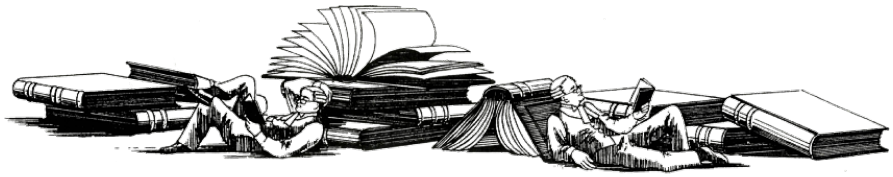

NOTES ON THE STYLE OF THE LAW

The Top Fifteen Judicial Smackdowns of 2023

by

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18 Dec 2023, 2 Car III

judicial writing — lists — fun — smackdowns
brutality — judges — viciousness

WITH the civil year coming to a close, it is time for one of the most beloved traditions of this publication—the annual compiling of those brilliant broadsides from the bench that we call… JUDICIAL SMACKDOWNS! So, my dear Reader, sit back, prepare some popcorn, and observe how judges smack down. Be warned, though, some of these smackdowns are so BRUTAL that they may not be appropriate for sensitive readers.

§ 1 Lord Leggatt

Being part of an august legal family, Lord Leggatt JSC was raised from birth to smack down, judicial style. In *Barton v Morris*,[1] His Lordship dealt with a cheeky litigant trying to assert a claim in unjust enrichment despite having a contractual relationship covering the underlying contact. This was a deadly mistake, for Lord Leggatt JSC responded with a smackdown that sent counsel running back to law school. In clear, simple words, His Lordship vivisected this argument and then spat on its quivering remains.

> [**191**] Nevertheless, there is also another broader reason why the existence of a contract precludes a claim based on the law of unjust enrichment. This is that there already exists a system of law for determining what rights and remedies contracting parties have in relation to the subject matter of their contract. It is called the law of contract. In relation to the subject matter of the contract, the law of contract determines, and governs the consequences of, not only the existence but also the absence of an obligation on one contracting party to confer a benefit on the other. To redistribute the allocation of benefits and losses provided for by the

1 [2023] AC 684, SC

law of contract by applying another set of legal principles would undercut this regime.

§ 2 *Mr Justice Wall*

Speeding along the highway of crime is all fun in games until the criminal car collides with the wall of justice, or put otherwise, Wall, Mr Justice. A despicable reprobate by the name of David Smith had, when employed to safeguard His Britannic Majesty's embassy in Berlin, voluntarily passed information prejudicial to the interests of King and country to a hostile foreign power, *viz* Russia.[2] When the Crown brought Smith to justice, this repulsive individual, whose actions were motivated by his support of Russia's illegal war of conquest in Ukraine, tried to cry his way to a lighter sentence, claiming to be suddenly intensely remorseful and deeply sorry for his wicked actions. This parade of tears stopped when Smith crashed into the impregnable force of justice, the load-bearing iron wall of the law, Wall J. Passing sentence,[3] His Lordship smacked Smith down hard:

> [**30**] I reject any suggestion that you are remorseful for your actions. Your regrets are no more than self-pity. When any expression of remorse was tested during the Newton Hearing you concentrated on the effects that your offending had on yourself, your wife and your parents. When asked about the potentially catastrophic consequences for others, you repeatedly suggested that these were non-existent or negligible as you only provided to the Russians information which they already had available to them. Had you been truly remorseful, you would not have lied on oath to me in that hearing as you did.

