilities' which the author's meaning permits."[112]

This leads to the heart of one key problem in *Meads*. The purveyors of "pseudolaw" are part of Justice Rooke's intended audience. Yet paradoxically, they are not his *ideal* readers. In fact, the ideal reader of *Meads*, i.e. one intimately familiar with the operation of the law, could not be further away from an intended reader contemplated in *Meads*: the purveyor of pseudolaw tactics. Thus, the judgment is incongruously generated *for* this audience, yet seemingly incapable of being effectively *interpreted by* this very same audience

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[110] Stowers, *A Rereading of Romans*, *supra* note 108 at 21-22.
[111] Stowers, *A Rereading of Romans*, *supra* note 108 at 22.
[112] Eagleton, *Literary Theory*, *supra* note 3 at 70. See Ed Hirsch Jr, *Validity in Interpretation* (Connecticut: Yale University Press, 1967).

(at least in the eyes of the law). Put different, there is a disconnect between the intended readers or audience, and that same audience's capacity as ideal readers.

In stating this, however, let me be clear: I am by no means suggesting that there is any kind of intellectual shortcoming or deficiency on the part of this audience identified in *Meads*. The state of affairs is much more nuanced than that, and I will return to this issue in the next chapter. Rather, what I mean to suggest is this: the interpretive horizon of these intended readers precludes them from being ideal readers that would best interpret Justice Rooke's ruling.[113] But again, this interpretive horizon does not imply an inherent lack on the part of the reader. On the contrary, it is simply the way in which this audience forms *any* understanding of the world whatsoever. This aligns with Hans-Georg Gadamer's thesis concerning the "positivity of prejudice"—that is, the idea that our biases are integral to our ability to formulate any cogent understanding whatsoever:

> It is not so much our judgments as it is our prejudices that constitute our being. This is a provocative formulation, for I am using it to restore to its rightful place a positive concept of prejudice that was driven out of the linguistic usage by the French and the English Enlightenment. It can be shown that the concept of prejudice did not originally have the meaning we have attached to it. Prejudices are not necessarily unjustified and erroneous, so that they inevitably distort the truth. In fact, the historicity of our existence entails that prejudices, in the literal sense of the word, constitute the initial directedness of our whole ability to experience. Prejudices are biases of our openness to the world. They are simply conditions whereby we experience something—whereby what we encounter says something to us.[114]

Following from this, I would suggest that many purveyors of "pseudolaw" possess particular prejudices, in the Gadamerian sense, that inhibit their ability to produce "valid" interpretations of *Meads*. Conversely, those familiar with the critical techniques and literary

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[113] I adapt the phrase "interpretive horizon" from Hans-Georg Gadamer (who in turn derives the notion from the work of Martin Heidegger). See Hans-Georg Gadamer, *Truth and Method*, 2nd ed, trans Joel Weinsheimer and Donald G Marshall (New York: Continuum, 1999) [Gadamer, *Truth and Method*].

[114] Hans-Georg Gadamer, *Philosophical Hermeneutics*, ed. and trans. David E. Linge (Berkeley: University of California Press, 1976) at 9. At the risk of oversimplification, Gadamer's thesis here is somewhat akin to the sociological notion of "framing," which denotes "'schemata of interpretation' that enable individuals 'to locate, perceive, identify, and label' occurrences within their life space and the world large." David A. Snow, E. Burke Rochford, Jr., Steven K. Worden and Robert D. Benford, "Frame Alignment Processes, Micromobilization, and Movement Participation," *ASR* 51 (1986): 464.

connections of legal writing—lawyers, judges, or other legal experts proficient in operating certain critical techniques and recognizing certain literary conventions—are better positioned to be 'transformed' by the text. Yet as Eagleton notes, 'this is precisely the kind of reader who *needs* to be affected least.'[115]

Again, these observations might appear arrogant, elitist, and pejorative. They are neither intended that way, nor do I believe that they ultimately are. On the contrary, I would suggest that if *Meads* indeed fails to convey its message effectively to vexatious litigants, at least some fault lies with the author of the ruling. The reason for this is that the unusual literary genre of *Meads*—its status as a "review judgment"—is antithetical to fostering effective communication with the members of the audience who are purveyors of "pseudolaw." Relatedly, the *Meads* ruling contains certain characteristics or rhetorical devices that only serve to further alienate readers holding any affinity to "pseudolaw." I will address three of those characteristics here, though this issue will also be canvassed, from a social-psychological perspective, in the next chapter.

(d) The Rhetorical Incomprehensibility of Meads

First, *Meads* exhibits one entirely *usual* characteristic of jurisprudence in terms of its dense and meandering style. As Matt Keating notes, "legal drafting is not reputed for its clarity. In its traditional form—known disparagingly as *legalese*—it is overblown, timid, homogenous, and obscure."[116] In my estimation, *Meads* possesses all of these qualities, with the exception of timidity—*Meads* is most certainly bold. But it is definitely not easily accessible to the

[115] Emphasis added. To be sure, I hardly intend to neglect lawyers, judges, and legal experts as being *part* of Justice Rooke's intended audiences. As noted earlier, there is no doubt that the ruling was directed partially to other members of the judiciary, to offer them guidance in dealing with litigants whose conduct exhibits OPCA indicia. And insofar as the ruling was directed in part to a *judicial* audience, there can be little doubt that these readers have been profoundly affected, or transformed. See Netolitzky, "After the Hammer," *supra* note 21, at 1187.

[116] Matt Keating, "On the Cult of Precision Underpinning Legalese: A Reflection on the Goals of Legal Drafting," (2018-2019) 18 Scribes J Leg Writing 91 at 91.

layperson. A paragon of judicial economy it is not: it is chock-full of references to case law, quotes from various cases, and technical legal jargon. All of these are normal features of judicial writing. They are also ordinarily found in law review articles. Where they are much less fitting, however is in a text that *aims* in part to persuade an audience unfamiliar with the esoteric stylings of conventions of legal writing.

Relatedly, the incomprehensibility of the decision has another unfortunate affect on those unfamiliar with technical jargon: it diminishes the authoritativeness of the text. Admittedly, this is the opposite of what one might ordinarily expect. In some cases, as Michael Huemer writes, "the very incomprehensibility of the law confers an air of sophistication and superiority on both the law and the lawmakers. People tend to feel respect for things they cannot understand, as well as for the people who deal with those things."[117] While I think that there is merit to this view in many cases, it is *not* how the "incomprehensibility of law" functions in this particular case. Rather, we must bear in mind that the purveyors of pseudolaw already possess a level of skepticism or distrust in the law and the judiciary. As such, that audience would be inclined to interpret the rhetorical style of the *Meads* ruling as a sign of the Court's status as what Roderick Kramer calls an "informational intimidator," i.e. an authority figure who "always [has] an abundance of facts, and intentionally or unintentionally invoke[s] them in ways that suppress opposition."[118] I will return to this topic to some extent in the next chapter, as it relates also to the topic of "insiders" and "outsiders" to the law.

(e) The Pejorative Tone of Meads

[117] Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (New York: Palgrave MacMillan, 2013), at 121 [Huemer, *Political Authority*].
[118] Deborah Rhode, *Leadership for Lawyers*, 3d ed (New York: Wolters Kluwer, 2020) at 51. See Roderick Kramer, "The Great Intimidators," *Harvard Business Review* (February 2006) at 94 [Kramer, "Intimidators"].

Second, while *Meads* purports to be aimed in part at persuading advocates of "pseudolaw," it also contains a liberal amount of inflammatory or pejorative language directed at that very same audience. Jonnette Watson Hamilton and Alice Woolley identify some of this language, particularly as it is directed at Mr. Meads:

> 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). [119]

Hamilton and Woolley go on to rightly note the risks associated with this sort of language in a judicial ruling:

> [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.[120]

This last assertion by Hamilton and Woolley is of critical relevance. In some places, Justice Rooke's acerbic tone risks further alienating, or 'other-ing' OPCA litigants to such a radical degree that their rejection of judicial authority becomes only more deeply entrenched and ossified. Indeed, further evidence of this is found in Justice Rooke's pejorative identification and description of OPCA "gurus":

> [T]he concepts discussed in these Reasons are frequently a commercial product, designed, promoted, and sold by a community of individuals, whom I refer to as "gurus." Gurus claim that their techniques provide easy rewards—one does not have to pay tax, child and spousal support payments, or pay attention to traffic laws. There are allegedly secret but accessible bank accounts that contain nearly unlimited funds, if you know the trick to unlock their gates […]

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[119] Jonnette Watson Hamilton & Alice Woolley, "What Has *Meads v Meads* Wrought?" (8 April 2013) ABlawg, online: <ablawg.ca/2013/04/08/what-has-meads-v-meads-wrought/> ["What Has *Meads* Wrought"].
[120] "What has *Meads* Wrought," *supra* note 119.

