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Organised Pseudolegal Commercial Argument and Freeman of the Land Litigants

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"If we get to the point where a mob can appear in court or a mob can appear on land to resist a lawful order of the courts, well then the rule of law ceases to apply anymore and then we are in the realm of anarchy." – McGovern J.[2]

Introduction

Every practitioner is aware of the impact of the economic downturn on litigation in Ireland. However, many practitioners may not have heard of the Freeman on the Land ("FOTL") or Organised Pseudolegal Commercial Arguments ("OPCA")[3] litigants. It is quite likely that on any given day, litigants-in-person are making FOTL and/or OPCA arguments in courts around the country.

This article will explore the concept of FOTL/OPCA litigants and it will set out the fallacy of their most common arguments.[4] It will also explore the manner in which the phenomenon has manifested itself in Ireland and other common law jurisdictions and finally it will suggest steps for practitioners on how to respond to arguments or tactics employed by FOTL/OPCA litigants.

Many of the arguments used by FOTL/OPCA litigants cause confusion and delay in the courts. Practitioners, upon hearing submissions or reading correspondence, pleadings or affidavits of FOTL/OPCA litigants may treat the arguments as bizarre, mildly amusing and an interesting anecdote to tell other colleagues. However, FOTL/OPCA litigants in Ireland have been subject to costs orders upon their cases being dismissed for being frivolous, vexatious and bound to fail. Others have, on

[1] The author would like to thank Ian Walsh BL, Elizabeth Corcoran BL, Sean O'Sullivan BL and Gary Hayes BL who have provided some helpful feedback. Any errors or omissions are the authors own
[2] These comments were given in response to a question about the Freemen of the Land during the inaugural Student Legal Convention held at University College Dublin – Irish Independent 13th February 2014
[3] The term Organised Pseudolegal Commercial Argument litigant was first used by Rooke ACJ in his decision of Meads v Meads 2012 ABQB 571
[4] This article only touches on the most common FOTL/OPCA tactics. Further detailed information on the tactics employed can be found in the decision of Rooke ACJ in Meads v. Meads 2012 ABQB 571

occasion, been imprisoned for contempt of court due to their obstructive behaviour in court and their failure to comply with court orders. On 14th May 2013, Dunne J. made an order of committal for contempt of court against Mr Francis Cullen a bankrupt for not cooperating with the official assignee in bankruptcy. In an article in the Irish Times it was reported that:

> "[Mr Cullen] repeatedly told the judge he did not recognise the court or the Official Assignee in bankruptcy as having any jurisdiction to deal with him unless he was treated under the title, "Francis, of the family of Cullen".
>
> If given that title, he indicated he would proceed to argue the court had no authority to deal with him and he was subject to a "superior court". Of several men accompanying Mr Cullen, a number sought to address the judge and to argue the jailing of Mr Cullen was unlawful."[5]

The actions of FOTL/OPCA litigants in court and their *inter partes* correspondence have also caused significant delays and costs for other litigants.

Organised Pseudolegal Commercial Argument ("OPCA") Litigants

The OPCA litigant phenomenon appears to have originated in Canada and the USA sometime in the 1980s but with the advent of the economic downturn, the growth in social media and the various anti governmental and austerity protest movements (e.g. the Occupy movement), OCPA litigants and the various gurus have become more prevalent in the courts of Ireland and the UK.

The term OPCA litigant was first used by Associate Chief Justice Rooke of the Court of Queen's Bench, Alberta, Canada in his seminal judgment of *Meads v Meads*[6] which was delivered on 18th September 2012.

The decision in question was delivered after the hearing and consideration of an application by lawyers for the applicant for case management of divorce proceedings. The subject matter of the application would appear, at first blush, to be a somewhat mundane procedural type of application which normally would not merit a 181 page decision. However, the manner in which the respondent (who was a litigant in person) dealt with the application through the lodging of voluminous papers with the court, correspondence with court officials and bizarre submissions in court lead the court to recognise that the respondent was employing a range of tactics which were disruptive, illogical and an attack on the court's jurisdiction.

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[5] "Bankrupt businessman sent to Mountjoy for another six months" (Irish Times 15 May 2013)
[6] 2012 ABQB 571

Rooke ACJ identified that the type of vexatious arguments which were being advanced by the respondent in *Meads v Meads*[7] are often put forward by OPCA litigants. Rooke ACJ and his judicial colleagues had noticed an increase in vexatious arguments being put forward by litigants-in-person throughout the courts of Alberta and Canada as a whole and the decision of the Associate Chief Justice was a response to the growing phenomenon. The judgment sets out the history of the various OPCA litigant movements, indicia of OPCA arguments and it also provides guidance to members of the judiciary and lawyers on how to respond to such arguments and obstructive behaviour.

Rooke ACJ coined the phrase OPCA litigant to functionally define the types of litigant who run these types of arguments. The judge described the tactics utilised by OPCA litigants:

> "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."[8]

The Judge identified that there are many different types of OPCA litigant but he stated that they share "one 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." [9]

The OPCA litigant phenomenon covers both criminal and civil cases. While it is a common feature of an OPCA litigant in civil proceedings to employ the various tactics to avoid contractual obligations as a result of financial difficulties or insolvency that is not always the case. One of the most famous OPCA litigants was the film actor Wesley Snipes. In the case of *US v Snipes*[10] Mr Snipes was jailed in a federal prison for three years for failure to file US federal income tax returns. Mr Snipes earned more than $37 Million between 1999 and 2004 but he failed to file a tax return.

Mr Snipes became involved with a group called the American Rights Litigators (ARL) which purported to assist its customers in resisting making payments or filing tax returns to the Internal Revenue Service (IRS). It appears that the ARL acted as some form of "guru" to Mr Snipes and he appears to have employed some of the tactics which ARL had advised other individuals to adopt in order to resist payment of taxes. Some of these tactics involved writing voluminous letters to the IRS challenging its authority to collect taxes and threatening to bring criminal proceedings against IRS employees. One of the arguments advanced by Snipes which appears to have been garnered from his guru ARL was

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[7] Ibid
[8] Ibid at paragraph 1
[9] Ibid
[10] July 16, 2010, case no. 08-12402, U.S. Court of Appeals 11th Circuit

"that as a fiduciary of God, who is a non taxpayer," he was a "foreign diplomat who was not obliged to pay taxes." Needless to say the court rejected these arguments.

