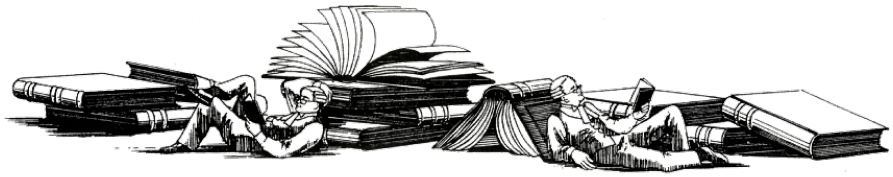

NOTES ON THE STYLE OF THE LAW

The Top 25 Judicial Smackdowns of 2024

by

ELIJAH Z GRANET

31 Dec

smackdowns judicial writing brutality viciousness evisceration lists

One of the jolliest and most brutal traditions of this publication is the end-of-year list of the most vicious and merciless judicial smackdowns of the preceding twelve months. In no particular order, please enjoy, in these last hours of 2024, my own little curated collection of these glorious judicial bench-slaps!

Tribunal Judge Anne Fairbo

The first such smackdown on our lists comes from the Tax Chamber of the First-tier Tribunal, where litigants have noted it is preferable to end up locked in a dungeon with only HMRC assessors and rats for company than to be on the receiving end of the sheer brutality of Tribunal Judge Anne Fairpo. In *Walkers Snack Foods Ltd v HMRC*,[1], Trib. the manufacturers of the Walkers Crisps brand claiming their line of poppadoms were not, for the purposes of VAT, considered to be potato crisps because, notwithstanding the usual rule that parties' names for things are irrelevant (one cannot, trademark infringement aside, usually name oneself out of legal jeopardy), they were called 'poppadoms' not potato crisps. Trib. Judge Fairpo was having none of it. Behold the following glorious SMACKDOWN!

> [**39**] The appellants argued that the products were called 'poppadoms', unlike potato crisps'. We consider that this simply means that the word 'poppadom' is not a protected term. Nominative determinism is not a characteristic of snack foods: calling a snack food 'Hula Hoops' does not mean that one could twirl that product around one's midriff, nor is 'Monster Munch' generally reserved as a food for monsters. For the avoidance of doubt, neither of these has been used as a comparator for the products – we refer only to their

1 [2024] UKFTT 31, TC

> names in this context. We do not consider that it is appropriate to give any weight to the name of the products 'in considering whether the products are similar to potato crisps', given the general freedom (within the constraints of trademark law) for manufacturers to choose the name of their product.

His Honour Judge Paul Matthews

Sometimes, a case is heard on the papers mainly because a smackdown is coming which is too brutal for open court. In *Greenwood v Pringle*,[2] HHJ Paul Matthews delivered just such a smackdown from His Honour's chambers. Namely, the judge let the proceeding *pro se* litigants asking for an extension of time, the Greenwoods, know exactly what he made of their incompetent waste of the Court's own time:

> [**36**] [...] I strongly urge the Greenwoods to obtain legal advice. The law is not a game, and it involves both emotional and financial costs. So far, it seems that the lack of legal advice has cost them dear. At the end of the day, of course, it is a matter for them. I cannot make them follow the rules. But, if they do not, they must accept the consequences.

Lord Leggatt

Any connoisseur of the smackdown is aware that Lord Leggatt JSC is an experienced practitioner of the art of brutally and politely destroying entire areas of law. Family practitioners observed one such utter disemboweling of an entire area of law in *Potanina v Potin*.[3] In that case, the UK Supreme Court was faced with the task of unravelling an erroneous line of law that, from nothing, had asserted that the appellate power to set aside an order under the Matrimonial and Family Proceedings Act 1984, s 13, required 'compelling reasons' delivered as a 'knock-out blow'. Lord Leggatt made clear the only knock-out blows were the ones His Lordship wanted to deliver personally to this legal nonsense:

> [**40**] No criticism can be made of the Court of Appeal for proceeding on this erroneous understanding of the law because the husband did not dispute before them that the power to set aside leave granted without notice may only be exercised where there is 'some compelling reason to do so' and in practice only where the court was materially misled. In his swansong in this court, however, Lord Faulks KC on behalf of the husband has mounted a direct challenge to the correctness of this approach. On examination it turns out to be built on sand.
>
> [**41**] No case has been cited to us in which a court has ever been asked to decide what test should be applied when a person served with an order made