> And all these "secrets" can be yours, for small payment to the guru.[121]

While the OPCA 'secrets' are most assuredly illegitimate in the eyes of the law, Justice Rooke's invective in this passage only functions to intensify the animosity between so-called OPCA litigants and the judiciary. Moreover, the identification of "gurus," and their purported 'duping' of individuals, is similarly inflammatory.[122] Indeed, some individuals have taken great exception to the label, and to the methods associated with it. For example, Freemanist Dean Clifford suggests that Justice Rooke's identification and description of gurus is merely a "slander technique."[123] Moreover, he vehemently denies charging money to anyone who consults him, noting "I have yet to charge anybody a dime, ever, for anything I've done…I've never in my life told somebody I'm not going to help you unless you give me some money."[124] In this regard, Clifford is hardly alone. Edward Jay Robin Belanger makes a similar claim, insisting that he does not seek compensation from those who consult him for advice about the law.[125]

(f) The Derisive Nature of the "Pseudolaw" and "OPCA" Labels

The third and final point segues from the above concern about tone. As alluded to earlier in this study, what appears to have gone largely unnoticed in commentary on *Meads* is that the OPCA neologism, and the terms "pseudolaw" and "pseudolegal" are themselves inherently pejorative. They are epithets. They are not descriptors that self-represented litigants *ever* use as self-identifiers. On the contrary, since *Meads*, there have been a number of instances where litigants have strenuously denied being advocates of "pseudolaw," or OPCA

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[121] *Meads*, *supra* note 8 at paras 73-74.

[122] Justice Rooke notes that his reasons are partially intended for those "who have been taken in/duped by gurus." *Meads*, *supra* note 8 at para 6.

[123] WorldFreemanSociety, "Dennis Larry Meads – Freeman Alberta – Dean Clifford discusses" (4 October 2012), online: <www.youtube.com/watch?v=mx4nqNuH2QE> [WorldFreemanSociety].

[124] WorldFreemanSociety, *supra* note 123. Curiously, Clifford acknowledges that even though he does not *charge* people for his advice, he has "had people give [him] a couple hundred bucks."

[125] See Belanger, "Demand For Accommodation," *supra* note 103.

litigants.[126] The reason for this is straightforward enough. If nothing else, what *any* empirical reader of *Meads* will glean from the decision is this: association with pseudolaw, or the OPCA label, portends negative judicial results. For that reason alone, these are labels with which no litigant wishes to be associated with.

This point is also evidenced in an incredibly shrewd move made by Frank O'Collins, who, post-*Meads*, appropriated the OPCA label and turned it on its head:

> A recent 185 page judicial decision from the 18th September 2012[…]concerning an acrimonious divorce in Edmonton, Canada has confirmed the inherent danger to the sustainable future of society of so called "Organized Pseudo-Lawful Commercial Arguments" or "OPCA" proffered by acolytes and advocates of the more sophisticated and complex "Organized Pseudo-Lawful Commercial Architecture" to which such arguments by definition must belong.
>
> While the formal 736 paragraph "Reasons for Decision" by Associate Chief Justice J.D. Rooke ("Justice Rooke") is full of presumptions, suppositions, inaccuracies and gross fallacies, the document nonetheless may herald a milestone in identifying a new way in which debate and discussion concerning jurisdiction, law and procedure may unfold – specifically the admission that certain "OPCA" structures exist masquerading as legitimate argument and law, yet having no validity except by force.[127]

O'Collins alters the OPCA neologism, or rather creates *another* neologism, with the notion of "Organized Pseudo-Lawful Commercial Architecture." Under this model, it is the *judiciary* and the *legal system* who are identified as proffering OPCA tactics. This ingenious reconfiguration of the OPCA label, which clearly casts the legal system as the villain, evokes the ubiquitous pop-culture Spider-Man-pointing-at-Spider-Man meme depicted below.

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[126] See Netolitzky, "After the Hammer," *supra* note 12 at 1196; *Holmes v R,* 2016 FC 918 at para 22 [*Holmes*]; *Crossroads*, *supra* note 99 at para 22; and *Steinkey v R*, 2017 FC 12 at para 5 [*Steinkey*].

[127] Frank O'Collins, "OPCA Explained — Why a Most Recent Opinion by the Queen's Bench in Canada Exposes the Secret Bar Guilds as the Most Radical and Dangerous Anti-Social and Anti-Law Group in the World" (2 October 2012), online: <nesaranewsnation.files.wordpress.com/2015/02/2015-v-2-frank-ocollins-america-the-sea-of-souls.docx> [O'Collins, "OPCA Explained"].

Figure 1 - Spider-Man (1967), episode "Double Identity"
(source: https://knowyourmeme.com/memes/spider-man-pointing-at-spider-man/photos/page/2)

While the reconfiguration articulated by O'Collins may to some extent be relegated to the realm of parody, it nonetheless substantiates the immediacy with which lay readers of *Meads* realized that the OPCA acronym was an inherently pejorative one. It also points to a level of hermeneutic creativity in terms of turning the derisive acronym on its head and applying it to the law, i.e. the very system that constructed the acronym in the first place. In any event, it is clearly sensible that litigants have consistently been loath to associate themselves with the label, and invariably insist that their tactics—whatever they might involve—do *not* fall under the OPCA category as articulated by Justice Rooke.

IV. Judicial Authority Undermined

All of these aforementioned features of *Meads* have the unfortunate effect of undermining the court's authority. From a theoretical perspective, this can be understood in a few ways. First,

it is worth taking into consideration a couple of notions of authority: executive authority and epistemic authority. As defined by Richard De George, executive authority is "the right or power of someone (X) to do something (s) in some realm, field, or domain (R), in a context (C)."[128] From this definition, one can quickly affirm its application to the operation of the legal system, in varied iterations, in both the legislative and executive branches. For our immediate purposes here, it is evident that the courts appear, at least, to enjoy a position of executive authority. But this is not all. Another notion of authority is sometimes referred to as epistemic authority, referring to a level of expertise or knowledge that a person possesses (or appears to possess, at least). This aligns with what H.L.A. Hart describes as "theoretical authority":

> To be an authority on some subject matter a man must in fact have some superior knowledge, intelligence, or wisdom which makes it reasonable to believe that what he says on the subject is more likely to be true than the results reached by others through their independent investigations, so that it is reasonable for them to accept the authoritative statement without such independent investigation or evaluation of his reasoning.[129]

When it comes to the judiciary (along with others professing expertise in the legal system), it is not *only* the case that the judiciary purports to possess executive authority, but *also* epistemic authority. In other words, courts, or more precisely judges, have a level of expertise, or knowledge of the law, that one might say supplements, or even conditions their status as executive authorities.

This, however, is only one part of the equation. The operation of authority, whether executive or epistemic, does not occur in a vacuum. What is fundamentally important in its effective operation is the role of the audience, or those who *acknowledge* those in authority. The significance of this is pointed to by Gadamer, who provides the following insight:

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[128] Richard T. De George, *The Nature and Limits of Authority* (Kansas: Kansas University Press, 1985), at 17 [De George, *The Nature and Limits*].
[129] HLA Hart, "Commands and Authoritative Legal Reasons," in *Authority*, ed. Joseph Raz (Oxford: Basil Blackwell Ltd., 1990) at 108 [Hart, "Commands"].

> [T]he authority of persons is based ultimately, not on the subjection and abdication of reason, but on an act of acknowledgement and knowledge—the knowledge, namely, that the other is superior to oneself in judgment and insight and that for this reason his judgment takes precedence, i.e., it has priority over one's own.[130]

Applied to *Meads*, the problem here lies in the fact that those identified by Justice Rooke as OPCA litigants are highly resistant to accepting that the court possesses superior judgment or insight. On the contrary, the rhetorical devices employed by Justice Rooke in *Meads* would appear to have an opposite effect, entrenching the view that judicial rulings do *not* have precedence. In other words, Justice Rooke's tack in *Meads* has an unfortunate side-effect on certain audiences: it undermines the judiciary's executive *and* epistemic authority.

Taking this notion further, it is worth returning to Lincoln, who asserts the concept of authority in general "is best understood in relational terms as the effect of a posited, perceived, or institutionally ascribed asymmetry between speaker and audience that permits certain speakers to command not just the attention but the confidence, respect, and trust of their audience, or—an important proviso—to make audiences act *as if* this were so."[131] In Lincoln's framework, the role of the audience is again critical—indeed, the audience has an integral role in the identification of the "ascribed asymmetry" that Lincoln notes.

In the case of *Meads*, the problem again lies in the judiciary's inability to command "the confidence, respect, and trust" of the class of litigants Justice Rooke's ruling targets. On the contrary, the pedantic and occasionally derisive nature of the ruling only deepens the fault lines, and fails to foster any level of trust in the judicial system in the minds of those who already possess a deeply ingrained aversion to judicial authority.

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[130] Gadamer, *Truth and Method*, *supra* note 113 at 281. Gadamer's articulation of authority here aligns with what HLA Hart describes as "theoretical authority." See Hart, "Commands," *supra* note 129.