§ 3 *Mr Justice Moor*

There is a pernicious phenomenon in family cases where, driven by mutual enmity, the litigants exhaust their estate in legal fees. Their antipathy turns legal molehills into costs mountains, and has the effect of clogging the courts and being a terribly inefficient way to resolve latent family issues. Unfortunately, these spiteful litigants seem to think that just because they can (for now) afford lawyers they get to go around having an expensive petty argument without ever being called out on their poor behaviour (both towards their family and the public). In *Teasdale v Carter & Teasdale*,[4] a family dispute (a divorcing couple and their daughter) over a property called Cow House accumulated costs far in excess of the value of that property. Moor J had had enough with this nonsense. Taking up His Lordship's metaphorical smacking rod and flexing very literal muscles of high-smack

2 As an aside, this case should have, in your correspondent's opinion, been tried as treason, but the Crown is unfortunately reluctant to so charge these days.

3 *R v Smith* (sentencing remarks of 17 Feb 2023)

4 [2023] EWHC 490, FamD

capability, this titan of family justice let the parties know just how idiotic and self-defeating their pointless litigation was:

> [**3**] I have to say that this is one of the most regrettable pieces of litigation that I have ever come across. It is not just because this family has become so fractured as a result. The total costs of the litigation at the conclusion of the hearing below were approximately £828,000. The costs of this appeal are £220,000. These figures do not include the costs of the financial remedy proceedings. The house at the heart of the dispute, Cow House, is worth £245,000, after a 20% reduction for an agricultural occupation restriction. When the appeal was opened, it was said that, if I allowed the appeal, the matter would have to be re-heard at further vast expense, as an appeal court clearly could not substitute different findings of fact for those found by the judge below. The final reason that the position is so regrettable is that the parties agreed a way forward on 7 October 2020 which would have obviated the need for all this litigation. Unfortunately, the agreement was subsequently repudiated by the Appellant, on the basis that the First Respondent had enlarged her claim in other respects. The case was then litigated for nine days before HHJ Shelton. It has been heard for two days before me, although that time estimate included only half a day of reading time and absolutely no judgment writing time.

HM Judges do conduct themselves with a sense of decorum as befits representatives of the King. They are thus by nature circumspect and careful with their language. They make use of euphemism, employing more polite language to get across some brutal concepts. Make no mistake: 'regrettable', in judge-speak, signals an immensely harsh smacking down.

§ 4 Mr Justice Galiatsatos

Across the Pond, Canadian judges love a good smacking down (usually in the courtroom, but occasionally at a bar after a hockey game) as much as their English counterparts. It is thus fitting that this particular smackdown entry comes from a judge, Galiatsatos JCQ, who was himself brutally smacked down by the Quebec Court of Appeal in the 2021 case of *R v Baptiste*.[5] For reference, that past smackdown occurred when His Honour had increased a sentence after conducting his own Internet research. The QCCA (Hogue, Cotnam & Cournoyer JJA) acidly responded:

> [**61**] With respect to the case at bar, we do not expect judges to surf the Internet in order to establish or confirm the latest upward or downward

5 2021 QCCA 1064

> crime trends, especially when they do not notify the parties of their intention to do so.

Astonishingly, Galiatsatos JCQ survived this smackdown and, though presumably still limping, continued what we scholars of the smackdown call the 'cycle of smacking', by which His Honour smacks unto others as smacking was done unto him. In *R v Epstein*,[6] the Crown charged Mr Epstein with criminal harassment after his vexatious neighbours had objected to his children playing in the street. The most wrongful act Mr Epstein appears to have ever done was display his middle finger in a dispute, and after evidence (or rather a lack thereof) emerged a trial, the Crown quite properly asked for an acquittal to be entered. Galiatsatos JCQ did so, and with such vigour that the resounding smackdown could be heard from Iqaluit to Burnaby. It is worth quoting at length:

> [**8**] For reasons explained below, the Court is resoundingly acquitting the accused. Since I'm hesitant to draft an entire decision in bold and caps-lock characters, I offer the following observations instead.
>
> [**9**] It is deplorable that the complainants have weaponized the criminal justice system in an attempt to exert revenge on an innocent man for some perceived slights that are, at best, trivial peeves.
>
> […]
>
> [**162**] To be clear: it is not a crime to dislike a neighbour. It is not a crime to express it. After all, the evidence demonstrates that the complainants may have incited their neighbours' disdain by driving recklessly and endangering their young children.
>
> […]
>
> [**165**] Staring at your neighbour's home is not illegal. It does not attract criminal liability.
>
> […]
>
> [168] To be abundantly clear, it is not a crime to give someone the finger. Flipping the proverbial bird is a God-given, *Charter* enshrined right that belongs to every red-blooded Canadian. It may not be civil, it may not be polite, it may not be gentlemanly.
>
> [**168**] Nevertheless, it does not trigger criminal liability. Offending someone is not a crime. It is an integral component of one's freedom of expression. Citizens are to be thicker-skinned, especially when they behave in ways that are highly likely to trigger such profanity – like driving too fast on a street where innocent kids are playing. Being told to 'fuck off' should not prompt a call to 9-1-1.

6 2023 QCCQ 630

[…]

[**171**] This needs to stop. The complainants are free to clutch their pearls in the face of such an insult. However, the police department and the 9-1-1 dispatching service have more important priorities to address.

[…]

[**173**] Having considered the evidence as a whole, it is common ground that the Crown has failed to prove the accused's guilt beyond a reasonable doubt.

[**174**] In the modern-day vernacular, people often refer to a criminal case 'being thrown out'. Obviously, this is little more than a figurative expression. Cases aren't actually thrown out, in the literal or physical sense. Nevertheless, in the specific circumstances of this case, the Court is inclined to actually take the file and throw it out the window, which is the only way to adequately express my bewilderment with the fact that Mr. Epstein was subjected to an arrest and a fulsome criminal prosecution. Alas, the courtrooms of the Montreal courthouse do not have windows.

[**175**] A mere verdict of acquittal will have to suffice.

§ 5 Lord Justice Bean

When a judge starts to compliment counsel, it is often a sign that a vicious smackdown is incoming. This was apparent in *Sainsbury's Supermarkets Ltd v Clark*,[7] where Bean LJ was faced with a number of appeals rather lacking in substance. Counsel must have been quaking in his learned boots when His Lordship began praising his forensic skills, and would have been right to do so, because what follows is an absolutely merciless smackdown of a meretricious application.

> [**3**] Before plunging into the details of the relevant statutes and regulations I think it is worthwhile to stand back and look at the broad picture. Not even the considerable forensic skills of Julian Milford KC could disguise the fact that these are highly technical applications lacking any substantive merit. When industrial tribunals were established more than half a century ago the purpose of Parliament was to create a speedy and informal system free from technicalities. It has been repeatedly stated that employment tribunals should do their best not to place artificial barriers in the way of genuine claims. Nevertheless, if the Appellant is right, an artificial barrier has indeed been placed in the way of these

7 [2023] ICR 1169, CA

> claims. It should be emphasised that there is no suggestion that any of these Claimants failed to make the necessary reference to ACAS before the claim was issued, nor that any of them failed to obtain a certificate by ACAS demonstrating that such a reference had been made. The complaint is no more and no less than that the ET claim form did not give the appropriate certificate number.

§ 6 His Honour Judge Sephton KC

Witnesses can be as deserving of a smackdown as any other courtroom participant, and none more so than a *soi disant* 'expert' witness, who is in fact a complete idiot. In *Rowbottom v Estate of Peter Howard*,[8] HHJ Sephton KC, faced with a car crash 'expert' whose evidence was also a car crash, had to take such this fool to school, which in this case involved His Honour literally teaching this expert the basics of physics. As this excerpt shows, when a witness acts like a clown, HHJ Sephton KC smacks down!