Freeman on the Land

The FOTL theory of law is prevalent among OPCA litigants. The basic tenets of the theory are illogical and have no basis in law and there does not appear to be any reported decision where an FOTL argument has succeeded in any common law jurisdiction. At best the OPCA litigant relying on an FOTL argument has managed to secure an adjournment due to time wasting and any confusion which may have arisen. Notwithstanding the above, FOTL arguments are employed on an almost daily basis in Irish courts and neighbouring jurisdictions. The reasons for this are manifold. If a litigant employing an FOTL argument manages to get an adjournment on the basis of the confusion that arises from the use of the tactics this is often touted on the guru's website or Facebook page as a wonderful victory against the "corrupt system". However, when the matter is before the court on the adjourned date and the FOTL argument fails, the failure is curiously not reported on the guru's website.

A somewhat novel argument proffered by the FOTL litigant is that they have taken or may take certain steps to make them immune from court orders. The FOTL litigants do not appear to recognise that their continued failure to comply with simple directions of the court can lead to imprisonment for contempt of court.[11] Rooke ACJ described these types of schemes in *Meads v Meads*[12] as "Magic Hat" schemes. If the FOTL/OPCA litigant wears their Magic Hat they believe that they are immune from court orders. Rooke ACJ stated:

> "The manner in which 'magic hat' schemes are presented is sometimes entirely arbitrary; a litigant only need say 'I am a sovereign man', or 'I am a Freeman-on-the-Land', and then are allegedly rendered immune to state and court action, all without any other further effort, explanation, or rationale."[13]

At paragraph 305 of his judgment Rooke ACJ sets out three different types of magic hat scheme:

1. no legal obligation can be enforced on the OPCA litigant without his or her agreement;
2. a single person has two legal aspects, or can be split into two legal entities, and
3. an OPCA litigant can unilaterally bind the state, a state actor, a court, or other persons with a 'foisted' agreement.

[11] See the case of Francis "of the family" Cullen above
[12] 2012 ABQB 571
[13] Ibid at paragraph 303

In the context of criminal proceedings, the first of the magic hat schemes is the belief that every interaction with state bodies (including members of An Garda Siochána and Court officials) is a contractual one and that a person must agree or consent before any obligation can be enforced. There is a mistaken view amongst FOTL litigants and gurus that statute law does not apply to them unless they consent to the making of that statute law.

In early 2012 at the time of the introduction of the household charge in Ireland an "advice leaflet" was distributed which falsely claimed that it was advice from the solicitor's firm McCann Fitzgerald. The leaflet claimed:

> "This household charge is a Statute, otherwise known as an Act of Government and only carries the force of law upon you if you consent to it… a statutory instrument is a contract. If you register for this "charge" you are consenting to this statute i.e. signing the contract."

The leaflet went on to say:

> "The courts know this and the last thing they will do is tell you. In fact they will hide this from you at every opportunity they can. On the other hand, if you tell them, they will accept it because they know it is actually true." [14]

Needless to say McCann Fitzgerald issued a press release stating that the above purported advice did not come from its offices and that it did not express the legal opinion of the firm.[15]

While it is clear to anybody with any formal legal training that an ability to "opt out" of statute law is wholly incorrect it is widely publicised on various internet websites as a means of avoiding obligations imposed by statute. Many videos have been posted online where people claim that they never consented to some statute which imposes a fine for non-compliance when interacting with members An Garda Siochana in Ireland or the Police in the UK; usually on foot of traffic violations or bench warrants. Notwithstanding their refusal to consent the person is still arrested.

The second 'Magic Hat' scheme is that a person's physical being is separate from their legal personality. In the context of civil litigation the FOTL litigant will argue that it was their legal personality who entered into a contract and not their physical being. In *Meads v Meads*[16] Rooke ACJ explained the theory:

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[14] Ignore the conspiracy theories – the household charge must be paid – Fergal Crehan BL The Journal 3rd March 2012

[15] http://www.mccannfitzgerald.ie/news-media/news/article/4046/statement-from-mccann-fitzgerald.aspx

[16] 2012 ABQB 571

> "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'."[17]

The premise appears to be that a contract is not binding on the "living person" because it was signed using the name of the legal person. An example of this exercise in existential fallacy can be found on the get out of debt free website[18] where the "gurus" behind the website advise users to print out stickers which state "Addressee unknown Return to Sender" and to affix these to letters of demand or legal notices and send them back. The advice on the website states that the stickers are very effective "As the name on the envelope will have Mr/Mrs/Miss/Ms etc. this is referring to your 'person' or corporate fiction/strawman. This is not us, the living breathing soul, so we have the perfect right to say addressee unknown return to sender."

The third 'Magic Hat' scheme is to foist a unilateral agreement on another litigant, a court official or other state actor. This is normally done by way of issuing demands for payment of quite large sums (sometimes in millions) and a statement to the effect that if the party to whom the letter is addressed does not respond within a very short specified period time then it will be taken as binding upon them to pay that specified amount. The other strategy is to issue a fee schedule which states that if a person is detained on foot of a bench warrant that the State will be charged an hourly fee. How the guru proposes to enforce such a unilateral agreement remains unclear.

Another somewhat odd fixation with the FOTL litigant is to insist on being addressed as John of the family Doe or some other variation. In *Meads v Meads*[19], Rooke ACJ discusses the use of strange punctuation or formation of names of one of the OPCA gurus:

> "For example, OPCA guru David Kevin Lindsay styles his name as 'David-Kevin: Lindsay'. There are many variations on this basic form with various combinations of colons and dashes. Mr. Meads in his documents identifies himself as '::Dennis-Larry: Meads::', '::dennis-larry:

[17] Ibid at paragraph 417
[18] www.getoutofdebtfree.org
[19] Ibid at paragraph 207

meads::', or'A:::dennis-larry:: of the meads-family:::'. The dash colon' motif has no legal significance or effect."