2 [2024] EWHC 84, ChD
3 [2024] AC 1063, SC

> without notice granting leave under s 13 applies to have the order set aside under [Family Procedure Rule] 18.11. Despite this, it has come to be regarded as received wisdom that a test requiring a 'compelling reason' demonstrable by a 'knock-out blow' should be applied. The history that has led to courts applying a test contrary to the plain meaning and purpose of the applicable rules of court is a tangled one which takes some unravelling. It can fairly be described as a chapter of accidents. I will trace it through in detail. But in overview what happened is that *obiter dicta* expressed without hearing any argument, and which were themselves based on a misreading of earlier *obiter dicta*, have been treated as authoritative and then applied without argument or analysis to new rules to which they are on any view inapposite.

Mr Dexter Dias KC

The sign of the true cool hero is the snappy retort after defeating the baddie. The website *TV Tropes*, which catalogues such things, refers to this as a 'Bond One-Liner', since 007 is the master of the art. Mr Dexter Dias KC may be good casting for the next *James Bond* film,[4] because, in *Bucks Council v Barrett*,[5] the learnèd Silk, sitting as a judge of HM High Court, dropped a perfect one liner smackdown at the end of a tedious costs applications the parties couldn't be bothered to work out themselves:

> [**20**] In summary:
>
> 1. 80% of the costs claimed are properly apportioned to proceedings against Mr Barrett;
> 2. Of that figure, 70% are reasonably and proportionately incurred;
> 3. Given Mr Barrett's personal circumstances, there should be an extension of time to pay of six weeks from the date of this ruling—25 January 2024;
> 4. Parties to agree an order to reflect the terms of this judgment.
>
> [**21**] From here, the parties can do the mathematics themselves.

Lord Leggatt and Lord Burrows

Though, as we saw *supra*, Lord Leggatt JSC is happy to eviscerate with brutal efficiency on His Lordship's own, His Lordship is also happy to bring in a judicial partner for a four-fisted no-holds-barred beatdown. In *Armstead v Royal & Sun Alliance Insurance Company*

4 Perhaps titled *On His Majesty's Secret Counsel, learnèd in the law*?

5 [2024] EWHC 254, KBD

Ltd,[6] His Lordship teamed up with Lord Burrows JSC. As one would expect from a sometime Professor of the Law of England and Fellow of All Souls College at the University of Oxford, Lord Burrows JSC has a thorough education in hand-to-hand combat, the uses of chairs in pinning an opponent in the ring, and the subtler points of sumo wrestling. Using this ample academic experience combined with Lord Leggatt JSC's own experience in practical smacking down, the two justices did everything short of burning the Court of Appeal to the ground for its failure to deal with an insurer, RSA, naughtily trying to force a case for which it had no evidence on appeal.

> [**71** The facts could have been investigated and evidence adduced at the trial. As it is, however, RSA, on whom the burden lay, pleaded no case and adduced no evidence to prove, or even suggest, that Helphire was likely to have had other spare cars available and that a liability to pay the daily hire rate for the vehicle limited to 30 days' loss of use was likely to result in overcompensation. In these circumstances it was not open to RSA to advance such a case on appeal. Nor was it open to the Court of Appeal to make factual assumptions which were entirely unsupported by evidence.

Justice Kós

'Hungarians and those descended from them (including me) are very fond of a full-bodied red wine blend known as *bikavér*, which translates literally as 'bull's blood'. The strength and power of the New Zealand Supreme Court's Kós J makes me wonder if he is fond of drinking literal rather than œnological *bikavér*. In refusing an extension of time for leave to appeal by a crank suing a host of former and current politicians for silly reasons, in the case of *Sixtus v Ardern*,[7] His Honour showed the potency of ten-thousand bull as he utterly gored the conspiratorial appellant, without ever breaking a sweat:

> [**3**] The applicant seeks review of the Deputy Registrar's decision. Her memorandum in support is difficult to follow, drawing as it does on such diverse sources as a 1918 Yale Law Journal article on the declaratory judgment by Professor Borchard, the practice of the courts of India and some provisions of the German Code of Civil Procedure. Regrettably for the applicant, however, these do not demonstrate error by the Deputy Registrar in his evaluation of the potential application of reg 5(2)(b) of the Supreme Court Fees Regulations.