> [**68**] I have, with some dismay, come to the conclusion that I cannot rely upon the evidence of Mr Green, for a number of reasons.
>
> [**69**] The most basic reason is that in his evidence, Mr Green advanced propositions of physics that were obviously incorrect. For example, he suggested that at the moment of collision, the forward motion of both vehicles cancelled each other out. Since the Vauxhall continued along its path at a considerable speed until it hit the verge, the proposition that its forward motion was cancelled out is palpably false. In my judgment, Mr Green compounded the error when he was asked to account for his statement. Instead of agreeing with the suggestion of Mr Hunter that this was nonsense, he hedged by saying that "how it's written is not correct" as if some typographical error was responsible for the blunder. A second example is his assertion that "you can't put fluid under pressure, you can't compress it." Whereas I accept that liquids are not readily compressible, the suggestion that fluids cannot be put under pressure is absurd. I am left wondering what is the purpose of the oil pressure gauge in my motor car if the purpose is not to show the pressure in the oil system.
>
> [**70**] A second reason why I do not feel able to rely upon Mr Green is that he did not appear to me to understand the obligation of an expert fairly to deal with all the evidence and not simply to address the points that support his hypothesis. Mr Hunter's criticism is fair that Mr Green was happy to emphasise the witness evidence that supported his theory whilst remaining silent about those witnesses whose evidence did

8 [2023] EWHC 931, KBD

not. I am critical of the fact that Mr Green relied upon the marks on the upright of the Recycling sign without drawing the court's attention to the fact that there were several other marks on the upright that were not consistent with his theory.

[71] One of the problems with Mr Green's theory is that there was no mark on the road to evidence his postulated instantaneous turning of the car wheel through 90°, a point made in the reports of Mr Roberts and Mr Davey. When Mr Green was asked in cross-examination to account for the fact that there was no evidence on the road, he mentioned for the first time the theory that the wheel of the car may have been lifted off the road by the motorcycle tyre. It is very surprising that he had not raised this potential explanation during the experts' discussion or in the joint statement. I formed the opinion that Mr Green made this explanation up as he was giving evidence.

[72] A further issue I have about Mr Green's conduct concerns the perception that his theory involved the motorcycle striking the nearside of the car wheel. It was, I believe, absolutely clear that Mr Roberts and Mr Davey understood Mr Green to be saying this, as appears both from the reports of both men and from their comments in the joint statement, which are directed to demolishing this theory. I reject Mr Green's evidence that he had made clear in the experts' discussion that this was not his view; if he had done so, Mr Roberts and Mr Davey would not have wasted ink seeking to discredit the theory in the joint statement. I also reject his (inconsistent) evidence that he did not realise that Mr Roberts and Mr Davey had not understood what he said was his true theory, which was that the motorcycle had struck the offside of the car wheel. It must have been obvious to Mr Green from their reports and from their comments in the joint statement what Mr Roberts and Mr Davey believed him to be saying. I am thus forced to the conclusion that in failing to explain to his fellow experts that they had misunderstood him, Mr Green has not complied with his obligation to help the court understand the expert evidence and in explaining his conduct to me, he has given inaccurate and unreliable evidence.

§ 7 Mr Justice Michael Green

When attempts to make a film, *A Patriot* fell apart, the French actress Ms Eva Green claimed she was still entitled to her fee. The financiers backing the aborted film claimed that Ms Green had engaged in repudiatory breach when she had refused to make the film under

the studio run by Mr Jake Seal. The case went to the courts,[9] catching the attention of the papers, and focusing on the spotlight on a man who, to your correspondent anyway, is a far bigger celebrity than Ms Green: Michael Green J (no relation). Like many cases from Hollywood, this sordid legal affair turned on the personal relationships between the outsized personalities involved.

Judges have to deal with all kinds of people, and the rôle generally requires a degree of tolerance to even the more annoying variety of *H. sapiens*. As the saying goes, beware the wrath of a patient man.[10] When someone is so insufferable that he breaks the patience of a figure as learned, chivalrous, and beatific as the universally belovèd Michael Green J, then he is in for a smackdown of astonishing brutality.