Earlier in the judgment at paragraph, Rooke ACJ highlights where he believes the practice of strange punctuation originated from:

> "American guru David Wynn Miller ["Miller"] (usually styled "PLENIPOTENTIARY JUDGE David-Wynn: Miller"), who advocates a bizarre form of "legal grammar", which is not merely incomprehensible in Canada, but equally so in any other jurisdiction […] Succinctly it appears that his law grammar provide rules on how to structure 'legally effective' documents. The result is very difficult to understand. Any defective document (ie. one not written in 'Millerese') is 'fictitious-language/scribble'."[20]

The argument that is sometimes put forward by the FOTL litigant is that due to the contract not being signed in the form as set out above then it is not binding upon their living corporeal being. Sometimes it is argued that the capitalisation of their names in official documents including court pleadings is confirmation that the courts recognise the dual personality and that it is only when the court is asked to recognise same using a magic formula of words that the FOTL litigant will begin cooperating (albeit in a limited sense) with the proceedings.

Examples of FOTL/OPCA tactics in Ireland

Each jurisdiction has its own brand of FOTL/OPCA litigant or guru with a slight variation on the theme. In Ireland many FOTL litigants describe themselves as "a freeman of Eire." In cases that involve the enforcement of court orders granting possession, the powers of the sheriff and the constitutional guarantees under Article 40.5 are sometimes used. The Bar Council of Ireland is sometimes referred to as **"the BAR"** (which apparently stands for British Accredited Registry). It is claimed that members of the BAR have sworn an oath of fealty to the Queen of England. There are also notices posted close to Four Courts on an occasional basis which call upon members of the BAR and the sheriff to vacate their office as there is no provision for their offices in the Constitution. There doesn't appear to be any mention of doctors, nurses or teachers in Bunreacht na hEireann but there aren't any calls for them to vacate their office. Other arguments raised by the FOTL/OPCA litigant are that there are not enough strings on the harp displayed in court rooms and therefore the courts have no jurisdiction.

(i) Attacking the Tax

[20] Ibid at paragraph 143

A mixture of FOTL/OPCA arguments in Ireland can be found on the Attack the Tax website. A number of FOTL tactics are suggested by the gurus behind the website. One such tactic is to return correspondence to the Revenue by attaching stickers. The Attack the Tax website has not confirmed whether affixing a sticker to a letter from Revenue and sending it back has defeated any liability incurred under the tax.

The gurus behind Attack the Tax set up a company called Acorn to Oak Communications PLC which instituted Plenary Proceedings in the High Court against every member of the Cabinet, every local authority, Ireland and the Attorney General. It appears that the proceedings concerned, *inter alia*, a challenge to the constitutionality of the property tax which is obviously not an FOTL/OPCA argument. While it is not uncommon for individuals or companies to challenge the constitutionality of various statutes in the High Court, the manner in which it was done by Attack the Tax was different. Individuals were invited to pay €2 to the website to become a shareholder in the company. They were then advised that as shareholders they would not have to pay the Household or Property Tax pending the determination of the proceedings. On its website the Attack the Tax group states:

> "Despite what the bar-room experts and the so called legal eagles say; the Household Charge and the Property Tax is Illegal, Unlawful and Unconstitutional, and does NOT [sic] have to be paid, unless you consciously consent/agree to paying it. It is NOT [sic] Mandatory to Declare or to Pay for the Household Charge or the Property Tax. Anyone that says anything to the contrary is either a legal imbecile, or a liar or both." [21]

The proceedings brought by Acorn to Oak Communications PLC were struck out in the High Court for being frivolous, vexatious and bound to fail but that decision is under appeal. It appears that at the time of the hearing of the motion, the company did not employ the services of a solicitor. Counsel on behalf of the Defendants relied on the Supreme Court judgment of Fennelly J. in *Re Coffey & Others*[22] which followed the decision of Ó'Dálaigh CJ in *Battle v Irish Art Promotion Centre Ltd.*[23] which held that:

> "in the absence of any statutory exception, a limited company cannot be represented in court proceedings by its managing director or other officer or servant."

During the course of his judgment Fennelly J stated that although it is far from ideal, *Battle v Irish Art Promotion Centre Ltd.*[24] is the law. As a result of same, the motion to strike out the claim was

[21] http://www.attackthetax.com/about.html
[22] [2013] IESC 11
[23] [1968] 1 IR 252
[24] Ibid

undefended. Upon hearing the substantive motion, Ryan J. struck the proceedings out. A notice of appointment of a solicitor has been filed and the decision to strike the proceedings out is under appeal to the Supreme Court.

Another tactic which the gurus on the Attack the Tax website advise could cause serious embarrassment and potential loss for those who follow it. Members are advised to issue letters to their employer or payroll department demanding that they do not deduct any monies from their payroll for the purpose of paying the property tax. A copy of the draft letter which the website advises people to send reads as follows:

> "Be advised; that until the outcome of [the Acorn to Oak Communications PLC] case has been decided, you must respect our legal right to litigate. We do not give consent for any monies whatsoever to be deducted from our wages/salary in relation to the Property Tax or the Household Charge. Any previously implied or stated permissions [sic] for deductions to be made in respect of the Property Tax or the Household Charge are now formally withdrawn and removed forthwith.
>
> Please take note: It would be illegal for you to make any deductions in relation to this illegal tax without our explicit permission, and would be constituted as theft and therefore a Criminal offence. You have a legal duty of care to yourself, to us and to the Revenue Commissioners to inform yourself of the law."[25]

The gurus appear to be under the misapprehension that if a person is a shareholder of a company which is engaged in litigation that the member or shareholder is somehow protected from action being taken against them to recover taxes under a statutory regime which has not been found unconstitutional. The apparent refusal by the gurus to recognise the separate legal personality of a company from its members is somewhat ironic, given the FOTL theory on the duality of the person. It should also be noted that neither the High Court nor the Supreme Court has put a stay on the Revenue in instituting legal proceedings in respect of the property tax.