[131] Lincoln, *Authority*, *supra* note 68 at 4. In this regard, Lincoln's views share a sentiment similar to De George, who observes that the analysis of epistemic authority involves "defining an epistemic authority in terms of those for whom he is an authority...It emphasizes the relation of an authority to those for whom he is an authority, and so it underlines the functional aspect of being an authority." De George, *The Nature and Limits*, *supra* note 61 at 27, emphasis added.

Following from the above, perhaps we are left to acknowledge a lamentable reality, namely, that *Meads* sets out to accomplish a task that the judiciary is simply not well-equipped to engage in: sustained, persuasive dialogue, aimed at fostering greater belief or trust in judicial authority. In many respects, such an aim is beyond the judiciary's capacity. Given this, I believe that we must locate a different approach if we wish to make meaningful progress in transforming the views of OPCA litigants. At the same time, it is crucial to recall that *Meads* only *partially* targeted OPCA litigants as an audience. Its other audiences, most notably judges, lawyers, and legal experts, have unequivocally drawn benefit from the decision.[132] Yet this, too, only attests to what seems to be an inescapable dichotomy—between those *familiar* with the legal system, on the one hand, and those who find it rather quite *alien* on the other. This dichotomy, which I will reflect on with reference to the sociological categories of "insider" and "outsider," forms the subject the next chapter.

[132] In addition, Mr. and Mrs. Meads also benefited from the ruling, given that Mr. Meads subsequently abandoned his deployment of vexatious arguments.

CHAPTER 3 – INSIDERS AND OUTSIDERS IN THE CANADIAN LEGAL SYSTEM

A little knowledge is a dangerous thing, and that's no more evident than when you see a self-represented litigant in court, relying on some arcane point of law that she Googled, without realizing why it doesn't actually help her. Or without noticing that everyone else in the room is getting frustrated at the waste of time." – the Right Honourable Richard Wagner, P.C., Chief Justice of Canada[133]

I. Legal Expertise, Self-Represented Litigants, and the Vexatious Litigant "Problem"

Through the lens of *Meads*, the previous chapters have discussed various aspects of a problematic tension in Canadian law. On a general level, this is a tension between fostering "access to justice" for SRLs, on the one hand, and facing, on the other, the practical challenges that SRLs experience in navigating an esoteric system that they frequently do not understand.

In fact, for those litigants who cannot afford to seek 'expertise' from lawyers, SRLs are left with little alternative: rather than appealing to expert legal authorities (i.e. lawyers), SRLs are essentially compelled to try to become experts themselves.[134] This approach to the notion of expertise is rather inconsistent with how we generally approach the concept in society:

> The reason we consult lawyers, doctors, architects, and engineers, is that we have to rely upon their advice on matters about which we lack knowledge. In general, an appeal to authority is relevant whenever the following two conditions are met: (1) we lack information or experience that is needed to make a reasonable decision, and it is difficult or impossible on the matter in question to obtain it directly for ourselves; and (2) the authority appealed to is entitled to authoritative status.[135]

Put in terms of the concept of authority, as addressed in the previous chapter, people tend to appeal to *epistemic* authority on occasions where the two above-noted conditions are met. In

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[133] The Right Honourable Richard Wagner, "Access to Justice: A Societal Imperative," On the occasion of the 7th Annual Pro Bono Conference Vancouver, British Columbia (4 October 2018), online: <www.scc-csc.ca/judges-juges/spe-dis/rw-2018-10-04-eng.aspx?pedisable=true> [Wagner, "Access to Justice"].

[134] As noted previously, I acknowledge that I have set up the dichotomy in a way that is not entirely comprehensive. Specifically, I am omitting the role of paralegals or other actors who might act as intermediaries between the legal system and individuals trying to engage with that system.

[135] William Hughes, Jonathan Lavery, and Katheryn Doran, *Critical Thinking: An Introduction to the Basic Skills* (London: Broadview Press, 2010) at 157.

particular, when it comes to dealing with contentious legal matters, or litigation, the prospect of appealing to a lawyer's expertise aligns entirely with how we tend to view expertise and authority in society. The access to justice model, however, fails to align with how we generally understand and appeal to expertise.

But the problem extends even further. Enabling more widespread access to the legal system also brings with it increased risk of *abuse* of that system, as we have seen from the *Meads* ruling. Indeed, *Meads* was occasioned in part by a judicial concern over vexatious litigants who persistently initiate or continue with proceedings that have already been determined, or advance arguments that are entirely devoid of merit.[136] As Justice Yves-Marie Morissette of the Quebec Court of Appeal notes, "abnormally belligerent and obdurate litigants only account for a very small percentage of parties who go to court in person without counsel. But they are a real and threatening burden for other parties and for all stakeholders in the administration of justice."[137] As evident in *Meads*, vexatious litigants, including of course the category of OPCA litigants, are typically portrayed with varying levels of derision by the judiciary. In some instances, descriptions of these litigants are accompanied with diagnoses of what ails them, and how they might best be dealt with.[138] Justice Morissette, for example, argues that these litigants often exhibit signs of querulousness, and suggests the following:

> The best *ex ante* solution would likely be a psychiatric treatment (probably a period of psychotherapy) sought by the subject and which would enable him to recover from the borderline personality disorder associated with his vexatious behaviour. But such a treatment does not exist at the moment. So, in the court system, legal rules must take over to deal with this reality, even though such rules are, inevitably, a poor substitute

[136] On the topic of what constitutes "vexatious" conduct, I would again note that there is nuance to this issue. See for example, *Jonsson*, *supra* note 14 at paras 38 and 85.
[137] Morissette, "Querulous," *supra* note 10 at 266.
[138] While the phrase "vexatious litigant" is more or less intended to *include* those referenced in Justice Rooke's definition of "OPCA litigant" discussed in the previous chapters, I have some aversion here to reliance on the phrase "OPCA litigants." Some of my concerns in this regard have been addressed previously, but I will address the topic in more detail further below.

> for genuine, individualized, and subjective cure, and remain for the most part *ex* post."[139]

Relatedly, Donald Netolitzky remarks:

> Psychiatric investigation of Freeman and Sovereign Citizens has concluded adherence to pseudolaw conspiracies is an expression of extreme political beliefs, reinforced in small introspective social communities. However, the peculiar formulaic expression of these ideas mimics delusion. That has resulted in misdiagnosis of these persons as mentally ill."[140]

The views of Morissette and Netolitzky have merit. But in what follows, I wish to partially turn this discourse on its head, and engage in an unconventional analysis of the relationship between the legal system and vexatious litigants. To be clear, I do *not* intend to argue that vexatious litigants exhibit a tack that is laudable when it comes to engaging the law. Nor do I generally think that their arguments or interpretations of law are compelling, for the most part.

What I would argue, however, is that the law itself is also partially culpable for this unsatisfactory state of affairs. In this regard, I would suggest that an interdisciplinary analysis—drawing not just from law, but from realms such as religious studies, social psychology, and philosophy—can serve to demonstrate that the law's treatment of vexatious litigants often involves a problematic "othering" of these litigants that results only in further alienation between the two sides. Put differently, I think that an implicit (and sometimes even *explicit*) epistemological arrogance underlies many encounters between the law and vexatious litigants. Accordingly, my aim here in this chapter is to highlight some ways in which the

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[139] Morissette, "Querulous," *supra* note 10 at 302. While the topic cannot be explored here, there is much to think about when it comes to the topic of vexatious litigants and underlying psychological conditions. Stephen Kent, for example, suggests that "without pushing the question of mental health too far, suffice it to say that psychiatry's Diagnostic and Statistical Manual (DSM) V includes behavior characteristics of some Sovereign Citizens, Freemen, and other OPCA litigants." Kent, "Freemen," *supra* note 38 at 11. See also Jennifer Pytyck and Gary A Chamowitz, "The Sovereign Citizens Movement and Fitness to Stand Trial," (2013) 12 Int J Forensic Ment Health 149; Benjamin Lévy, "From Paranoia Querulans to Vexatious Litigants: A Short Study on Madness between Psychiatry and the Law (Part 1)" (2014) 25 History of Psychiatry 299; and Benjamin Lévy, "From Paranoia Querulans to Vexatious Litigants: A Short Study on Madness between Psychiatry and the Law (Part 2)" (2015) 26 History of Psychiatry 36.

[140] Netolitzky, "After the Hammer," *supra* note 21 at 1174.

relationship between vexatious litigants (and SRLs broadly) and the judiciary involves critical observations on *both* sides: the litigants, or "outsiders" to the legal system on one side, and the judiciary and legal experts, or "insiders" to the legal system on the other.[141]

II. The Insider and Outsider Problem

I have very deliberately introduced a framework that identifies vexatious litigants as "outsiders," and the judiciary as "insiders." Yet prior to looking at the *implications* of these designations, I should first acknowledge that this identification of the two sides might on the surface seem mistaken, or fundamentally backwards. Indeed, it is vital to provide some justification for my unconventional labelling of the two sides.

