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Ontario Court rebukes litigants for improper reliance on Personal Property Security Act

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In *Myers v. Blackman*, 2014 ONSC 5226, the young phenomenon more often seen in family proceedings out West, has reared its head in Ontario, this time in the commercial context.

History of the Application

Myers v. Blackman dealt with an application to discharge a falsely registered financing statement under the *Personal Property Security Act*. The applicants, the law firm, Papazian, Heisey, Myers and one of its partners, Michael S. Myers, found themselves the subjects of the security instrument after they took steps to recover monies owed to their client, the National Bank of Canada, by the respondents, the Blackmans.

In response to a demand letter for payment of $21,000, Mrs. Blackman initiated what Justice Graeme Mew described as a "broad shake down": a series of letters purporting to unilaterally impose various obligations on the law firm with corresponding fines for failure to comply, such as $1 million for threats and/or attempted intimidation, or $1,000 per page to respond to unsolicited commercial mail.

The law firm rejected the validity of the letters and launched a Small Claims Court action to recover its client's money. Rather than defend the action, Mrs. Blackman preferred the psuedolegal track of foisting increasingly aggressive obligations on the firm, culminating in an invoice rendered for "Threats and Attempted Intimidation", "Unsolicited Correspondence" and Unauthorized Use of Name" in the amount of $2.75 million. Meanwhile, the Bank obtained default judgment in Small

Claims Court.

The Decision

Justice Mew discharged the *PPSA* registration pursuant to section 56(5) of the *Act*, and for being against colour of right. But it was the applicants' ancillary requests for punitive damages, damages for injurious falsehood and full indemnity that created the opportunity to address OPCA tactics in a commercial context.

OPCA is a term coined by Alberta Court of Queen's Bench Associate Chief Justice John D. Rooke in *Meads v. Meads*, 2012 ABQB 571. That decision drew attention for identifying the trend of self-represented litigants' manoeuvring to attempt to frustrate genuine legal proceedings. The epic 736-paragraph decision was a call to arms to "develop court procedures and sanctions for persons who adopt and advance these vexatious litigation strategies." *Meads* did its part by identifying and categorizing the schemes and concepts employed by self-represented litigants of all stripes.

Mrs. Blackman denied being such a litigant, but Justice Mew found that her foisting obligations and fines onto the applicants were pure pseudolegal tactics. However, the sanctions were somewhat circumscribed in *Myers*: no damages and costs on a substantial indemnity (as opposed to full indemnity) basis.

Although Justice Rooke may be disappointed, those unlucky enough to face an OPCA litigant should not be dismayed, or for that matter, reluctant to bring these litigants to court. The applicants' request for full indemnity was denied because they didn't seek the award from the outset. Further, punitive damages were unnecessary since the elevated cost award served to chastise the improper conduct, and damages for injurious falsehood were unwarranted as there was no evidence of actual injury.

Moreover, Justice Mew named Mrs. Blackman jointly and severally liable for the costs award, despite the corporate respondent's false registration. Justice Mew found that the numbered company was "incorporated principally, if not exclusively, for the purpose of shielding its principal and directing mind, from the consequences of her dealings with and concerning the applicants and their client." Ms. Blackman was not permitted to shield behind a corporate veil to avoid the consequences of her improper use of the *PPSA* scheme.

Needless to say, improper reliance on the *Personal Property Security Act* can attract serious cost consequences, with potential for damages. More broadly, the war rages on against vexatious litigation.