(ii) Suing the Lender

A common tactic employed by OPCA gurus in Ireland is to encourage people who are in serious financial difficulties to sue their lending institution for damages for, *inter alia*, negligent lending, fraud and creating money. It is being sold as a way to "beat the banks" and the gurus advise that if the borrower wins then a court will grant damages over and above the amount that is due and owing by

[25] http://www.attackthetax.com/downloads.html

the borrower to the bank on foot of the contractual debt. In the recent decision of Hogan J in *Healy v Stepstone Mortgage Funding Limited*[26] the Plaintiff had taken out a mortgage with the Defendant mortgage company in 2007 and the mortgage company had instituted separate proceedings in respect of the arrears on the mortgage. The Plaintiff sued the mortgage company and at paragraph 2 of the Judgment Hogan J sets out the basis for the claim

> "…the plaintiff has sued Stepstone for what is described as "gross negligence and misrepresentation" which it is claimed has been orchestrated "by the mortgage company. The general endorsement of claim contends that Stepstone broke "serious liquidity laws which has caused the financial collapse" and it claims that by reason of this conduct the mortgage contract is "seriously flawed". The plaintiff also claims damages for "reckless lending procedures" by Stepstone and it seeks a declaration that any liens or charges registered on the folio of the plaintiff's family home otherwise secured by the mortgage be removed."[27]

The defendant brought an application to strike out the proceedings on the basis that, inter alia, the tort of "reckless lending" is not a tort that exists. In dismissing the claim Hogan J. quotes with approval the decision of Charleton J in *ICS Building v Grant*[28] where he stated:

> ". . . the argued for tort of reckless lending does not exist in law as a civil wrong. It is not within the competence of the court to invent such a tort. Oireachtas could, if it saw fit, pass a law creating such a civil wrong. It is difficult to imagine the parameters of such a law since those who seek a loan will have different views to what should be borrowed, and if a loan is badly made by a bank, how can the issue of contribution be escaped from by the borrower who sought the money in the first place. Defining that civil wrong would tend to remove the presumption of arms length dealing as between borrower and bank and replace it with a new relationship based on a duty of nurture that other common law countries do not see it as their duty to put into the marketplace as any argued-for law as to reckless lending does not appear in the works on tort that I have consulted from other common law jurisdictions."

In the decision of Birmingham J. of *Kearney v KBC Bank Ireland Plc*[29] the Defendant bank issued a motion to strike out the Plaintiff's claim for being frivolous, vexatious and bound to fail. The Plaintiff had borrowed various sums of money on foot of six loan facilities for the purpose of purchasing investment properties. The Plaintiff instituted proceedings against the bank and its then Chief

[26] [2014] IEHC 134
[27] Ibid paragraph 2
[28] [2010] IEHC 17
[29] [2014] IEHC 260

Executive Officer. The allegations against the bank were that it had, *inter alia*, engaged in the illegal creation of currency, had fraudulently misrepresented matters in relation to property developments and that it had unlawfully stolen all payments and interest from the Plaintiff. The Judge described the Plaintiff's pleadings as being *'diffuse and do not easily lend themselves to being summarised.'*

During the course of his judgment Birmingham J. quoted with approval the decision of Gilligan J. in *Freeman v Bank of Scotland (Ireland) Ltd (No. 1)*[30]whereby he referred to the observations of Rooke ACJ in *Meads v Meads*[31]:

> "He described these arguments as 'fanciful' and 'completely devoid of merit' and said they are often made by distressed litigants, particularly those who find themselves in financial difficulty, acting under pressure and on the instruction of organised groups or individuals who have a vested interest in disrupting court operations and frustrating the legal rights of governments, corporations and individuals."

Birmingham J. went on to say:

> "In my view the phrases 'fanciful' and 'completely devoid of merit' are very appropriate to describe this argument and indeed significantly more robust language would be justified. Quite simply the plaintiff drew down funds and thereby took on the responsibility to repay. What the source of these funds was matters not a whit."

In striking the claim out, Birmingham J. said:

> "The proceedings are unmeritorious, so unmeritorious indeed as to amount to an abuse of process and are bound to fail."

It is not unsurprising that the OPCA gurus have failed to highlight this decision on their websites.

(iii) Courts of Eire

In November 2013 it was reported that a group calling itself Baile Féitheáin Heritage had attempted to hold trials in what were described as Eire Courts[32] . The group had summoned HSE staff, gardai, social workers and solicitors to be tried by a self-selected jury. It was reported that*:*

> "The group handed out documents purporting to be a summons to HSE staff and garda stations, demanding that named people attend a trial by 'éire court' on Tuesday 5 November

[30] [2013] IEHC 371
[31] 2012 ABQB 571
[32] Gardai on trial; 'Community court' tries to put gardaí on trial – Cork Independent 14th November 2013

> at 9am "to stand trial for their acts of terrorism against mothers, their offspring and others in our community", according to the group's literature […]
>
> "The summons stated to the 17 people that "your failure to attend shall be accepted by éire court as your agreement all complaints by (name) are true and you do agree to forthwith and without any further notice forfeit to (name) your ESTATE and further do agree to forthwith leave éire and never return and you do accept all penalties decided by éire court."

The "trials" never went ahead and it was reported the following week that upon the publication of the original article, the Cork Independent was threatened on the group's website page:

> "You have been warned. This was publicly posted over a year ago, so Cork Independent newspaper and its journalists involved now face full both legal and lawful action from the entire community of Baile Féitheáin, for unauthorized miss-usage of the content of this page."[33]

No legal action has been instituted by the group or its members against the newspaper or the journalists to date.