6 [2024] 2 WLR 632, SC
7 [2024] NZSC 14

Dame Victoria Sharp

Sharp by name, sharp by nature. In the criminal underworld, where danger and violence abound, men who have no fear at knifepoint have been known to quake if they learned that they were going to be tried before Dame Victoria Sharp P, whose verbal points stab deeper than even the sharpest knife. When, in *R v Booker*,[8] a thief pointed out the deficiencies in his brief at trial, one Mr David Martin-Sperry, the President of the King's Bench Division unleashed a storm of brutality on the incompetent barrister:

> [**113**] Mr Martin-Sperry was an unimpressive witness. It is a matter of regret that there are ample grounds for criticising his conduct is what was a relatively straightforward case.
>
> [**114**] We do not find his unorthodox approach to counsel's duty to put his client's case is one that can be tolerated. The rationale for Mr Martin-Sperry's approach was opaque and unsupported by material which we would expect experienced advocates to seek out before making such a significant decision about the tactical approach to a contested case. We are forced to conclude that he recognised the difficulty of successfully challenging the video recorded evidence of Ms Brooker and decided that the appellant's best chance lay with his own account to the jury, as a man of previous good character, with as little attention being drawn to his sister's account as possible. Mr Martin-Sperry fixed variously on dissociative identity disorder, Ms Brooker's strokes and what the appellant was able to tell him about how his sister reacted when under stress. Having failed to persuade the prosecution and the judge that a transcript of the ABE interview should be provided to the jury rather than the footage (as suggested in his first note to the court) he sought to limit the damage her evidence might cause, by presenting the appellant's oral and 'fresh', and unchallenged and uncontradicted by Ms Brooker. It follows that we find that Mr Martin-Sperry has not been frank with the court.
>
> [**115**] In addition, behind this, there was a catalogue of elementary professional errors. Mr Martin-Sperry communicated directly with his lay client, including using his personal email address; he took no notes of those discussions or of the advice that he gave; he apparently ignored the request for advice from his instructing solicitors; he failed to comply with directions made at a series of preparatory court hearings and there is no indication that he ever analysed the extensive medical records disclosed during the case.
>
> [**116**] In all the circumstances we are satisfied that his performance of his duties fell below the standard to be expected of a member of the Bar of England and Wales. We are not convinced that the accurate description is

8 [2024] EWCA Crim 103

> incompetence which implies a lack of skill. Here, having made an erroneous strategic decision on the basis of his personal judgment Mr Martin-Sperry, in his role for the defence, failed to comply with orders of the court before the trial and during the trial itself. He is a highly experienced advocate. It is hard to escape the conclusion that this was a deliberate course of conduct. It is regrettable that this is the position at the end of Mr Martin-Sperry's long career.

The Court of Appeal of Quebec

In Quebec, the Court of Appeal, consisting of Savard CJ and Morissette & Bich JJA, let fly some brutal Francophone smackdowns on intervenors in *World Sikh Organization of Canada v AG of Quebec*.[9] When the Fédération Autonome de l'enseignement (FAE) tried to argue that politics meant *stare decisis* could be tossed like expired poutine, the Quebec Court of Appeal let the punches start flying (from the English translation, footnotes omitted):

> [**303**] The FAE also refers to what it characterizes as] 'the rise of populism in Quebec and elsewhere in the Western world'. Given that this 'new trend […] diminishes the real scope of the rights and freedoms guaranteed by the Charters', the FAE is of the view that it is 'the Court's moral duty to be bold and reverse [this] precedent'.
>
> [**304**] To be clear, we note immediately that this latter statement—while it unquestionably draws the reader's attention—adds little, if anything, to the debate. The role of an appellate court is not to be bold. Overseeing the lawfulness of legislation and safeguarding 'Charter protection[s]', as the FAE urges the Court to do, does not entail an exercise in bravery in which the Court must be bold. When the Court declares a law unconstitutional in a given case, it is not being bold; it is quite simply performing its constitutional role.
>
> [**305**] Likewise, the Court is not being timid (the antonym of bold) in rejecting the FAE's argument in the case at bar; it is simply applying the law. In the Court's opinion, the FAE has not shown the existence of a 'change in circumstances' or evidence that 'fundamentally shifts the parameters of the debate' such that [binding precedent] could be revisited.

