

CITATION: O'Brien v. Murchland, 2013 ONSC 4576
COURT FILE NO.: 168-13
DATE: 2013/07/11

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Edward Joseph O'Brien (Plaintiff)

- and -

Emmett Murchland (Defendant)

BEFORE: Justice H. A. Rady

COUNSEL: Mr. Edward O'Brian, acting in person

L. Geddes, for the defendant

HEARD: July 3, 2013

ENDORSEMENT

Introduction

[1] The defendant moves for summary judgment dismissing the plaintiff's claim on the basis that there is no genuine issue requiring a trial.

Background

[2] The plaintiff commenced an action against the defendant arising from a traffic stop. The defendant is a police officer employed by the London Police Service. The plaintiff seeks his immediate removal from office and that "he shall no longer any type of public office in Ontario [sic]." He seeks damages of \$30,000 (being \$1000 for every minute of his "15 minute detention (arrest)" and \$15,000 "for mental distress and physical violation." Finally, he asks for "a declaratory judgment to the effect that the plaintiff is not bound by statute of Canada and/or Ontario."

[3] In the claim, the plaintiff outlined the circumstances surrounding the traffic stop. In particular, he pleaded:

6. The Defendant demanded statutory documentation, in the form of licensing, insurance and registration of the car. The Plaintiff agreed only to provide his given, and family names to the Defendant.

7. The Plaintiff informed the Defendant, who appeared to be acting as a police officer, that he was not required to have such documentation.

8. The Plaintiff explained to the Defendant that the statutes that the Defendant was enforcing did not bind him. The Plaintiff advised the defendant that he was travelling in the capacity of a human being.

9. The Defendant became agitated. The Defendant made a derogatory slur about the Plaintiff being a "freeman on the land" type trying to claim sovereignty.

10. The Defendant threatened to take the Plaintiff to jail, if he did not provide any identification. He claimed his authority to demand identification stemmed from the Highway Traffic Act of Ontario.

11. The Defendant then attempted to enter the car the Plaintiff was travelling in, first by pulling the outer door handle, then reaching inside the car the Plaintiff was travelling in for the inside handle.

12. The Plaintiff attempted to sweep the Defendant's hand away from the handle. At which time, the Defendant grabbed the Plaintiff's arm with stern force.

13. The Defendant said to the Plaintiff, "You don't want to mess with me buddy."

14. (a) Under threat, and duress, the Plaintiff handed over the documents that were demanded by the Defendant.

(b) The Plaintiff conveying these documents was not to be construed or implied as his consent to be recognized as a legal person.

15. The Defendant took said documents back to his vehicle. When the Defendant returned to the car the Plaintiff was travelling in, he gave the identification back to the Plaintiff. The Defendant also gave the Plaintiff two tickets under the Highway Traffic Act of Ontario, one for "HTA sec. 128, and Compulsory automobile insurance act sec. 3(1) [sic].

16. The Defendant pulled over the Plaintiff initially for speeding. The Defendant appeared to proceed under the assumption that the Plaintiff was a legal person subject to the Highway traffic Act.

17. The Plaintiff informed the Defendant that he was not required to follow statutes, but the Defendant disregarded the Plaintiff's statements, without further investigation.

The Defendant was negligent in his duty to verify that the Plaintiff was indeed obligated to follow statutory law, as the prima facie evidence had been rebutted.

[4] The plaintiff continued to outline why he is not obliged to obey the provisions of the *Highway Traffic Act* and the *Compulsory Automobile Insurance Act* and how the defendant's actions give rise to the various causes of action pleaded:

18. (a) The Plaintiff has given no oath of allegiance to Her Majesty the Queen Elizabeth II, or Canada, thus has no duty to follow any statutory laws.
- (b) The Defendant has, or ought to have a list of who has pledged allegiance.
- (c) If the Defendant had checked for the pledge of allegiance, he would have found none to exist from the Plaintiff.
19. The defendant's action of entering the car that the Plaintiff was in was clearly an intentional trespass, due to the lack of authority to take such action.
20. The Defendant's act of grabbing the Plaintiff's arm was clearly a trespass on his person, and abrogated his right to security of the person, ad his right to inviolability.
21. The Defendant's statement to the Plaintiff of "You don't want to mess with me buddy" were clearly intended to cause nervous shock, and inflict fear upon the Plaintiff.
22. The Defendant's action of trying to enforce the statutory obligations on the Plaintiff is tantamount to holding the Plaintiff in servitude in the name of Queen Elizabeth II, against the Plaintiff's will.
23. The Defendant has abrogated the Plaintiffs rights, including, but not limited to: Liberty, security of the person, freedom of association, and right not to be held in servitude. International treaty, laws, and the common law recognize these human rights. These rights are also pointed out in the internal laws of Canada.
24. The Defendant knew or ought to have known the mechanism by which statutory obligations are bound to a human being because of the nature of his office.
25. The defendant owed the Plaintiff a duty of care to the plaintiff. The particulars of the duty of care include the following obligations to ensure that:
 - (a) The plaintiff's right to liberty would be recognized and protected.
 - (b) The Plaintiff's right to security of the person would not be abrogated.
 - (c) The Plaintiff's right to freedom of association would not be abrogated.
 - (d) The plaintiff would not be held in servitude against his will.