(iv) Private Trusts

Another example of Irish OPCA litigants is the Rodolphus Allen Family Private Trust. In July 2013 the Irish Examiner reported[34] that at least 600 individuals had placed their properties into a trust called the Rodolphus Allen Family Private Trust("the Trust"). The theory behind the Trust was that borrowers who had mortgaged their properties to a bank could transfer the land, the subject matter of the charge or mortgage, to the Trust and the Trust would in turn lease the property back to the borrower. The borrowers were charged a fee for the transaction by the Trust. It was claimed that the charge would be somehow wiped clean. When asked to explain how this conveyance could clear the first legal charge or mortgage on the property, the guru behind the Trust, Mr Charles Allen declined to explain how it worked. Unsurprisingly borrowers who had purported to transfer the land to the Trust relied upon the assurances from the Trust that the banks could not appoint receivers or gain possession of the lands. The Trust document specifically stated that the land to be transferred was to be unencumbered. This was clearly not the case for any properties subject to a legal charge or mortgage.

In August 2013 a number of protestors "reclaimed" land located at Kennycourt stud farm which Mr Allen claimed was property of the Trust. Receivers were removed from the land and they issued

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[33] 'No basis in law' : Gardai probe Ballyphehane group after raid – Cork Independent 21st November 2013
[34] Debtors protect assets in private trust – Irish Examiner 19 July 2013

attachment and committal proceedings against Mr Allen, the borrower Mr Euguene McDermott and Mr Ben Gilroy a politician and activist with Direct Democracy Ireland. Previously in the course of injunctive proceedings brought by the receivers against Mr McDermott he had used FOTL tactics questioning the judge, inter alia, about whether he was on his oath. During the course of the attachment and committal proceedings Mr. McDermott was brought before the High Court on foot of a bench warrant and Mr McDermott, having had the benefit of professional legal representation, apologised for his actions. McGovern J. told Mr McDermott

> "The upset and suffering experienced by [you and your family] was 'no justification for letting a mob on to your lands'[…]This State was 'not founded on the rule of the mob' and the people had decided the courts would adjudicate disputes."[35]

Mr Allen who was the guru behind the Trust was arrested on foot of a bench warrant on the site of another property which the Trust purported to have ownership over. On 29th November 2013, Mr Allen agreed not to interfere with the Kennycourt Stud farm property and the property in Cork where he had been arrested. Upon hearing that Mr Allen had sent two notices in relation to the land in Cork, one called "a notice of fraud and barratry" and the other "a notice of dishonour" Ryan J. stated:

> "They (notices) may be served to give 'some colourable justification' to unlawful trespass but it should be perfectly obvious, to lawyers or otherwise, that they did not convince anybody, he said.
>
> It may also be the notices were being used to intimidate people into believing there was some justification for acting on them, he said."[36]

Mr Gilroy was arrested on foot of a bench warrant and sought to challenge the motion for attachment and committal on the basis that, inter alia, he had not been properly served, he was only present on the lands as an observer and that the deponents who had sworn affidavits in support of the motion had been coached.

Ryan J. delivered his judgment on the matter Reynolds v McDermott[37] In relation to the argument about the coaching of witnesses and a conspiracy against Mr Gilroy the Judge stated:

> "Mr Gilroy says that he has demonstrated irregularities, inaccuracies and lies in the affidavits, as a result of which the affidavits must be dismissed without further consideration and the

[35] Farm owner sorry for repossession protest – Irish Times 22 November 2013
[36] Charlie Allen apologises for protest at stud farm – Irish Independedt
[37] [2014] IEHC 219

whole application must therefore be disallowed. He draws attention to averments concerning the time and place of the swearing of the affidavits and internal references to particular paragraphs, which he says are impossible and demonstrate untruthfulness and/or inaccuracy. However, it is clear to me that much of this line of questioning was based on a misunderstanding of the process of production of affidavits and gives little basis for demonstrating that there is any uncertainty in regard to the central issues in the case. I do not accept that the witnesses were untruthful or that Mr Gilroy went anywhere close to demonstrating the conspiracy that he was alleging."

Ryan J. made a finding that the contempt was of a "flagrant and serious" nature. He imposed a suspended sentence of 4 weeks upon Mr Gilroy and made an order for costs in favour of the Receivers. The Irish Times reported that Mr Gilroy has indicated that he will appeal the decision to the Supreme Court and that he has initiated an attempt to impeach the Judge.[38]

(v) Challenging the Authority of a Judge

Another approach that FOTL/OPCA litigants have employed in Ireland is to challenge the authority of a judge. The basis upon which an FOTL/OPCA challenges the authority of a judge was explored in a recent article published in the Law Society Gazette. The author stated:

> "The Freeman asks the judge to produce his oath of office based on a misreading of article 34.5.3 of the Constitution, claiming that the judge must make the declaration of their oath before entering upon his duties – in the Freeman reading, this means every day before the court begins its business. This is combined with article 34.5.4, which states: "Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office."[39]

Referring to Canadian jurisprudence, the author expressed the hope that:

> "…an equally strong declaration from the Superior Courts in this jurisdiction will soon be forthcoming to put an end to this farcical and dangerous movement and their delusional approaches to the law."[40]

The article, which shone a bright light on the murky pseudo-legal world of the FOTL/OPCA gurus, prompted a letter in response from an anonymous contributor calling himself/herself "Concerned

[38] Direct Democracy runs in four European constituencies – Irish Times 8 May 2014
[39] Rooney, *Land of the Free, Home of the Deluded*, (2012) 160 (3) LSG 12
[40] Ibid

Sovereign" which was published in the May edition of the Law Society Gazette.[41] The author of the letter stated:

> "This article proves the point that members of the Law Society do not have a clue regarding the Freeman Movement and do not have any idea regarding the 'real' law. The arrogance of solicitors is only overshadowed by their ignorance…
>
> If the Law Society really think [sic] they have all the answers and that the Freeman Movement is wrong, we would like to suggest that you do an interview on TNS Radio[42] to debate this subject matter. If you put up a good argument, than [sic] maybe people will not apply the Freeman process."
>
> If you believe that you are right, then you have nothing to lose going on TNS Radio. If, however, you decide not to do this, it will confirm to everyone that the Law Society is not only lacking transparency, but colluding with a corrupt judicial system to milk the system and the tax payer."