Sir Julian Flaux and Lord Justice Green

Back in England & Wales, the Court of Appeal will also hand down some vicious brutality from time to time. Two of the most intense pugilists on that honourable Court are the Chancellor, Sir Julian Flaux and Green LJ, who between them know how to eviscerate

9 2024 QCCA 254

the parties into shreds unrecognisable to the coroner. In *Visa Inc v Commercial and Interregional Card Claims I Ltd*,[10] Their Lordships made clear that parties who come into the Court trying to be sneaky about grounds of appeal are in for a smackdown:

> [**23**] It is trite, though worth repeating, that merely because an argument is framed as a point of law does not mean to say that it is arguable, and thereby warrants being aired at a full appeal. It engages the jurisdiction of the Court to hear an appeal but not a right of the parties to have an appeal. Once permission is granted the Court does not revisit the question but proceeds to determine the appeal. If it concludes that the arguments are unfounded, the Court does not backtrack and revoke the permission; it simply dismisses the appeal.

Judge Steven C Seeger

In Illinois, US District Judge Steven C Seeger never holds back when it comes to plaintiffs in need of a good smackdown. When, in *Blagojevich v Illinois*,[11] a convicted criminal former governor of Illinois sued arguing his federal civil rights had been violated by his impeachment and removal by the state legislature, His Honour made clear that anyone filing such a silly action was in for a brutal smackdown:[12]

> All of these problems, and perhaps more, stand in the way of his claim. The simple reality is that federal courts have no role to play when it comes to a state impeachment. The state legislature decided to remove Blagojevich from public life, and it is not the place of a federal court to bring him back.
>
> The case began with great fanfare. Surrounded by microphones and cameras, with a gaggle of press in tow, Blagojevich announced to the world that he might want a sequel in public life.
>
> The book is closed. The last page already turned, and the final chapter of his public life is over. The case never should have been filed. Read generally Dr. Seuss, Marvin K Mooney Will You Please Go Now! (1972) ('The time has come. The time has come. The time is now. Just Go. Go. GO! I don't care how. You can go by foot. You can go by cow. Marvin K Mooney, will you please go now!').
>
> The case started with a megaphone, but it ends with a whimper. Sometimes cases in the federal courthouse attract publicity. But the courthouse is no place for a publicity stunt.
>
> He wants back. But he's already gone. Case dismissed.

10 [2024] Bus LR 1928

11 (2024) 722 F Supp 3d 807 (ED Ill

12 *ibid*, 817

Sir Andrew McFarlane

Even though it's the judge who is a knight, some counsel before Sir Andrew McFarlane have been known to wear helms and face visors to protect themselves against the brutality of the President of the Family Division's smackdowns. These are entirely ineffective, for nothing can stop the wrath of an angry Sir Andrew McFarlane P. In *Williams v Williams*, His Lordship, faced with the incompetence of a law firm who had misused an online portal, made very clear that attempting shallow excuses blaming the computer portal was grounds for a brutal smackdown:

> [**39**] Before turning to the primary issue, it is necessary to correct an impression given in the course of Mr Todd's presentation of his case which was that the HMCTS digital divorce portal would deliver a final order of divorce where one was not wanted simply by 'the click of a wrong button'. Like many similar online processes, an operator may only get to the final screen where the final click of the mouse is made after travelling through a series of earlier screens. First of all, a solicitor, who may have a series of different divorce proceedings 'live' on the system at any one time, must select one particular case. It was at this stage that the error made by [the law firm] Vardags' operative apparently took place. Thereafter a number of other screens must be traversed, each of which prominently bears the names of the parties (for example '*Williams v Williams*'). At the final stage, after clicking the request for a final order, a further screen comes up inviting the operative to confirm that this is indeed what is sought—again the name of the case is prominently displayed on this screen.
>
> [**40**] The potential, which Mr Todd described, for a litigant in person, or their well-meaning relative, to operate the portal and make the same mistake as the professional operative at Vardags apparently made, does not exist. A litigant in person will only have access to their own case, with no potential for them to apply for a final order in a different divorce application.