> [**35**] It was difficult to see how there could be so much vitriol directed at Mr Seal by Ms Green and her witnesses, particularly as she only met him once, and the others on only a few occasions. I assumed that it was because of what he wanted to do with the Film and his unwillingness to spend money on paying and engaging crew at standard industry rates and generally not being willing to listen to any of the suggestions emanating from Ms Green or Mr Pringle in order to make a good quality movie. But I have to say that, having heard him give evidence, I can see how it might be possible to take an instant dislike to him. In giving evidence he was at times patronising, sarcastic and denigrating; he laughed when he considered that the question betrayed a misunderstanding of how the film industry works; and he had a habit of reinterpreting his own documents in an absurd way. I found him to have an innate aggression and can understand why Ms Green and others might have been displeased to be told that they had to make the Film under his full control. He was unrepentant about his false first witness statement's account of the conversations he had had on 22 September 2019 and I will have to be cautious about accepting anything from him unless there is independent corroboration by contemporaneous documents or admitted facts.

§ 8 Justice Kagan

As we saw *supra* with Galiatsatos JCQ, it is not unknown that a superior court will smack down a naughty inferior court judge. Much more unusual is judge-on-judge smacking down from judges at the same level, let alone in an apex court. This kind of internecine smackdown, befitting the gargantuan jurisprudential powers of an apex judge, can resemble the fight at the end of a superhero movie: massive levels of destruction and

9 *Green v White Lantern Film (Britannica) Ltd* [2023] EWHC 930, ChD

10 Or of a patient woman.

collateral damage. In the SCOTUS case of *Andy Warhol Foundation for the Visual Arts v Goldsmith*,[11] Kagan J, dissenting, let loose a vicious smackdown in a spicy footnote to Her Honour's already spicy opinion:

> **fn 2** One preliminary note before beginning in earnest. As readers are by now aware, the majority opinion is trained on this dissent in a way majority opinions seldom are. Maybe that makes the majority opinion self-refuting? After all, a dissent with 'no theory' and '[n]o reason' is not one usually thought to merit pages of commentary and fistfuls of comeback footnotes. In any event, I'll not attempt to rebut point for point the majority's varied accusations; instead, I'll mainly rest on my original submission. I'll just make two suggestions about reading what follows. First, when you see that my description of a precedent differs from the majority's, go take a look at the decision. Second, when you come across an argument that you recall the majority took issue with, go back to its response and ask yourself about the ratio of reasoning to *ipse dixit*. With those two recommendations, I'll take my chances on readers' good judgment.[12]

§ 9 Mr Justice Bright

. For readers (or at least the editor) of this publication, there may be some special delight in seeing a smackdown where a judge, in this case, Bright J, takes to task someone making the ludicrous but common claim that serious errors are in fact mere slips of typography. Your correspondent, as you might imagine, has a particular dislike for those who blame typography for their faults. Thus, the smackdown in *Arani v Cordic Group Ltd*,[13] is one which bears particular special meaning for me. The claimants, including one Dr Arani, had sold a company making software helping courier businesses, which used an address database. The allegation was made that the software business had been, in breach of licences, simply lifting data from the Royal Mail Postcode Address File (PAF), rather than, as the company later claimed, using as the base a different address database. This was rather strongly supported by the fact that there was written evidence from the company itself that repeatedly referred to use of the PAF. Rather than own up to this, Dr Arani tried to brush off this 'smoking gun' as a set of typos. This was not too bright a strategy, so it was only fitting that Bright J was ready with a smackdown.

> [**51**] I found their explanations unconvincing. If the Company had developed its own bespoke address database, the Sellers would have regarded this as a significant selling-point and would not have been shy to highlight it.