My identification of the two sides is founded on two chief considerations. First, I believe that Stephen Kent is correct in noting that "among the most extreme and sometimes violent of the antigovernment groups are ones variously called Freemen or Sovereign Citizens [i.e. OPCA litigants], all of whose adherents believe that existing government is illegitimate and holds no legal authority over them."[142] I believe that this is essentially true. But this state of affairs also involves a deep irony, or paradox. While vexatious litigants often (though not always) possess anti-state or anti-authoritarian sentiments, their legal clashes with the state always occur *within* the system that these litigants eschew. Consequently, even by simply participating in that system, vexatious litigants tacitly (but no doubt reluctantly) accede to the legitimacy of the very same structure to which they are ideologically opposed.[143] The paradox here is thus apparent: while some vexatious litigants "argue that the

[141] For the sake of brevity, I will simply refer to the "judiciary" going forward in connection to my discussion of insiders and outsiders. Yet to clarify, I would be inclined to include a *variety* of people as insiders to the legal system—the judiciary, legal experts or academics, lawyers, and court officers would all be included under the insider umbrella.

[142] Kent, "Freemen," *supra* note 38 at 1.

[143] While this irony or paradox is worth noting in the context of this discussion, I by no means intend to suggest that this observation is novel. For example, Edwin Hodge recognizes that "anti-government sentiment in the United States and Canada is nothing new. Indeed, an argument could be made that the revolutionary attitudes

sovereignty and therefore legitimacy of the state has been eroded . . . to the point where the state is no longer able to effectively guarantee property rights of its citizens,"[144] these same litigants are nonetheless compelled to *engage* the state (or more precisely the judiciary) in the course of articulating their dissent.[145] Accordingly, the encounter between vexatious litigants and the judiciary occurs *inside* the state apparatus, or the legal system, even though vexatious litigants often regard themselves as being *outside* of that system.

My second justification for identifying the *judiciary* as insiders involves consideration of how the field of religious studies often approaches the insider and outsider problem. An alternate way of framing this problem sometimes involves the terms "emic" and "etic." As Kenneth Pike puts it, the "etic viewpoint studies behavior as from outside of a particular system," while the "emic viewpoint results from studying behavior as from inside the system."[146] In the study of religion, then, the emic or insider view is typically associated with those who self-identify with some particular ideology or religious belief system.

I realize that my identification of the two sides here may seem counterintuitive. After all, vexatious litigants are the ones who possess a variety of subversive or countercultural ideologies. Shouldn't these ideologies lead to their classification as emics, or insiders? And is that not especially so, given that some of these groups—e.g. Freemen on the Land, Sovereign

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that underpinned both American and Canadian statehood were expressions of anti-government sentiment." In other words, societal upheavals or revolutions can theoretically arise *within* the very system that is being reformed or replaced. Hodge, "Sovereign Ascendant," *supra* note 38 at 1.

[144] Hodge, "Sovereign Ascendant," *supra* note 38 at 5-6.

[145] Given that these vexatious litigants are frequent participants *in* the legal system, I would be inclined to slightly reconfigure Kent's assertion that "[OPCA] litigants and related extremist antigovernmentalists have no chance of receiving legal recognition from any country in which they operate, they are important to study in part because they reveal a segment of the population that is profoundly alienated from society." Kent, "Freemen," *supra* note 38 at 12. I would suggest, rather, that every time a vexatious litigant enters into the courtroom he or she enjoys at least a modicum of legal "recognition," in that the judiciary is compelled—repeatedly albeit perhaps reluctantly—to engage with this class of litigants. At the same time, I would affirm alongside Kent that this class of litigant has no chance of receiving *validation* or *endorsement* from the judiciary.

[146] Kenneth Pike, *Language in Relation to a Unified Theory of the Structure of Human Behavior*, 2nd ed (The Hague: Mouton, 1967) at 37. This distinction aligns with what social psychology addresses as "in-group" and "out-group" conflict: "whenever individuals find themselves in a situation in which there exists clear evidence of an 'us' and a 'them,' they are likely to discriminate against the out-group (them) and in favor of the in-group (us)." Martha L. Cottam, Elena Mastors, Thomas Preston, and Beth Dietz, *Introduction to Political Psychology*, 3rd ed (New York: Routledge, 2016) at 57-58 [Cottam et al, *Political Psychology*].

Citizens, Church of the Ecumenical Redemption International, etc.— espouse beliefs of a religious flavour? One can most certainly embrace and justifiably adopt that approach. But on the other hand, as Benjamin Berger asserts, "law and religion are, in [a] sense, homologous; through norms, rituals, institutions, and symbols both constitute meaningful worlds."[147] Indeed, in addition to what Berger notes, it is beyond question that navigating the legal realm demands adeptness at speaking an esoteric *language*, one that purports to only be 'properly' understood by those insiders (i.e. the judiciary and lawyers) who *specialize* in the interpretation of that language.[148]

Bearing in mind Berger's apt observation, I think that an unconventional approach to the insider and outsider dichotomy is worth adopting here. But in applying this approach, let me be clear: I do not intend to privilege or authorize *either* an emic or etic bias, or position. Granted, I begin with the premise that insiders to the legal system, especially judges, are no less prone to possessing biases than vexatious litigants (or the rest of us)—as Peter McCormick and Ian Green rightly note, "judges are human beings, not computers, and all of us have biases we are not conscious of that help to determine our decision-making processes."[149] While this observation might seem mundane, it is important to take stock of, given our societal tendency to associate judicial decision-making with the concepts of neutrality and impartiality. The reality is far more complicated.

A further and final preliminary note about bias is warranted here. I harbour no illusions over my *own* bias, or Gadamerian "prejudice" when it comes to the issues tackled here.[150] Confessionally, my own training and background is such that I am a regular

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[147] Berger, *Law's Religion*, *supra* note 63 at 131.

[148] The issue of interpretation, or specialized expertise in interpreting legal ideas and texts, as addressed in the previous chapter in connection to the topic of who reads *Meads*, and who its intended audience is.

[149] Peter McCormick and Ian Greene, *Judges and Judging: Inside the Canadian Judicial System* (Davidson, NC: Lorimer Press, 1990) 247.

[150] I am appealing here to Gadamer's thesis concerning the "positivity of prejudice," articulated in the previous chapter.

participant in, and something of an "insider" to the legal system, even though I feel a theoretical alienation or detachment from it. Given this detachment, I can by no means claim to be a dispassionate observer of or outsider to the legal system, even if I wish that were so.

In any event, I believe that the present discussion differs from many other studies on vexatious litigants that tend to focus on the arguments of and characteristics exhibited by the litigants, rather than the role and comportment of the *judiciary* in its dealings with these litigants. In what follows, my intention is to present a less one-sided analysis, one that critically examines problems or challenges on *both* sides of the equation: the side of vexatious litigants, and the side of the judiciary.

III. Insider and Outsider Aspects of the Relationship between the Judiciary and Vexatious Litigants

(a) Categorization of Vexatious Litigants: Identity and the OPCA Label

Following then from the above-described insider and outsider classification, it is worth reflecting first on how the judiciary classifies or identifies vexatious litigants from *within* the legal system. In this regard, some further consideration must be given to a point discussed previously: Justice Rooke's formulation of Organized Pseudolegal Commercial Argument litigants, or OPCA litigants, as a neologism. The relevance of Justice Rooke's neologism cannot be overstated. Since the release of *Meads* in 2012, the OPCA acronym has become ubiquitous in discourse on vexatious litigants, and has become ingrained in the judicial lexicon in Canada and beyond.[151] As previously discussed, it appears to have gone largely unnoticed that Justice Rooke's neologism functions essentially as an epithet. It is not a descriptor that any vexatious litigant uses as a *self*-identifier. On the contrary, since *Meads*, a

[151] As Netolitzky points out, "*Meads* is the most cited post-2012 decision issued by the Alberta Court of Queen's Bench," and "foreign courts [also] rely on Meads." Netolitzky, "After the Hammer," *supra* note 21 at 1186-1187.

number of instances have occurred where litigants strenuously *denied* being advocates of "pseudolaw," or "OPCA" litigants.[152] Pragmatically speaking, the reason for this denial is straightforward enough: association with pseudolaw, or the OPCA label, does not lead to favourable outcomes with the judiciary.