Justice Lee

Without getting too deep into the detail of a tumultuous Australian imbroglio, Bruce Lehrmann, a staffer for a Member of the Commonwealth Parliament, was charged with sexual intercourse without consent of Brittany Higgins, but the case fell apart amidst juror and prosecutorial irregularities. Lehrmann, who at present has been committed to stand trial in an unrelated sexual offence in Queensland (he denies the offences), then sued the broadcaster Network Ten over their coverage of his alleged crimes. This was a deadly mistake. Giving the judgment of the Federal Court of Australia,[13] Lee J found against Lehrmann on

13 *Lehrmann v Network Ten Pty Ltd* [2024] FCA 369

the network's truth defence. In the process of doing so, Lee J let loose a brutal smackdown at the end of a punishing thousand-paragraph judgment, with élan that made him another contender for the Bond One-Liner:

> [**1091**] Having escaped the lions' den, Mr Lehrmann made the mistake of going back for his hat.

Lord Justice William Davis

Often, the best smackdowns are the most understated, for the most potent brutalisers pack an enormous amount of smack per word. A nice example of this comes from the little post-judgment transcript at the end of *R v Hendron*,[14] where (after losing an appeal against sentence) counsel for the appellant (the hapless drugs criminal, sometime barrister, and trigger of more red flags than a Soviet rally, Henry Hendron) mentioned the possibility of an application for leave against conviction. William Davis LJ needed very few words to respond with awesome brutality (emphasis added):

> LORD JUSTICE WILLIAM DAVIS If he wants to appeal against his conviction, *which would be a bold move*, he of course is entitled to seek leave to do so, together with the relevant long extension of time.

The Law Society of British Columbia Tribunal

In *In Re Arbabi*,[15] dealing with a proceeding against a barrister and solicitor who had brought a vexatious claim against her neighbour and then defended it with public remarks invoking pseudolaw nonsesnse, three Benchers of the Law Society of British Columbia (Mr Michael F Walsh KC, Ms Jennifer Chow KC, and Mr Thomas L Spraggs) were faced with astonishingly incoherent submissions from the impugned lawyer, one Naomi Arbabi. In response, the learnèd lions of the law in that Province responded with brutal efficiency. This smackdown is particularly good because it shows that sometimes the best smackdowns combine tribunal brutality with the judo technique of quoting the party being smacked down's own words.

> [**61**] The ebb and flow of [Arbabi's] submission had no discernable direction that the Board could follow. The Lawyer said that trying to explain it to us was like trying to explain a rainbow to a blind person.

Mr Justice G S Patel

The High Court of Judicature at Bombay sits in a famed building with beautiful architecture. Inside, however, there is occasional brutality against not only the parties, but some-

14 [2024] EWCA Crim 338
15 2024 LSBC 13

times even Hollywood film producers. G S Patel J's smackdown against a beleaguered popular franchise may be the longest distance smackdown on this list, working a tactical strike against the Wachowski sisters into a constitutional law case:[16]

> This should not become a debate about a theory of law or freedoms. We are concerned with the interpretation of a particular Rule. The Petitioners' argument is founded on the premise that all users everywhere and in all circumstances have the plenitude of choice. In reality, our choices are constrained by innumerable factors. The argument comes perilously close to saying that no law that even fits within Article 19(2) [of the Constitution of India]—itself a constriction of choice]—can or should ever be made. A more accurate approach would be, I believe, to simply say that choices (*ie*, freedoms) cannot be constrained except in strict accordance with Articles 19(2) to (6). The mere invocation of the 'illusion of choice' is insufficient; and might have perilous consequences—such as a fifth instalment of The Matrix movie franchise. Nobody wants that.