(vi) Copyright/trademark the name

In a recent Prime Time report[43] some of the FOTL/OPCA strategies were investigated and reported upon. The report highlighted an FOTL/OPCA strategy employed by the guru behind the website[44] where individuals are encouraged to "copyright their name" upon payment of €250. The names of the individuals are listed on the website and upon clicking on the name the website states:

> "Trademark/Copyright Notice: all rights reserved re common-law Trademark/Copyright of trade-name/trade-mark, [**Name of person**]™ ("Debtor"), as well as any and all derivatives and variations in the spelling of said trade-name/trade-mark– common Law Trademark/Copyright **[year]** © [**Name of person**] (as denoted by their appearance on CopyrightYourName.com) The said common-law trade-name/trade-mark, [**Name of person**]™ (and all derivatives thereof), may neither be used, nor reproduced, neither in whole nor in part, nor in any manner whatsoever, without the prior, express, written consent and acknowledgment of © [**Name of person**], as signified by the red-ink signature of © [**Name of person**], the "Secured Party.

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[41] Anonymous letter criticises lack of transparency – Law Society Gazette Mat 2012
[42] TNS Radio or Tir na Saor Radio is an online radio station that discusses and sometimes promotes FOTL/OPCA strategies
[43] Broadcast in October 2013 http://www.youtube.com/watch?v=2267gYtw2RU
[44] www.copyrightyourname.com

> Each and every infringement of said Trademark/Copyright of trade-name/trade-mark, will incur a €50,000.00 charge and will be enforced to the full extent of the law. For permission to use please contact the owner at: **[email address of the person]**"

When asked about this on the Prime Time programme the guru behind the site stated that it keeps debt collectors away and that it was like a "parasite protection cream." The method by which the charges of €50,000.00 per usage of the name would be enforced or executed upon were not explored in the programme.

Subsequent to the broadcast on RTE, the founder of Tír na Saor lodged a complaint with the Broadcasting Authority of Ireland (BAI).[45] He claimed that the programme was:

> "grossly biased and used what he describes as fear mongering which he states was intended to demonise the ideas of the Freeman Movement and the people expressing them."[46]

The BAI rejected the complaint and found that a critical examination of the methods employed by some of the various organisations featured in the report is not in and of itself evidence of a lack of objectivity.

Examples of FOTL/OPCA tactics in other jurisdictions

The FOTL/OPCA phenomenon is not unique to Ireland. In a comment piece published in the 'Comment is Free' section of the Guardian newspaper[47] a contributor called "commonly known as dom" [sic] who was an activist in the Occupy London movement set out how he was "teaching people about the legal system." In his article he stated:

> "We are all taught to be a name, the name on our birth certificate. But if you don't consent to be that "person", you step outside the system. According to the law books, a "natural person" (or human being) is distinct from the "person" as a legal entity. All the statutes and acts are acting up on the "person", and if you're admitting to being a person, you are admitting to be a corporation that can be acted upon for commerce."

He concluded his article by stating:

[45] It is somewhat curious that the founder of an organisation which perpetuates the view that individuals are not bound by statute would himself make a complaint to a statutory body

[46] Broadcasting Authority of Ireland – Broadcasting Complaints Decisions May 2014

[47] We are the change: welfare, education and law at the Occupy camp – The Guardian, 15 November 2011

> "I say to people: educate yourself. Google "lawful rebellion". Google "freeman on the land". Google the difference between "legal" and "lawful". Understand the rules that are keeping you enslaved."

Unsurprisingly there was severe criticism of the newspaper in the online comments sections and elsewhere for failing to perform any fact checking before publishing the claims of its FOTL/OPCA contributor.[48]

Adam Wagner BL responded to the claims that a person can *"step out of the system."* He stated: *"No you don't. This movement is not just silly, it is also dangerous, and seemingly gaining popularity through numerous internet sites."*[49]

The family law case of *Doncaster Metropolitan Borough Council v Haigh*[50] is an example of how dangerous the FOTL argument can become and how a party employing OPCA/FOTL tactics can end up in jail. This case, which was ultimately appealed to the President of the Family Division of the High Court and was also one of the cases the subject of a super injunction, the first respondent Ms Haigh had made numerous false allegations about the father of her child being a paedophile. The malicious and false allegations were considered so serious by Wall P. that he decided to lift the in camera rule for the purpose of countering the false allegations about the case that were published on the internet by Ms Haigh and her supporters. During the course of the litigation Ms Haigh was advised by Ms Elizabeth Watson who sometimes went by the name Elizabeth of the Watson Family. Ms Watson was jailed for 9 months for contempt. At paragraph 24 of his judgment Wall P. stated:

> "In addition to the matters that I have already considered, a number of court orders, including the relevant order by Baker J., were returned to the court defaced by Ms. Watson. She has put lines through most of the orders and written phrases on them such as "void", "no consent", "no jurisdiction", "no legal right", "no contract", "contempt of court", "offence against public justice", "not valid" and "return to sender"

Wall P. described the defacement of the various documents as childish scribblings. It is submitted that as the Honourable President did not have the benefit of the judgment of Rooke ACJ in Meads, he was not in a position to recognise the actions of Ms Watson as those of a FOTL litigant.

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[48] The Comment is Free section of the Guardian Newspaper gets its name from a quote of C.P. Scott the editor of the newspaper from 1872 until 1929 who said *"comment is free but facts are sacred"*.
[49] Freeman of the Dangerous Nonsense (Adam Wagner, *UK Human Rights Blog*, 15 November 2011)
[50] [2012] 1 F.L.R. 599

On 8th March 2011 an attempt was made by OPCA litigants to arrest District Judge Michael Peake in Birkenhead County Court. This was after Wirral Council instituted proceedings against Mr Roger Hayes for non-payment of Council tax. Mr Hayes is chairman of an OPCA group called The British Constitution Group. According to a report[51] in the Liverpool Echo Mr Hayes claimed that *"the council tax is illegal and imposed without his consent."* The newspaper reported that:

> "As the case got under way yesterday, Mr Hayes repeatedly demanded district judge Michael Peake say if he was "on oath of office". In response Judge Peake insisted it was a "properly constituted court", and said if Mr Hayes had a complaint, he could take up later. But Mr Hayes persisted and when he did not get an answer he was satisfied with, said: "Sir, I am obliged to arrest you for contempt of court and treason." Two supporters of Mr Hayes then attempted to arrest the judge but were stopped by police. More demonstrators then burst into Court One of Birkenhead county court. The judge was quickly ushered out of the court by officials, saying as he left "this case is adjourned, I'm afraid."