Yet even apart from any legal, result-oriented concerns about how the OPCA designation is viewed, there is an additional reason for why so-called OPCA litigants are resistant to having that label applied to them. Another reason for resistance to the OPCA label involves the inherent tension between classification or taxonomy, on the one hand, and our autonomous predilections concerning self-identity on the other. Without delving into the deep body of research around the social psychology of classification, a relevant point here can be drawn from a classic passage in the work of psychologist William James:

> The first thing the intellect does with an object is to class it along with something else. But any object that is infinitely important to us and awakens our devotion feels to us as if it must be *sui generis* and unique. Probably a crab would be filled with a sense of personal outrage if it could hear us class it without ado or apology as a crustacean, and thus dispose of it. 'I am no such thing,' it would say; 'I am MYSELF, MYSELF alone.'[153]

Applying this Jamesian analogy here, one can easily imagine how litigants would be resistant to the OPCA label, even as a matter identification. Indeed, given that it is not a self-identifier, it is unsurprising that the label is rejected by those who have the label applied *to* them—the OPCA label in no way aligns with how these litigants view *themselves*:

> When a person receives feedback that is incongruent with self-conceptions, he or she may (a) cognitively reconcile the discrepancy (b) act against it, or (c) act in accordance with it. If the person acts in accordance with incongruent feedback, this may or may not lead to the person accepting the new identity.[154]

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[152] See Netolitzky, "After the Hammer," *supra* note 21 at 1196; *Holmes v R,* 2016 FC 918 at para 22, *Crossroads*, *supra* note 99 at para 22; and *Steinkey*, *supra* note 126 at para 5.
[153] William James, *The Varieties of Religious Experience* (New York: Longmans, Green and Co, 1906) at 9.
[154] Hazel Markus and Elissa Wurf, "The Dynamic Self-Concept: A Social Psychological Perspective" (1987) 38 Ann Rev Psychology 299 at 326.

Applied here, it is evident that vexatious litigants, as outsiders, act *against* being identified as OPCA litigants. That identifier is imposed on them by legal insiders: the judiciary. Indeed, I am unaware of *any* instances in which litigants have accepted or voluntarily adopted the judiciary's identification of them as OPCA litigants.[155]

(b) The Necessity and Utility of Classification

To be clear, I do not intend to suggest that the act of classifying OPCA litigants *as* OPCA litigants is somehow inherently wrong, or misguided. On the contrary, I share the sentiment of Jonathan Z. Smith when it comes to responding to James' crab analogy: "to fail to reject the crab's sentence is to condemn the study of religion to an inconclusive study of individuals and individual phenomenon."[156] Put differently, there is a good linguistic and sociological justification for embracing the taxonomic enterprise, given, as Bruce Lincoln writes, that "taxonomy is . . . not only an epistemological instrument (a means for organizing information), but it is also (as it comes to organize the organizers) an instrument for the construction of society."[157] Ultimately, then, we are of course inescapably tied to the act of classification.

Accordingly, in the context of legal analysis and judicial decision-making, classification is fundamentally necessary, and aligns with Lincoln's articulation of taxonomy as a means for organizing information and as an instrument for the construction of society. Indeed, the vexatious litigant taxonomy articulated in *Meads* functions as a shining instance of the law's capacity—and need—to organize information and represent, or 'construct' a

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[155] As noted in the previous chapter, however, Frank O'Collins shrewdly turns the OPCA acronym on its head by creating yet *another* neologism: "Organized Pseudo-*Lawful* Commercial *Architecture*" (emphasis added). Under this construction, O'Collins re-casts the *judiciary* as the villainous purveyor of "OPCA" strategies. See O'Collins, *supra* note 127.

[156] Jonathan Z. Smith, "A Matter of Class," in *Relating Religion: Essays in the Study of Religion* (Chicago: University of Chicago Press, 2004) at 174.

[157] Bruce Lincoln, *Discourse and the Construction of Society*, (Chicago: University of Chicago Press, 1989) at 7-8 [Lincoln, *Discourse*].

particular societal class of (vexatious) litigants. Moreover, the mass appeal of *Meads* in legal circles no doubt owes much to the efficacy of Justice Rooke's creation of the OPCA classificatory scheme—the creation of the OPCA category was at least partially aimed at organizing what had previously been an underdeveloped area of analysis in law.[158] And without doubt, Justice Rooke's taxonomy has proven itself useful, to a certain audience. Insofar as *Meads* has been so routinely cited in vexatious litigant jurisprudence, it has indeed proven utilitarian—at least from the insider perspective of the *judiciary*.[159]

(c) Pejorative Judicial "Othering" of Vexatious Litigants

As noted previously, the OPCA label functions as a pejorative identifier, one that further alienates a class of litigants who are already deeply estranged from both the legal system and the state in general. Further, such pejorative language risks further ostracization or othering of OPCA litigants.

But lest it be implied that I am sympathetic to the arguments of vexatious litigants, let me be clear. For the most part, Justice Rooke's critiques resonate viscerally with me. And when the chips are down, I share the sentiment that most OPCA concepts *are*, in fact, unsustainable, and incongruent with various legal theories and principles. At the same time, I am not in the (unenviable) position of Justice Rooke and the judiciary. I am not a participant in the legal encounters between the judiciary and vexatious litigants. I am not required to adjudicate the claims of vexatious litigants. Moreover, I do not have to concern myself with the maintenance of legitimacy and authority over citizens of the state. The judiciary, conversely, *does*. And insofar as the judiciary is tasked with such responsibilities, its

[158] As Netolitzky notes, "prior to *Meads*, no standard label identified this litigation category. Many judges were unaware that what appeared to be an idiosyncratic litigant was instead an instance of a broader phenomenon." Netolitzky, "After the Hammer," *supra* note 21 at 1173.

[159] The sociological utility of the *Meads* classification is also attested to by Kent, who refers to *Meads* as a ruling that articulates a "partial, but useful, classification of some extremist antigovernment groups." Kent, "Freemen," *supra* note 38 at 2.

rhetorically pejorative treatment of these litigants is in inimical to effectively carrying out those responsibilities. On the contrary, the judiciary can ill-afford to partake in what Michael Patrick Lynch refers to as "tribal arrogance":

> Tribal arrogance is…*intrinsically hierarchical*. It is the arrogance of whites over nonwhites, of men over women, of native-born over immigrant. But it is also the arrogance of the educated over the uneducated, the rich over the poor, the cosmopolitan over the provincial. For the tribally arrogant, those in other tribes are like children, and for that reason, there is a sad history of the arrogant denying rights to those they consider inferior, precisely because they view those 'inferior' people as having less of a capacity to reason and to know.[160]

While Lynch is writing in the context of contemporary North American socio-political culture generally, his sentiment is no doubt applicable to the subject matter we are concerned with here. Specifically, it is evident that the unilaterally-imposed OPCA label, and its pejorative usage, signals an example of the hierarchical tribal arrogance referred to by Lynch.

(d) "Peculiar Language," Legalese, and the Challenge of Legal Interpretation

Beyond the concerns raised above, the pejorative rhetoric levelled by the judiciary at vexatious litigants involves a deep irony. On top of the previously-noted criticisms of vexatious litigants, Justice Rooke writes in *Meads* that "a judge who encounters and reviews OPCA concepts will find their errors are obvious and manifest, once one strips away the layers of peculiar language, irrelevant references, and deciphers the often-bizarre documentation which accompanies an OPCA scheme. When reduced to their conceptual core, most OPCA concepts are contemptibly stupid."[161] It is precisely here where a profound irony lies. For *outsiders* to the law, i.e. anyone unfamiliar with the linguistic peculiarities of the legal system, similar criticisms could easily be levelled *at the law*. In large part, the

[160] Michael Patrick Lynch, *Know-It-All-Society*: *Truth and Arrogance in Political Culture* (New York: Liveright Publishing Corporation, 2019) at 26 [Lynch, *Know-It-All-Society*].
[161] *Meads*, *supra* note 8 at para 75.

problem lies with the incessant presence of technical jargon in law, as Michael Huemer describes:

> The writing of lawyers, judges, and lawmakers is so distinctive that it is often referred to as "legalese," as if it were a language of its own. This language has a distinctive tone that is highly formal, dispassionate, and technical. Sentences are typically long and abstract, with multiple clauses.[162]

This aligns with the earlier-noted remarks of Matt Keating, who suggests that legalese "is overblown, timid, homogenous, and obscure."[163] Even more acerbic are the remarks of Fred Rodell, who asserts that "there are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground."[164]

While Rodell's irreverent criticism verges on parody, it is somewhat warranted. Indeed, it points to a curiosity in law touched on earlier:

> [L]aws and legal documents are frequently incomprehensible to ordinary people—one must hire a trained professional to interpret them. Our inability to understand the law may make us reluctant to question it, while the very incomprehensibility of the law confers an air of sophistication and superiority on both the law and the lawmakers. People tend to feel respect for things they cannot understand, as well as for the people who deal with those things. This sort of respect is important if one is trying to convince others to accede to one's dominion.[165]

Comparably, Lincoln notes that "in practice, the consequentiality of authoritative speech may have relatively little to do with the form or content of what is said. Neither officers' commands nor experts' opinions need to be artfully phrased or even make sense in order to yield results. (Indeed, the authority of the latter may be enhanced by a certain incomprehensibility)."[166] Put different, authoritative speech can in some instances prove *more* effective if it is obfuscated or complex.