11 (2023) 143 S Ct 1258
12 *ibid*, 1293 (cleaned up)
13 [2023] EWHC 95, Comm

> The reason why customers were told that the address database was derived from PAF, and why people within the Company frequently used this language when communicating with each other, was that they all knew and believed it to be true. This is confirmed by various invoices, under which customers were charged for the supply of the "Full UK Post Office Address Database". Dr Arani's suggestions that these were typographical errors, or were again instances of people within the company using this phrase without really understanding it, bore the hallmark of desperation and reflected very badly on him as a witness.

§ 10 Judge Frank Easterbrook

Back across the Pond for a quick smackdown whose nature shows the mathematical relationship underlying smackdown theory: the more understated a smackdown, the greater the brutality. In *United States v Holden*,[14] a defendant had tried to challenge a gun conviction on the basis that, due to a recent SCOTUS decision,[15] the underlying federal firearms law was unconstitutional. The first-instance district court concurred, striking down 18 USC § 922(*n*) as against the Second Amendment. The resulting smackdown from the appellate court, *per* the legendary law & economics scholar Judge Frank Easterbrook (nickname: 'The Beasterbrook'), is short, but utterly brutal in its understatement:

> The main problem with the district court's approach is that Holden was not charged with violating § 922(*n*).[16]

§ 11 Mr Justice Poole

There's a saying around the courts of the Realm: you can't fool the Poole. When one appears before Poole J, and acts like a fool, one gets taken to school. In *A v B (Appeal: Domestic Abuse)*,[17] Poole J was faced with counsel—the somewhat, shall we say,[18] infamous Dr Charlotte Proudman trying to characterise the judge below contrary to the judge's own words. That called for only one response: a good old-fashioned judicial smackdown:

> [**48**] In Ground 1 of the Grounds of Appeal it is said that it was wrong for the Judge to find that the likelihood of the Appellant 'being raped was low because she was an educated English teacher.' It would indeed have been wrong for the Judge to have so found, but he did not. Nevertheless, he did refer to the Appellant's education and profession when finding improbable her evidence that *(a)* she did not know that she had a

14 (2023) 70 F 4th 1015, 7th Cir

15 *New York State Rifle & Pistol Association v Bruen* (2022) 142 S Ct 2111

16 *Holden* (n 14), 1017

17 [2023] EWHC 1499, FamD

18 Choosing my words carefully…

choice not to submit to being forced by the Respondent to have repeated, frequent sexual intercourse with him, and *(b)* she did not feel she could speak to anyone about it. At first sight the Judge's reasoning is objectionable. Many victims of sexual abuse within marriage or a partnership will find it difficult to speak to anyone about it. As the judgments […] show, there are many reasons why someone might submit to an abusive relationship without insight into what they are suffering until after the relationship has ended, or perhaps long after that. It is very unfortunate that the Judge referred to 'inherent probability' in this context.

[**49**] In fact, as the paragraph as a whole demonstrates, consistent with his judgment as a whole, the Judge focused on the evidence in the case, and the character of the Appellant as he assessed it to be, rather than 'inherent' probabilities. Indeed, the Judge had reminded himself of the 'rape myth' that the victim's culture or religion may justify abuse. He reminded himself that some victims of abuse may face cultural or other barriers that prevent them from seeking help. I am satisfied that the judgment establishes that it was his view of the evidence from and about the Appellant herself that convinced him that it was unlikely that *she* would have not known that having sexual relations with her husband ought to be a matter of choice and that she would not have spoken to someone, such as one of her own aunts or cousins, about what was happening. Having given this matter careful consideration, on balance I accept that the Judge was entitled so to find. The fact that some victims of sexual abuse may not realise they are being abused, or may not speak out, does not preclude a finding that had the alleged abuse occurred to a particular person, *that person* would have known, and would have spoken to someone else about it. Dr Proudman referred to the judgments of Hayden & Cobb JJ in similar cases as though the Judge in this case was bound to have reached the same conclusions, but each case is determined on its own evidence. Similar allegations do not necessarily lead to similar findings. A court should be cautious for the reasons set out in guidance about rape myths and stereotypes as well as in a number of reported judgments, but it is not precluded from making a finding that a complainant would have realised that the alleged conduct was abusive or would have spoken to someone about what was happening. The Judge had the benefit of hearing three days of evidence. All appropriate special measures were taken to ensure that the Appellant could give her best evidence. The Judge was made aware of and included in his judgment, the risks of making assumptions or findings