26. (a) The Defendant is bound to recognize and protect these rights pursuant to the international covenant on civil and political rights, parts 1, and 3, articles 8, 21, 22 and 47, the Universal declaration of human rights, and other laws to which Her Majesty, and Canada have signed.

(b) The Defendant breached his duty of care owed to the Plaintiff. The particulars of such breaches include the following:

(i) The Defendant failed to recognize and protect the Plaintiff's right to liberty.

(ii) The Defendant abrogated the Plaintiff's right to security of the person.

(iii) The Defendant abrogated the Plaintiff's right to freedom of association.

(iv) The Defendant forced the Plaintiff to be held in servitude against his will.

27. Since the Defendant was operating in his private capacity outside the scope of his office, and contrary to law, he has no immunity from suit.

29. If not constrained by this honourable court, it is foreseeable that the Defendant will continue to operate his office as he sees fit, and not by the will of Her Majesty Queen Elizabeth II.

30. The Plaintiff has no avenue other than this honourable court to find remedy for the Defendants actions against the Plaintiff.

31. The Plaintiff pleads and relies on the provisions of international human rights laws, and thus also the common law, and the courts of justice act, RSO 1990, c. C.43, specifically sections 96, 97, 100.

[5] The defendant delivered a statement of defence and this motion for summary judgment followed.

The Parties' Positions

[6] The defendant submits that the claim is without merit and that the arguments advanced by the plaintiff have no basis in law. Ms. Geddes submits that these types of claims are typical of "organized pseudolegal commercial argument litigants", a term coined by Associate Chief Justice Rooke of the Alberta Court of Queen's Bench in *Meads v. Meads*, 2012 ABQB 571.

[7] In that case, the court identified a group of litigants who advance vexatious litigation strategies. Justice Rooke observed the following:

[4] OPCA litigants do not express any stereotypic beliefs other than a general rejection of court and state authority; nor do they fall into any common social or professional association. Arguments and claims of this nature emerge in all kinds of legal proceedings and all levels of Courts and tribunals. This group is unified by:

1. a characteristic set of strategies (somewhat different by group) that they employ,
2. specific but irrelevant formalities and language which they appear to believe are (or portray as) significant, and
3. the commercial sources from which their ideas and materials originate.

This category of litigant shares one other critical characteristic: they will only honour state, regulatory, contract, family, fiduciary, equitable, and criminal obligations if they feel like it. And typically, they don't.

[8] He went on to enumerate the *indicia* of OPCA litigants; their strategies; their concepts and arguments. One such argument is that the litigant is not subject to statutory law. Justice Rooke noted:

[325] Another 'immunity' 'magic hat' is an argument that the litigant is only subject to a different form of law than that which would otherwise apply to the present action. This category is arguably a facet of the 'restricted court authority' immunity group.

[326] It is helpful at this point to make a few comments on the manner in which OPCA litigants often use the term "common law". 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 provincial governments. *The Constitution Act* provides the rules and principles that restrict the scope

and nature of legislation, both by jurisdiction and on the basis of rights (i.e. the *Charter*).

[9] Another argument is that obligation requires the litigant's agreement. On this point, Justice Rooke observed:

[405] ... A second common variant of the 'obligation requires agreement' category is a belief that a person is immune if they simply say they have not consented to be subject to the law and the courts. Of course, this concept has not met with success. [Cases and citations omitted.]

[10] Yet another concept advocated by OPCA litigants is that of a dual *persona*. Justice Rooke commented:

[417] A strange but common OPCA concept is that an individual can somehow exist in two separate but related states. This confusing concept is expressed in many different ways. The 'physical person' is one aspect of the duality, the other is a non-corporeal aspect that has many names, such as a "strawman", a "corporation", a "corporate entity", a "corporate fiction", a "dead corporation", a "dead person", an "estate", a "legal person", a "legal fiction", an "artificial entity", a "procedural phantom", "abandoned paper work", a "slave name" or "slave person", or a "juristic person".

[11] The plaintiff submits that the summary judgment is not appropriate because the claim has merit. He submits that he is not bound by statute because he has not given an oath of allegiance to the Queen or Canada. He further submits that he was travelling in the car as a human being and not as a legal person. He denies being an OPCA litigant or that he takes the position that he is beyond the law. Rather, he is a human being or a man, both titles carrying distinct rights, roles and responsibilities in common law and equity. He refers to Canada's international commitments and relies on common law and equity in support of his claim.