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[162] Huemer, *Political Authority*, *supra* note 117 at 121.

[163] Matt Keating, "On the Cult of Precision Underpinning Legalese: A Reflection on the Goals of Legal Drafting," (2018-2019) 18 Scribes J Leg Writing 91.

[164] Fred Rodell, "Goodbye to Law Reviews—Revisited" (1962) 48:2 Va L Rev 279 at 279 [Rodell, "Goodbye to Law Reviews"].

[165] Lynch, *Know-It-All-Society*, *supra* note 160 at 121.

[166] Lincoln, *Authority*, *supra* note 68 at 4. One could also relate this notion to the earlier-mentioned concept of an "informational intimidator," as contemplated by Roderick Kramer. See Kramer, "Intimidators," *supra* note 118.

It would seem, then, that despite the frequent criticism of "legalese," one can also argue that its incomprehensibility functions to *augment* the law's legitimacy. While this augmentation may be true in some instances, I do not think it is always the case. Consider, for example, the results of the 2013 National Self-Represented Litigants Project, in which Julie Macfarlane notes that many self-represented litigants "commented about the impact of legal language used by judges and lawyers which they felt distanced them from the proceedings and made it hard for them to be sure they were following what was happening in the court room."[167] Self-represented litigants are thus left with a "feeling of being an outsider, unable to properly participate [in the legal system] due to the unfamiliar language, procedures and customs of the courtroom."[168] Consequently, Macfarlane states that "while it is inevitable that lawyers and judges will use legal expressions that may not be familiar to SRL's [sic], this unfortunately contributes to a feeling of exclusion and even (from a SRL perspective) 'collusion.'"[169] In short, the esoteric nature of legal jargon reifies the division between SRLs as outsiders, and the judiciary as insiders.

(e) Legal Interpretation and Biases

Bearing in mind such concerns, one can come to appreciate the divergent positions of the judiciary as insiders to the esoteric language of law, and the disadvantaged position of a vexatious litigant or SRL on the other. Indeed, the challenge faced by SRLs is that they simply do not possess the technical legal training or background that allows for the hermeneutic adroitness exhibited by the judiciary. Writing specifically in connection to

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[167] Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self- Represented Litigants — Final Report" at 97, online: <representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf> [Macfarlane, "SRL Project"].

[168] Macfarlane, "SRL Project," *supra* note 167 at 97. The religious connotations of this experience are evidenced in the words of one SRL, who described the experience as an outsider as "like going as agnostic to a religious court." *Ibid*, at 97.

[169] Macfarlane, "SRL Project," *supra* note 167 at 97.

vexatious litigants, Colin McRoberts addresses the pitfalls associated with a lack of training in legal interpretation and concepts:

> Pseudolawyers often show a surprising if incomplete familiarity with complex legal principles. Compared to laypeople, pseudolawyers are relatively likely to understand isolated concepts such as the elements of a contract. But that understanding is typically deeply flawed, because pseudolawyers do not integrate the concepts they study into an accurate understanding of law as a system. This is partly because they study those concepts in isolation, without placing them in context…Gurus collect bits and pieces of information like magpies, shuffling through misunderstood cases, excerpts from statutes they have not read, definitions from out-of-date legal dictionaries, legal maxims they found online, and other snippets to assemble fragile frameworks around their beliefs.[170]

This summation of how vexatious litigants acquire knowledge of the law is no hyperbole. In fact, it aligns perfectly with Chief Justice Wagner's remark referenced at the outset of this study: "A little knowledge is a dangerous thing, and that's no more evident than when you see a self-represented litigant in court, relying on some arcane point of law that she Googled, without realizing why it doesn't actually help her."[171]

Pushing this analysis even further, it is rather easy to apprehend how the availability of all sorts of unfiltered data online, coupled with people's pre-existing biases (i.e. confirmation biases[172]), results in vexatious litigants arriving at a (mis)understanding of the law that bears little resemblance to how it is understood and applied by those with training in the field. Lynch explains the way that piecemeal data plucked from the internet is interpreted in accordance with our own biases:

> [T]he internet [does not have] any dark power all its own. It just feeds into our human dependency to overinflate what we know by reinforcing what we already believe…The internet becomes one big reinforcement mechanism, obtaining for each one of us the information that we are already biased to believe, and encouraging us to regard those in other bubbles as misinformed miscreants.[173]

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[170] McRoberts, "Tinfoil Hats," *supra* note 34 at 651-652.
[171] Wagner, "Access to Justice," *supra* note 133.
[172] In the field of psychology, there exists a wealth of research on this bias. But in short, a confirmation bias is understood to be a bias seen "when individuals tend to favor information that confirms already-existing beliefs." Cottom et al, *Political Psychology*, *supra* note 146 at 51.
[173] Lynch, *Know-It-All-Society*, *supra* note 160 at 29-30. Gloria Origgi remarks on how this state of affairs is entirely understandable, given the proliferation of unfiltered information that is available to us in today's age: "Quality uncertainty and informational asymmetries have become crucial epistemological issues in

The operation of our pre-existing biases is observable in the views of Edward Jay Robin Belanger, a minister of the Church of the Ecumenical Redemption International (a group explicitly referenced in *Meads* as falling under the OPCA umbrella). In one of his many diatribes on Youtube, Minister Belanger offers an account of his legal expertise and his understanding of the Canadian judicial system, including his views on Justice Rooke personally:

> I have been studying law now for about 25 years, and I have come to the grasp that we are under a Christian monarchy, with a Christian monarch who swore to defend the laws of God with all of her power…It would seem that Justice John Rooke, in league with many other judges in the province . . . [are] slandering and smearing men and women that wish to exercise faith in Christ and the King James Bible by calling them conmen, King James Bible literalists, and fake Churches.[174]

Some of what Belanger says is partly accurate. For example, it is indeed the case, as Huemer rightly points out, that "solemn oaths are administered to jurors and witnesses, often including the words 'so help me God', invoking divine oversight of the proceedings."[175] Moreover, there exists an undeniable historical connection between our judicial system and a "Christian monarchy." In fact, Belanger's Christian-centric understanding of our legal system is arguably quite consistent with our own constitution, given the reference to "the Supremacy of God" in the preamble to Canada's *Charter of Rights and Freedoms*. While this preamble is sometimes dismissed as a "dead letter,"[176] I would argue that it is, rather, a topic that the judiciary simply prefers to *avoid*. Lorne Sossin relays an anecdote that evidences the judiciary's wariness of the matter:

> At a conference some years ago, I asked a Supreme Court Justice about what he thought the supremacy of God's role was in *Charter* analysis. He looked visibly uncomfortable. He stammered something about the importance of freedom of religion

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contemporary *information-dense* societies. The vast amount of information available on the Internet and in the media makes the problem of reliability and credibility of information a central issue in the management of knowledge." Gloria Origgi, "A Social Epistemology of Reputation" (2012) Social Epistemology Vol 26 Nos 3-4 399 at 409.

[174] Belanger, "Demand for Accommodation," *supra* note 103.

[175] Huemer, *Political Authority*, *supra* note 117 at 119.

[176] See *R v Sharpe,* 1999 BCCA 416, at para 79. See also *Meads*, *supra* note 8 at para 281.

> in s. 2 of the *Charter* and invited the next question as soon as he could. This seems to me to sum up the collective orientation of the Court.[177]

I believe that Sossin is entirely right in identifying the "collective orientation of the Court" when it comes to the *Charter* preamble.[178] Bearing this in mind, one can see how Belanger's Christian-centric worldview is, in one respect at least, somewhat congruent with Canadian constitutional law.

I do not mean to suggest, however, that Belanger's convictions concerning the operation of the law, or criticism of Justice Rooke, are correct.[179] I do not believe that they are. What I do believe, however, is that his views are entirely understandable, theoretically, from a social-psychology perspective. Indeed, it is clear that in the case of Belanger—among others associated with or identified as vexatious litigants— his understanding of law is informed by a bias, or conceptual matrix that differs substantively from those who are on the *inside* of the legal system. Dan Kahan, Hank Jenkins-Smith, and Donald Braman articulate a similar point:

> Individuals tend to assimilate information by fitting it to pre-existing narrative templates or schemes that invest the information with meaning. The elements of these narrative templates—the identity of the stock heroes and villains, the nature of their dramatic struggles, and the moral stakes of their engagement with one another—vary in identifiable and recurring ways across cultural groups.[180]

Consequently, it should come as no surprise that vexatious litigants, as outsiders to the legal system, construct and maintain an understanding of the law and the legal system that is not only dissimilar to the insider view of the judiciary, but also rather incorrigible. Alternatively,

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[177] Lorne Sossin, "The 'Supremacy of God,' Human Dignity and the *Charter of Rights and Freedoms*" (2003) 52 UNLB LJ 227 at 233. There is now perhaps some irony in this anecdote, given that Lorne Sossin is now *Justice* Sossin of the Court of Appeal for Ontario.