> based on rape myths (applicable to all forms of sexual abuse). He was very mindful of the cultural and religious context within which the Appellant found herself. Some judges might have avoided this reasoning on this point, but the Judge was entitled to find, on the evidence before him, that had the allegations of sexual abuse been true, the Appellant would have known that the abuse was abuse and was not 'normal', and that she would have spoken to someone else about it.

§ 12 Justice Jackman

The actor, Mr Hugh Jackman, is well-known for playing the adamantium-clawed mutant Wolverine in the *X-Men* franchise, but it is his brother, Jackman J of the Australian federal judiciary, who has the truly vicious attacks. When Farrell J of the Federal Court of Australia had lectured litigants about the importance of punctuality, but then failed to give judgment for two years (for no apparent reason than the basic fact that some people just want to see the world burn), Jackman J's claws—made of pure justice, ten times stronger than adamantium—came out. The following excerpt (cleaned up) makes clear just how vicious this X-Judge can be:[19]

> [1] These proceedings were heard by Farrell J on 12, 13, 14, 15, 16 and 19 October 2020, 20 November 2020, and 9 and 23 December 2020, a period of nine days. The references in that sentence to '2020' are not a misprint. Farrell J began the trial by complaining about the timeliness with which the evidence had come to her: T4.5-6. During the trial, Farrell J was understandably keen to keep the hearing on schedule: T193.43-194.12. Her Honour was particularly censorious of the plaintiffs' key witness, the third plaintiff, for making the Court wait, and reminded him of his duties to the Court, and that 'punctuality is expected. It costs a lot for all of these people to sit around waiting for you" (for which the third plaintiff apologised): T199.32-46. That was all relatively unexceptional, and, for the most part, appropriate. Regrettably, Farrell J has not delivered judgment. The delay in giving judgment is all the more glaring in light of the fact that Farrell J made freezing orders against the first and second defendants on 27 September 2017, which were subsequently varied but remain in place. [2] Despite the period of two and a half years without giving judgment, Farrell J has indicated that in view of her impending resignation from the Court, which the Governor-General has accepted and which is to be effective on 1 August 2023, she will not be giving reasons for judgment or making any orders in the proceedings. The Chief Justice has re-allocated the proceed-

19 [2023] FCA 826

> ings to me for that purpose. The evidence comprises about twenty affidavits, about ten volumes of documents and almost six hundred pages of transcript. I have read and analysed that material, and have done so bearing in mind that, unlike Farrell J, I have not had the advantage of having seen and heard the witnesses in person.
>
> […]
>
> **[4]** I have communicated to the parties my view that any application for the grant of such a certificate would be problematic in the present case. I now give my reasons for that conclusion. Her Honour has resigned her office, but the resignation will not be effective until 1 August 2023. As far as the evidence indicates, Farrell J has not suffered a protracted illness or otherwise become unable to continue with, or to give judgment in, the proceedings. I am not aware of any medical evidence to that effect. There was a reference by Farrell J during the hearing on 16 October 2020 to a doctor's appointment at 8.30 AM on 19 October 2020, but the transcript indicates that no impediment arose for the continuation of the trial that day , or on subsequent days. […]
>
> **[5]** The reallocation of the matter to me was made on 30 June 2023, the day after I was asked whether I would accept the reallocation. I have sought to prepare this judgment as expeditiously as possible, given the delays which the parties have patiently borne to date. It is a task which I have undertaken in the time available to me after dealing with what was already a full load of matters for hearing and judgment. While Farrell J is not one to rush to judgment, the evidence does not indicate any acceptable reason why Her Honour could not have given judgment by 1 August 2023, even if Her Honour did not begin the task until 30 June 2023.
>
> […]
>
> **[8]** The Chief Justice has apologised in correspondence to the parties and their legal representatives on behalf of the Court for this situation. I wish to add my own apology for what has transpired.