Six people were arrested by Police Officers after participating in the protest and attempted arrest of the judge.

With the onset of more and more disruptive tactics being employed by FOTL/OPCA litigants a practice has developed in the Northern Circuit of England & Wales whereby County Court judges who encounter FOTL/OPCA litigants adjourn the matter before the specialist mercantile judge sitting in Manchester. On occasion the FOTL/OPCA hearings have been heard in the Manchester Crown Court due to the increased security requirements.

In Scotland the FOTL litigants sometimes refer to themselves as Scottish Sovereigns. In a recent editorial comment in the Civil Practice Bulletin[52] practitioners were advised that:

> "As making any recovery from Freemen can be difficult, practitioners should warn their clients about the risks of such litigation.
>
> Personal safety is something that should be carefully considered. Although Freemen profess to be peaceful, Police Scotland have reported incidents where Freemen have attended at court with groups of supporters. This can be intimidating for some practitioners and any who are concerned should alert the court officers who usually ensure that uniformed police officers are in attendance."

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[51] Protestors storm Birkenhead county court and attempt to arrest judge – Liverpool Echo 8 March 2011
[52] Freeman on the Land - Civ P.B 2013 114 (Dec) 1-3

In a recent case in Northern Ireland, Deeney J. delivered two written judgments in the case of *Santander (UK) PLC v Anthony Parker*[53] which involved the challenge by a FOTL/OPCA litigant to an order for possession granted by the Master of the High Court in Belfast. At page 6 of his first judgment Deeney J. sets out some of the arguments raised by the FOTL/OPCA litigant:

> "[The Defendant] takes the point that this matter should be adjudicated on by Sir Christopher Geidt, Private Secretary to Her Majesty The Queen. He says that on foot of Clause 45 of the Magna Carta of 1215, which in the version advanced by him reads: "We will appoint as justices, constables, sheriffs or other officials only men that know the law of the realm and are minded to keep it well." Of course I have the privilege to serve as one of Her Majesty's justices and sit here to do justice as envisaged by Magna Carta rather than Sir Christopher whom, while I am sure a person of distinction, is not so far as I am aware a judge or lawyer.
>
> Another point raised by Mr Parker at point 10 reads as follows:
>
> Since I am a living man, I operate under a foreign jurisdiction to the legal system. I already tried this case in my private foreign jurisdiction court, and find Santander in default judgment. Since Santander was found in default judgment in my private foreign jurisdiction court, Master Ellison, under the rules of the Hague Convention on foreign judgments and civil and commercial matters, should have respected that judgment."

Deeney J. dismissed the appeal as he found that the arguments raised had no merit. Similarly to the case in *Doncaster Metropolitan Borough Council v Haigh*[54] the Judge did not have the benefit of considering the decision of Rooke ACJ in *Meads v Meads*[55]

Identifying a legitimate legal point

Despite the rejection by the courts of many of the FOTL/OPCA arguments as having no basis in law there is always the possibility that a legitimate legal point may be contained somewhere in the case being put forward by the FOTL/OPCA litigant. It is also possible that the case being brought against the FOTL/OPCA litigant contains some infirmity.

An example of one such instance can be found in the Canadian case of *R v Duncan.*[56] The case concerned a minor alleged traffic offence. During the course of the hearing, the Defendant employed a number of OPCA tactics. O'Donnell J. who heard the case found Mr Duncan not guilty on the basis

[53] 2012 NICh 6 and 2012 NICh 20
[54] [2012] 1 F.L.R. 599
[55] 2012 ABQB 571
[56] 2013 ONCJ 160

that the prosecution had failed to demonstrate that the purported arrest was lawful. In conclusion the Judge stated:

> "Mr. Duncan is entitled to his acquittal and none should begrudge him it. In assessing how much of the "freeman of the land" type of philosophy that he wishes to adopt in future, a philosophy that appears to focus to an unhealthy degree on freedom from societal obligations, he might, however, wish to contemplate some more productive reading on the internet, reading which emphasises the importance of responsibilities as much as society's ongoing and sometimes exclusive fixation on rights."

The Judge concluded his judgment by giving Mr Duncan some advice:

> "Mr. Duncan did not strike me as a fool and individual acts seldom define people, but the red binder he offered to the officers and the "affidavit of truth" he offered to me in court were regrettable descents into foolishness and Mr. Duncan would be well-advised to be more discriminating on what parts of the internet he models himself upon in the future."

Meads v Meads[57] was also considered in the Irish decision of *Freeman v Bank of Scotland (Ireland) Ltd (No. 1).*[58] There the Defendant brought a motion to strike out the Plaintiff's claim for being frivolous, vexatious and bound to fail. The Plaintiff was advised throughout the hearing of the motion by OPCA gurus who acted as McKenzie friends and on occasion sought to address the court. During the course of the hearing Gilligan J suggested to the Plaintiff that it may be in her interest to seek professional legal advice as it would be the Plaintiff and not the gurus who would be visited with costs orders if some of the areas of claim failed. The Plaintiff declined to seek professional legal advice at that time. In his judgment, Gilligan J. referred to some of the arguments put forward by the Plaintiff. At paragraphs 29 of the Judgment Gilligan J. said:

> "At para. 10 of the statement of claim, the plaintiffs allege that the "first named defendants misled and deceived the plaintiffs by offering what the plaintiffs understood to be a 'loan of money', when in fact the first named defendants did not 'lend' the funds, they instead created the funds with the Plaintiff's signatures on a loan application."