[178] As noted earlier in this study, further discussion of the *Charter* preamble is entirely warranted, though it will not substantively be addressed here. I will return to this topic briefly in the conclusion.

[179] While the topic is deserving of further attention, the term "conviction" is conceptually significant. As Lynch points out, "convictions don't carry just moral authority. *They carry authority over what we believe.* Once something becomes a real conviction, it is difficult for us to doubt; it becomes part of our form of life." Lynch, *Know-It-All-Society*, *supra* note 160 at 61.

[180] Dan Kahan, Hank Jenkins-Smith, and Donald Braman, "Cultural Cognition of Scientific Consensus" (2011) Journal of Risk Research, Vol 14, No 2 147 at 170.

at the very least, the views of these outsiders prove resistant to any modification through badgering and sometimes-derisive commentary from the judiciary.[181]

The above of course relates to the discussion of different classifications of readers in the previous chapter, i.e. intended readers, ideal readers, and empirical readers. In the legal system, 'insiders' to the system possess a particular kind of hermeneutic training, one that engenders a kind of visceral or natural interpretative recognition of certain nuances or concepts, such as "originalism" or the "living tree doctrine." But these are entirely parochial interpretive practices or strategies that are understandably quite alien to those who are outsiders to the system. Moreover, the very existence and persistence of esoteric hermeneutic ideas in law only entrenches the insider and outsider distinction that is palpable in our legal system.

IV. Implications of an Insider and Outsider Analysis

The preceding analysis is essentially descriptive, focussing on an unconventional examination of how the "insider" and "outsider" problem might enhance our understanding of the troubling relation between vexatious litigants and the judiciary. What I have not addressed, however, is any *solution*. In this regard, I concur with the views of McRoberts:

> There is no single, simple, or easy solution to pseudolaw. Law is a human endeavor, and humans are irrational; pseudolaw may be an inevitable byproduct of complex legal systems. But we need not, and should not, simply accept it without protest…The greatest advantage pseudolaw has may be that the mainstream wants to ignore it. We do not handle it as well as we should because we do not understand it as well as we should; we do not understand it because we do not study it as much as it deserves; we do not study it because it is seen as a sideshow rather than a serious problem.[182]

[181] Further exploration of this issue might appeal to the concept of "reactance" in social psychology, i.e. the idea that "individuals value their sense of freedom and self-efficacy," and that "when blatant social pressure threatens their sense of freedom, they often rebel." at David G Myers, Christian H Jordan, Steven M Smith, and Steven J Spencer, Social Psychology, 7th ed (McGraw Hill: Toronto, 2018) at 211.
[182] McRoberts, "Tinfoil Hats," *supra* note 34 at 671.

On the one hand, I would repeat my earlier-stated sentiment: on a personal level, from my own perspective as something of a legal 'insider,' I find virtually all vexatious litigant arguments less than compelling. Be that as it may, it is nonetheless clear that the judiciary's insider position frequently engenders an unhelpful ostracization of vexatious litigants as outsiders. A greater level of empathy and sensitivity to different cognitive biases is required, especially in Canada, where the judiciary purports to embrace the "access to justice" ideal.

Relatedly, what the judiciary must remain cognizant of, and make every attempt to avoid, is the kind of judicial threat outlined by Berger:

> There is great risk…in a judge saying, 'I have heard your claim but, from within the law's framework of meaning and significance, the law's commitments to the structure of experience and what is of value in the human, I cannot accede to your view.' The litigant will walk away feeling that the law is not for her, that she cannot be understood...Better to maintain the conceit that law stands apart from the cultural fray than to risk this kind of alienation. In truth, it is the conceit that is deeply alienating.[183]

While vexatious litigants may possess an outsider understanding of the law that is fundamentally inconsistent with that of a legal insider, it is incumbent upon the judiciary and other legal actors to guard against law's "jurispathic" tendency to "kill other normative arrangements and interpretations."[184] In fact, given the state's interest in maintaining its own legitimacy and fostering obedience among citizens, it would behove the judiciary to be ever self-conscious of and resistant to the law's jurispathic tendencies. To this end, I would suggest that legal insiders, particularly the judiciary, must avoid becoming frustrated by vexatious litigants to the point of casting scorn and ridicule on them in a manner that exhibits the sort of "tribal arrogance" described by Lynch. Instead, insiders to the legal system ought to focus on generating productive and rehabilitative discourse, aimed at fostering greater belief or trust in the authority of the judiciary and the state. That is a better path to remedying

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[183] Berger, *Law's Religion*, *supra* note 63 at 157.

[184] Berger, *Law's Religion*, *supra* note 63 at 103. The notion of law as "jurispathic" comes from Robert Cover, "Foreward: *Nomos* and Narrative" (1982) 97 Harv L Rev 4 [Cover, "Foreward"].

the problem. But this is not all. In the concluding chapter, I will point to some areas in need of further study, and touch on some paths that might lead to a more ameliorative state of affairs when it comes to the tension between the legal system and so-called vexatious litigants.

CONCLUSION

"For the law made nothing perfect" – Hebrews 7:19 (RSV)[185]

The preceding discussion has endeavoured to make use of the category of vexatious litigants, or so-called OPCA litigants, as a backdrop for some reflections on the operation of legal authority and the challenging nature of legal discourse in general. In doing so, however, I recognize that the analysis is far from fulsome; on the contrary, this study merely points in the direction of much broader investigation that goes well beyond the topic of vexatious litigants. More precisely, I would suggest that the topics addressed here relate very much to the increasing discourse (especially in Canada) about SRLs and access to justice in general. These topics persistently linger in the background of this study—one obvious reason for this, of course, is that all OPCA litigants are SRLs.[186] Yet conversely, not all SRLs are OPCA litigants, a point that is important, but also insufficiently analyzed. Netolitzky addresses how much of the Canadian SRL population is far less known:

> Despite all this interest in "access to justice," the "crisis," and an apparently universal emphasis on the allegedly unsatisfied needs of Canadian SRLs, the Canadian SRL population is only weakly characterized and documented. Who Canadian SRLs are, and what they do, is essentially unknown […] Our limited understanding of who SRLs are, and what they do, may handicap and misdirect Canada's developing response to SRLs who appear before courts and tribunals.[187]

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[185] The broader context of this quote in Hebrews involves a discussion of the provisional nature of the Judaic law as a kind of 'pedagogue.' In this regard, the argument in Hebrews is rather Pauline in nature, which aligns well with the fact that the work was often identified, historically, as being of Pauline authorship. It bears noting, however, that virtually all contemporary scholarship rejects this view, and that unlike all other Pauline and pseudo-Pauline correspondence in the New Testament, Hebrews nowhere attests internally to have been authored by Paul. As such, most New Testament scholars agree that the author of Hebrews is unknown.

[186] I am not aware of any reported decisions in which a party identified as an OPCA litigant had legal counsel. While this might seem unsurprising, it does bear noting. The issue is explicitly touched on in *Meads*, where Justice Rooke affirms that "a lawyer has duties not only to the client, but also to the justice system as a whole […] One duty is to not participate in or facilitate OPCA schemes." *Meads*, *supra* note 8 at paras 642 and 643 [*Meads*]. Justice Rooke goes on to lament being "very disturbed and profoundly disappointed to see the number of occasions where an OPCA document was notarized by a practicing lawyer." *Ibid*, at para 643.

[187] Donald J Netolitzky, "The Walking Wounded: Failure of Self-Represented Litigants in 2017 Supreme Court of Canada Leave to Appeal Applications" (2021) 58:4 Alta L Rev 837 at 838.

Netolitzky is entirely justified in noting this concern over a lack of knowledge about SRLs generally, and how this lack might 'handicap and misdirect Canada's developing response to SRLs.' This also brings us back to a point from Farrow and Jacobs noted at the outset of this study: *meaningful* access to justice must address "people's ability to access a diverse range of information, institutions, and organizations—not just formal legal institutions such as the courts—in order to understand, prevent, meet, and resolve their legal challenges and legal problems when those problems concern civil or family justice issues."[188]

While I confess to having much skepticism about whether that kind of meaningful access to justice ideal is *achievable* in the Canadian legal system as it currently exists, it is nonetheless my hope that the previous chapters function in part to attest to the legitimacy of what Farrow and Jacobs point to. Relatedly, I have argued that while the *Meads* decision no doubt possesses a level of usefulness to the judiciary, it is ultimately a piece of jurisprudence that has done little to foster outreach to either OPCA litigants or SRLs at large. It is, for all intents and purposes, an exercise in state force. Yet as Bruce Lincoln aptly notes, "in all instances […] force—be it coercive or disruptive—remains something of a stopgap measure: effective in the short run, unworkable over the long haul."[189] Accordingly, I would argue that the blunt force of the law, as reflected in a case like *Meads*, is not the answer. In this regard, I take some direction from Fred Rodell, whose words written over fifty years ago remain just as applicable today:

> With law as the only alternative to force as a means of solving the myriad problems of the world, it seems to me that the articulate among the clan of lawyers might, in their writings, be more pointedly aware of those problems, might recognize that the use of law to help toward their solution is the only excuse for the law's existence, instead of blithely continuing to make mountain after mountain out of tiresome, technical molehills."[190]

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[188] Farrow and Jacobs, "Meaningful Access to Justice," *supra* note 6 at 7.
[189] Lincoln, *Discourse*, *supra* note 157 at 4.
[190] Rodell, "Goodbye to Law Reviews," *supra* note 164 at 284.