[12] In his affidavit responding to the motion, the plaintiff deposed as follows:

2. I believe I have a right to liberty, and feel the defendant in this matter has deprived me of this right.

3. I believe it is clear that entities are bound by The Highway Traffic Act, and The Compulsory Automobile Insurance Act. I am not one of those entities,

4. My right to liberty is a natural right, and existed long antecedent to the state.

5. Her Majesty has not conferred this right upon me, as I have not given consent to act as her subject.

6. I am not a legal person and I do not represent this fiction waiving my right to be recognized as a person before the law.

7. I am a flesh and blood human being in the private capacity under no contract at the time of the claim against me.

8. I, Edward O'Brien, the human being, was not an officer, agent, employee, trustee, surety or holding any title of office for the Corporation of Canada, Corporation of Province of Ontario, or the Corporation of the City of London et al at the time of the claim. As the name, "EDWARD JOSEPH O'BRIEN", is presumably owned by the Corporation of Canada.

24. I, Edward O'Brien, the human being, am not a person (legal). I do not give consent for their government or any other corporation to create joinder between me and any legal person.

...

27. I, Edward O'Brien was born free and have waived any/all "benefits and privileges" of any/all corporations et al., known or unknown, compelled or not. I DO NOT give consent or give my permission to be recognized as a person and strongly object to any party identifying me as operating under or though the designation of a "person" or anything other than a "man". I, Edward O'Brien acknowledge that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights make it clear how Canada, the Province of Ontario, and Her Majesty must view and interact with him.

28. I, Edward O'Brien have never pledged my allegiance to Her Majesty the Queen Elizabeth II or any other fictional governmental body, or entity.

29. I, Edward O'Brien have not entered into any contracts and/or agreements which would allow the enforcement of statutory laws upon me. I am not a CITIZEN of the Corporation Canada et al. I do not perform any services or contract services for the Corporation, and do not receive a "pay check or payroll records" from the Corporation. The Corporation has never made "full disclosure" to these alleged contracts and agreements, nor a meeting of the minds been made, no consideration was given, therefore no contract and/or agreement could exist.

30. I, Edward O'Brien, the human being, have maintained that a lack of jurisdiction by any other party exists throughout this process.

31. I, Edward O'Brien, the human being, have never "consented or agreed" to the jurisdiction of any inferior Ontario court. As I understand that such courts cannot enforce my rights as a man. Indeed the latest biennial report for "Ontario Court of Justice" supports this claim with this statement: "As a "statutory" court (a court created by statute), the Ontario Court of Justice's jurisdiction is specifically given to it by the laws of Ontario and of Canada".

32. I, Edward O'Brien, the human being, was in a private capacity with all my inalienable rights attached at the time of the claim against me.

33. The Canadian Charter of Rights and Freedoms is a policy manual solely for employees of the government, see: CCRF sections 32 & 52. So unless I am a corporate employee, i.e.: a "person", i.e.: a dead entity, then NONE of their "laws" apply to me, the man.

34. Under the International Bill of Human Rights (IBHR), article 16 of the International Covenant of Civil and Political Rights states that, "everyone has the right to be recognized as a person before the law". I also have the right to waive that right as Canada is a signatory to the IBHR, therefore all court officers and government employees are bound by this "International Law" which trumps other laws which are only corporate statutes.

Analysis

[13] I am satisfied that summary judgment dismissing the plaintiff's claim must be granted. There is no genuine issue requiring a trial.

[14] I need not decide whether the plaintiff is an OPCA litigant. The point is that his arguments bear a striking similarity to those identified by Rooke A.C.J. in *Meads* as advanced by OPCA litigants. It appears to me that the plaintiff is attempting to create a dual *persona* or aspect by identifying a distinction between himself as a human being as opposed to a legal person.

[15] Such an argument has been soundly rejected by the courts. See *Meads, supra*; *Canada (Minister of National Revenue) v. Stanchfield*, 2009 FC 99; *Mercedes-Benz Financial v. Kovacevic*, [2009] O.J. No. 783 (S.C.); *Hadju v. Ontario (Director, Family Responsibility Office)*, 2012 ONSC 1835.

[16] Further, the plaintiff's argument that he is bound only by the common law is similarly devoid of merit. An individual cannot choose whether he is subject to statutory laws, which take precedence over the common law. The state is free to impose laws subject to *Charter* compliance and the relationship between the state and the individual is not contractual in nature: *Meads, supra*.

[17] Finally, the argument that a statute does not apply to a person because that person chooses not to have it apply is a jurisdictional argument which is bereft of merit: *R. v. Klundert*, 2008 ONCA 767, 93 O.R. (3d) 81; leave to appeal to the Supreme Court of Canada refused (2009), 260 O.A.C. 398.

[18] The motion is granted. The action is dismissed. I will receive brief written submissions on costs (no more than three pages) plus a bill of costs, first from the defendant within ten days and from the plaintiff ten days thereafter.

"Justice H. A. Rady"
Justice H. A. Rady

Date: July 11, 2013