Judge Frank H Easterbrook

US Circuit Judge Frank H Easterbrook is famed not only as an experienced judge but as a premier scholar of law and economics. A lesser known talent of this professor-judge is his ability to utterly destroy parties in need of a good smackdown. This year, Judge Easterbrook managed to win a special place in my heart for delivering a typeface-related smackdown in *AsymaDesign LLC v CBL & Associates Management Inc* (cleaned up):[17]

> Of the many typographic suggestions in the [Handbook for practitioners in this circuit], the one most important to readers is that lawyers choose typefaces (often called fonts) suited for use in books and other long-form presentations.
>
> [...]
>
> Jason R Epstein, who represents AsymaDesign, did not heed this advice. His brief is set in Bernhard Modern, a display face suited to movie posters and used in the title sequence of the Twilight Zone TV show. Wikipedia explains: 'A somewhat decorative text typeface, it is distinct for its low x-height, elongated ascenders, and relatively short descenders giving it an appearance of height without requiring excessive leading. Serifs are wide and splayed.' Those are not characteristics that conduce to easy reading of long passages.
>
> [...]

16 *Kamra v Union of India* Writ Petition (L) № 9792 of 2023

17 (2024) 103 F 4th 1257, 1260f (7th Cir)

> Judges are long-term consumers of lengthy texts. To present an argument to such people, counsel must make the words easy to read and remember. The fonts recommended in our Handbook and Typography for Lawyers promote the goals of reading, understanding, and remembering. Display faces such as Bodoni or Bernhard Modern wear out judicial eyes after just a few pages and make understanding harder.
>
> Matthew Butterick, a type designer turned appellate lawyer, offers advice similar to that in our Handbook. See Matthew Butterick, *Typography for Lawyers* (2nd edn 2018), or his web site of the same name. He provides a different (though overlapping) list of typefaces good for use in legal briefs. If you don't believe our Handbook, believe Butterick. His book and web site include many examples of what to emulate—and what to avoid.
>
> We hope that Bernhard Modern has made its last appearance in an appellate brief.
>
> The appeal is dismissed.

Mr Justice Mulcahy

In Ireland, the inadvertent comedy troupe of the Burke family, a group of fringe Christian activists desperately in surch of martyrdom, provide excellent material for smacking down. The High Court's Mulcahy J had an opportunity to deliver one such smackdown to the clan's annoying scion Enoch, who was suing for defamation over newspaper reports that other prisoners (when Enoch Burke was committed for contempt) found him, as one might expect, annoying.[18] With incredible brutality, His Honour pointed out that Enoch Burke lacked much reputation to be defamed:

> [**164**] [...] To put it at its most neutral, a reasonable member of society could not, considering those facts, have had a view of Mr Burke's reputation which was capable of being injured by an incorrect allegation that he had been speaking excessively about religion following his imprisonment, which he claimed was for refusing to compromise his religious beliefs. He had behaved and was continuing to behave in a way which significantly adversely affected his reputation. The suggestion that he severely annoyed his fellow prisoners by the repeated expression of his religious beliefs is, in those circumstances, a whisper in the hurricane of noise which his actions in [being in contempt of court] created.

18 *Burke v Mediahaus Ireland Ltd* [2024] IEHC 348

Mr Raffi A Balmanoukian

In Nova Scotia, the Supreme Court is marked by a noted expertise in maritime smackdowns, using nautical themes to eviscerate parties. A Registrar in Bankruptcy of that Court, Mr Raffi A Balmanoukian, delivered a truly brutal and on-theme smackdown in his first paragraph in *In re Atlantic Sea Cucumber Ltd*:[19]

> [1] Sea cucumbers are ugly, bottom-dwelling scavengers possessed of lumps and bumps galore. The gentle reader may draw their own comparisons to this litigation.

Judge Mark C Scarsi

Sometimes, a smackdown is just a fact in a case, which by repetition becomes a bludgeoning instrument of considerable brutality. In *Frankel v University of California*, Judge Mark C Scarsi of the US District Court for the Central District of California showed how repetition and empahsis (in original) can effectively smackdown:[20]

> In the year 2024, in the United States of America, in the State of California, in the City of Los Angeles, Jewish students were excluded from portions of the UCLA campus because they refused to denounce their faith. This fact is so unimaginable and so abhorrent to our constitutional guarantee of religious freedom that it bears repeating, *Jewish students were excluded from portions of the UCLA campus because they refused to denounce their faith.* UCLA does not dispute this. Instead, UCLA claims that it has no responsibility to protect the religious freedom of its Jewish students because the exclusion was engineered by third-party protesters. But under constitutional principles, UCLA may not allow services to some students when UCLA knows that other students are excluded on religious grounds, regardless of who engineered the exclusion.