While Rodell articulated these words generations before the phrase "self-represented litigant" entered our everyday lexicon, his critique nonetheless involves a sentiment entirely consistent with the idea of meaningful access to justice as something that fosters people's ability to access a diverse range of information. Yet paradoxically, that is precisely one area that the law persistently struggles in. Indeed, the law inevitably makes 'mountain after mountain out of tiresome, technical molehills' on account of its inherent nature. One key reason for this, of course, relates to the concepts of *stare decisis* and precedent in our legal system. Because of these concepts, the past is always brought forward to render judgment on the present. And the more time passes, the greater the accumulation of precedent (or data) from the past there is to be considered. The resulting state of affairs is an iteration of the predicament described by Derrida:

> By incorporating the knowledge which is deployed in reference to it, the archive augments itself, engrosses itself, it gains in auctoritas. But in the same stroke it loses the absolute and meta-textual authority it might claim to have. One will never be able to objectivize it while leaving no remainder. The archivist produces more archive, and that is why the archive is never closed. It opens out of the future.[191]

This is precisely what occurs in law, as the law both refers to its own archive and, in doing so, simultaneously generates more and more archive to draw from. Consequently, this ever-increasing precedential archive, and the 'technical molehills' that incessantly arise from it, perpetually impede the quest for meaningful access to justice.

I. Areas for Future Study

Following from such considerations, I would argue that this study functions as something of a preliminary exploration of a much deeper interdisciplinary examination about the nature of

[191] Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago: University of Chicago Press, 1996) at 67.

our legal system, and how it is in tension with the ever-elusive access to justice ideal. Such an examination would categorically require attention to the following three areas, among others.

First, it is necessary to engage in a much more philosophical and robust discussion of how our Canadian legal system constructs itself and its own authoritative narrative. In this regard, I partly have in mind the words of Robert Cover, who writes that "no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture."[192] Bearing in mind Cover's religiously-tinged words, I would suggest that there are at least two important and related subjects that must be addressed in such a discussion. Both of these relate to the way that outsiders to law construct narratives *about* the law and its authoritative place.

In Canada, this is an issue that in one sense requires a protracted discussion on the subject of the *Charter* preamble, and how the presence of God in the preamble proves a persistent thorn to the judiciary in certain contexts. This is a particularly acute issue in terms of how it can impact the way that outsiders to law identify and place the authority of the law in contrast to the (superior) authority of the divine.[193] This was touched on earlier in this study, in terms of how vexatious litigants or OPCA litigants are prone to cite the preamble in support of some of their claims about the superior nature of religious authority.

In another sense, it is also worth exploring the issue of the law's authority in connection to the subject of Indigenous sovereignty, particularly in the wake of the ninety-

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[192] Cover, "Foreword," *supra* note 184 at 28.

[193] For a very recent discussion of this phenomenon, see Gauvreau, *supra* note 67. There, Justice Nielson canvasses a wide variety of literature on the topic of the preamble: "Some academics who have commented on 'the supremacy of God' component of the preamble have suggested that 'the supremacy of God' is some kind of indirect reference to natural law (Jonathon W Penney & Robert J Danay, 'The Embarrassing Preamble? Understanding the 'Supremacy of God' and the Charter' (2006) 39:2 UBC L Rev 287), or human dignity (Lorne Sossin, 'The 'Supremacy of God,' Human Dignity and the Charter of Rights and Freedoms' (2003) 52 UNBLJ 227). Alternatively, the 'supremacy of God' phrase has also been identified as 'a particularly obnoxious example' of 'bad legislative drafting', that has had the unfortunate, but not unexpected, effect of misdirecting laypersons: '... the Charter preamble will be read, interpreted, and applied by ordinary persons, and to them, 'supremacy of God' likely means exactly what it says.': Donald J Netolitzky, 'Organized Pseudolegal Commercial Arguments as Magic and Ceremony' (2018) 55:4 Alta L Rev 1045 at 1052-1053." *Ibid*, at para 23.

four ‘Calls to Action’ from the Truth and Reconciliation Commission (TRC) report published in 2015. While we are nearing a decade since the release of the TRC report, we are far from coming to grips with its implications. More precisely, it is no doubt the case that the authority, or positionality of the law, is implicated greatly in those Calls to Action.

While there is much post-TRC jurisprudence worth considering in this regard, a particularly acute post-TRC engagement between an indigenous community and the law occurred in the Supreme Court’s much-maligned ruling in *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*.[194] There, the majority held that the Ktunaxa Nation’s rights to freedom of religion were not violated by a decision to allow a ski resort to be constructed in an area of Ktunaxa territory. Among other critiques, Senwung Luk and Krista Nerland argue that the ruling “is a disappointing artifact of Canadian colonialism which turns away from the attitude of reconciliation that seems to have animated the Court’s recent decisions on Crown-Indigenous relations.”[195] Perhaps more to the point, Stacie Swain poignantly laments that “rather than the impossibility of Indigenous religious freedom, it may be the impossibility of Indigenous sovereignty when the state claims territory in the name of the Crown and the Canadian public.”[196] In sum, there is no doubt that recent jurisprudence such as *Ktunaxa* exemplifies the need for further examination of how legal authority operates in connection to indigenous sovereignty.[197]

Second, it is necessary to reflect on the legal system’s fidelity to the concepts of *stare decisis* and precedents. Recalling Rodell’s lament, I think that these concepts relate very much to the opacity of the law and its “technical molehills,” and how these concepts are, in

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[194] *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)* 2017 SCC 54.
[195] Senwung Luk and Krista Nerland, “Supreme Court: *Charter* does not Protect Ktunaxa Sacred Site,” online, <oktlaw.com/supreme-court-charter-not-protect-ktunaxa-sacred-site/>.
[196] Stacie Swain, “Claims and Constraints: The Category of Religion in the SCC Ktunaxa Nation Decision,” online, < https://bulletin.equinoxpub.com/2017/11/claims-and-constraints-the-category-of-religion-in-the-scc-ktunaxa-nation-decision/>.
[197] To be sure, I hardly intend to suggest that I am raising an entirely novel issue. For example, the work of John Burrows, among many others, is of significant relevance to this topic.

some respects, actually an *impediment* to achieving meaningful access to justice. In this regard, I think that Derrida's aforementioned conception of an "archive" has a useful application to the realm of the law: our ever-growing archive of jurisprudence corresponds to an ever-growing presence of "technical molehills," and thus only further impedes the ability of legal outsiders to apprehend or interpret the law, let alone be able to engage with it.[198]

Third, it is worth reflecting very carefully on whether the law is in fact capable, in its current form, of fostering meaningful access to justice. In part, such an investigation would involve consideration of how lawyers, the judiciary, and other legal actors might better facilitate meaningful access to justice for outsiders to that system. In this regard, it would also be worth giving consideration to how or if other parts of society, whether government institutions, educational institutions, or other entities, might have something beneficial to offer in achieving meaningful access to justice.[199] But more to the point, I think it worth carefully considering whether the quest for meaningful access to justice is actually attainable, or whether it might better be reconfigured into an ideal that can effectively be realized within the legal system that exists today.

To be sure, these three areas for exploration are hardly exhaustive. Nonetheless, I would argue that they are most certainly deserving of further investigation, and in some manner or another follow from the topics of discussion in this study. Indeed, what I hope to have drawn attention to in the preceding chapters is a modest but important realization concerning vexatious litigants or OPCA litigants, and the plight of SRLs in general: engaging with the law proves notoriously challenging and frustrating for those who are not positioned

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[198] In connection to this topic, there is another consideration that comes immediately to mind: the concepts of *stare decisis* and precedents are hardly the harbingers of epistemological development. On the contrary, these concepts arguably can function to foreclose upon the possibility of radical or sudden turns in human knowledge or ideas. In this regard, I have in mind specifically the notion of paradigm shifts in the work of Thomas Kuhn. See Thomas S Kuhn, *The Structure of Scientific Revolutions,* 3rd ed (University of Chicago Press, 1996).

[199] This topic also relates to an issue footnoted at the outset of this study: the role or place of paralegals in enhancing meaningful access to justice.

within it, and the law has by no means proven itself able to bridge the divide between insiders and outsiders. In other words, ‘the law made nothing perfect.’

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