§ 13 Chancellor Glasscock

An unreported preliminary ruling on a question of jurisdiction would normally be too trivial to make the smackdown hall of fame, but Glasscock C's opening in the Delaware Court of Chancery case of *Williams & Ferris v Lester* is far too brutal to miss.[20] Behold, the first paragraph (cleaned up):

20 2023 WL 4883610 (1 Aug 2023, unrep), Del Ch

> Scientists have found that the octopus is bizarrely adept at navigating mazes. Its protean and malleable body—together with a keen brain distributed throughout its nervous system, so that each arm can think independently—allows it to make short work of finding any exit that a biologist's apparatus has left it. But the octopus has nothing on the contortions exhibited in Plaintiffs' attempt to establish jurisdiction here.

§ 14 Mr Justice Andrew Baker

This publication is rather fond of Andrew Baker J,[21] and it is thus a particular pleasure to include a smackdown from His Lordship on this list. When faced, in *Kallakis v Kallakis*,[22] with a repugnant character, Achilleas Kallakis, who had committed two of the crimes most particularly outrageous to your correspondent—namely, heraldry fraud and Lord Denning impersonation,[23] along with more trifling financial fraud and deceit against business partners and his own family. Happily, Andrew Baker J let him have it with both barrels:

> [**269**] Achilleas Kallakis strove for financial greatness, and for a time achieved a measure of it, but he did so using the dishonest means of a conman and forger. He was brought low by the depth of his dishonesty, acting in combination as it did with fate in the occurrence, and timing, of the global financial crisis.
>
> [**270**]] The consequences of Achilleas' dishonesty have been substantial and far-reaching. It cost [the insurance firm] AIB over £150 million (there being no distinction to be drawn between AIB itself and insurers who may have carried part of that loss). It had the deserved but nonetheless serious human cost of criminal convictions and lengthy prison sentences for Achilleas himself and for Mr Williams, who now presents as a rather lost soul for whom the experience of the Crown Court trials and subsequent imprisonment seems to have been the breaking of a weak and somewhat vulnerable man. It has now resulted in the abusive manipulation of Michalis and his misplaced loyalty.
>
> [**271**] The impudence of Achilleas' claim to have been more sinned against than sinning was brazen. The extent of his dishonesty is astonishing, and some of the individual charades in which he engaged are almost comical. However, his dishonesty indeed did cost AIB over £150 million, and there is nothing funny about his attempt, using his son, to sue AIB rather than make some reparation, if he can, for the harm he has

21 See 'Encomium to Andrew Baker J', Note of 23 Oct 2023

22 [2023] EWHC 214, Comm

23 These offences really ought to carry whole-life terms, in your correspondent's humble opinion.

caused, and nothing funny about his consequent abuse of the court by and through these proceedings.

[**272**] All the claims asserted in these proceedings fail on multiple grounds and will be dismissed.

§ 15 Lord Justice Coulson

We close with a late entry from the Court of Appeal case, *University of Exeter v Allianz Insurance plc*,[24] concerned with damage from a leftover bomb from the Second World War. Yet, that explosive force pales in comparison to the sheer power of the smackdown from Coulson LJ to the entire Bar and its citation practices. A citation related smackdown is particularly dear to this publication, and thus a perfect closing:

[**2**] I should note that, although the issue in this case is primarily one of law, leading counsel on both sides referred to the authorities in a measured and controlled way, and spared the court the incontinent citation of numerous vaguely relevant causation authorities, all too common in appeals of this type. We are very grateful to them.

24 [2023] EWCA Civ 1484

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