The judge noted that this argument exhibited an affidavit which was sworn in the context of litigation in the United States which has no relevance to the proceedings before him. He continued:

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[57] 2012 ABQB 571
[58] [2013] IEHC 371

> "The Court accepts the submission by counsel for the defendants that this 'creation of currency' argument resembles the so-called 'money for nothing schemes' discussed in *Meads v Meads* 2012 ABQB 571. Such arguments are coming before the Courts in numerous jurisdictions with increasing frequency since the economic and property market collapse. In Meads, Associate Chief Justice Rooke stated that such arguments are often advanced by a particular type of vexatious litigant which he termed 'Organised Pseudolegal Commercial Argument (OPCA) litigants'. He described these arguments as 'fanciful' and 'completely devoid of merit' and said they are often made by distressed litigants, particularly those who find themselves in financial difficulty, acting under pressure and on the instruction of organised groups or individuals who have a vested interest in disrupting court operations and frustrating the legal rights of governments, corporations and individuals." [59]

Gilligan J struck out the FOTL/OPCA claims, but, he did not strike out the allegation that the Defendant was in breach of Codes of Conduct promulgated by the Central Bank on the basis of the conflicting jurisprudence. Needless to say, the decision of Gilligan J was hailed as a victory by the OPCA gurus, despite the fact that the judge had struck out the FOTL/OPCA arguments. The Plaintiff subsequently instructed solicitors and junior and senior counsel. The full plenary hearing to determine the issues which had not been struck out was heard for four days in May 2014 and on 29 May 2014, McGovern J. gave judgment dismissing the remaining "non OPCA" arguments.

FOTL/OPCA litigants may use a mixture of FOTL/OPCA arguments and legally principled arguments. The decision of Gilligan J in *Freeman v Bank of Scotland (Ireland) Ltd (No. 1)*[60] is an example of the courts performing a balancing exercise when dealing with claims where some have no merit (the FOTL/OPCA variety) and other claims may have some merit. In a recent article by Trevor Murphy, [61] the author identified the reasons for the balancing exercise:

> "At the heart of the jurisdiction of the courts to dismiss unmeritorious litigation lie two important, yet competing, rights. The first of these rights is the well-established constitutional right of citizens to access the courts in order to allow citizens protect and vindicate justiciable rights and resolve genuine grievances, regardless of how badly articulated their claim is. This right of access to the courts is fundamental and was reaffirmed by Gilligan J. in the High Court earlier this year in Freeman v Bank of Scotland.

[59] Ibid paragraphs 29-30
[60] Ibid
[61] Murphy, *To Strike or not to Strike? A Review of the Jurisdiction to Dismiss Proceedings in the Superior Courts*, (2014) 21(2) CLP 33

> As against this right, there is equally the right of citizens not to be exposed to (and, indeed, a duty on the State to protect against) unmeritorious claims which may be brought for some collateral or improper purpose, such as harassment or embarrassment. In this regard, it was commented by McGovern J. in Doherty v Minister for Justice, Equality and Law Reform that "the courts are not to be used as a forum for ventilating complaints, but, rather resolving genuine disputes between parties to the litigation."

Guidance for Practitioners on how to deal with FOTL/OPCA litigants

Practitioners should familiarise themselves with some of the more common FOTL/OPCA arguments by reading the judgment of Rooke ACJ in *Meads v Meads.*[62] If practitioners are opposed in cases by litigants in person they should not automatically assume that the lay litigant is an FOTL/OPCA litigant. However, they should be on the lookout for tell-tale signs. If the litigant in person is being advised by one or more people in court, the practitioner should bring it to the Courts attention that the litigant in person appears to be using the assistance of others and a practitioner can ask the court to designate the other person(s) as a McKenzie friend or McKenzie friends.

If it appears that a guru is seeking to make submissions on behalf of the litigant in person the practitioner should draw the courts attention to the comments of Fennelly J. at paragraph 37 in *Re Coffey & Others*[63] where he said:

> "Only a qualified barrister or solicitor has the right, if duly instructed, to represent a litigant before the courts. The courts have, on rare occasions, permitted exceptions to the strict application of that rule, where it would work particular injustice."

The guru may claim that they have been appointed power of attorney but that has a completely separate meaning to that of being a paid legally qualified solicitor or barrister and it does not amount to a right of audience.

It should be noted that applications to make representations on behalf of litigants in person are not solely limited the FOTL/OPCA guru. In the recent judgment of Cregan J. in *Tougher v Tougher's Oil Distributors Limited*[64] the court dismissed an application by a litigant in person to permit a former solicitor to represent him in court. While the Judge made it very clear "that there is no reason at all to doubt the integrity of [the former solicitor]" the individual was, however, not bound by "the extensive

[62] 2012 ABQB 571
[63] [2013] IESC 11
[64] [2014] IEHC 254

and detailed codes of professional conduct of the Law Society." The Court followed the ratio of Fennelly J. in *Re Coffey & Others*.[65]

Practitioners should assist the Court by ensuring that FOTL/OPCA arguments are separated from the arguments being put forward by the litigant in person which may have some merit. In a recent editorial the in the Scottish periodical the Civil Practice Bulletin[66] practitioners were advised that when they are bombarded with lengthy correspondence:

> "…such documentation requires careful consideration (i) to understand it and (ii) to ensure that the kernel of a relevant case in not hidden within."

When preparing for a case involving a FOTL/OPCA litigant practitioners should advise their clients of the potential delays and costs which may arise. Copies of *Meads v Meads*[67] and the Irish decisions which consider Meads should be made available to the judge hearing the case and for the litigant in person in order to alert the Court as to the possible source of the submissions and paperwork from the FOTL/OPCA litigant.

It is submitted that due to the increasing prevalence of FOTL/OPCA litigants that a practice direction should be issued by the Presidents of each court in Ireland similar to the Practice Note 3/2012[68] issued by the Lord Chief Justice in Northern Ireland which sets out how the Courts should deal with McKenzie friends.

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[65] [2013] IESC 11
[66] Freeman on the Land - Civ P.B 2013 114 (Dec) 1-3
[67] 2012 ABQB 571
[68] http://www.courtsni.gov.uk/en-gb/judicial%20decisions/practice%20directions/documents/practice%20note%2003-12/practice%20note%2003-12.htm