Justice Evan A Young

They say everything is bigger in Texas, but sometimes even Texan courts enjoy a smackdown over small matters. In *In re Dallas County, Texas*,[21] the Supreme Court of Texas was faced with a petition concerning court reform. Young J, with understatement and restraint, unleashed a pedantic smackdown (one of the best types of smackdown) on the petitioners (emphasis added):

> [T]he County filed in this Court what is styled as a 'petition for writ of injunction,' urging this Court to grant relief[…]

19 2024 NSSC 214

20 2024 WL 3811250 at *1 (13 Aug 2024)

21 (2024) 697 SW 3d 142, 149 (Tex)

> The County's petition, *which we treat as a petition for writ of mandamus*, claims entitlement to this relief on the ground that[…]

Judge Ed Carnes

In *Cambridge Christian School Inc v Florida High School Athletic Association Inc*,[22] a denominational private high school in Florida sued over rules on certain public prayer at state American football championship athletic events. In the US Court of Appeals for the Eleventh Circuit, Judge Ed Carnes showed why he is popularly nicknamed the Carnivore—it is not just a pun! Rejecting the lawsuit on standing grounds, His Honour demolished the school's Lancers football team for not being very good at football (cleaned up):[23]

> Cambridge Christian acknowledges that its standing theory relies on 'speculation' that it 'will make it to another championship game,' but the school contends that that speculation does not defeat standing because there's no need to prove that future harm is certain. True, Cambridge Christian is not required to demonstrate that it is literally certain that the harms it identifies will come about. But the school does need to demonstrate that future injury is 'certainly impending,' or at the very least, that there is a 'substantial risk' that the harm will occur. And given the Lancers' past performance on the gridiron, it cannot meet that standard. All the more so because as Cambridge Christian admits, the 'competitiveness' of its football team 'has waned' over the last few seasons, and the team is now in what it calls a 'rebuilding phase' that it expects to last for a 'few years.' Hope springs eternal but standing cannot be built on hope. With all due respect to the Cambridge Christian Fighting Lancers, there's nothing to suggest that the team's participation in a future football state championship is imminent or even likely.

Judge Andrew S Oldham

In *Dwyer v United Healthcare Insurance Company*,[24] the US Fifth Circuit's Judge Andrew S Oldham delivered a vicious smackdown to the denial of coverage, in violation of contract, to the anorexic minor beneficiary (referred to as 'ED') of a health insurance plan. The entire judgment is worth reading for Judge Oldham's line by line forensic demolition of the refusal of coverage, with smackdowns aplenty, but here I will excerpt only one such close reading smackdown (cleaned up):[25]

> 'You are better.' [from the grounds of denial]

22 (2024) 115 F 4th 1266 (11th Cir)
23 *ibid*, 1282
24 (2024) 115 F 4th 640 (5th Cir)
25 *ibid*, 649

> This one is a doozy. When United denied ED's benefits, she was still very ill. She was suffering from rapid swings in her weight, terrible body image, terrible experiences while home for three days, continuous body checking, and multiple hours every day of intrusive thoughts about restricting food. United's own files reveal: '[she] is continuing to body check; [she] does continue to walk in an attempt to not have thighs touch due to when [she] was in [eating disorder] behaviors [she] had thigh gap.' United's files thus reveal a beneficiary who was struggling with her treatment—not one who was 'better.'
>
> What is more, 'You are better' has no medical significance. The plan does not countenance any discussion of this sort of vague platitude. Rather, the plan requires a particularised evaluation of ED's medical needs and therapeutic alternatives for meeting those needs. Here, there is not sufficient concrete evidence in the administrative record that supports the denial of the claim.

Ms Justice Costello

This particular smackdown, from the Irish Court of Appeal, got quite a bit of press coverage and sparked a lot of debate about the proper role of references to popular culture and Internet memes in judgments. At this stage, I take no position as to the propriety of the impugned reference below, but it is very clear to me that Costello J qualifies for an entry based on the brutality involved:[26]

> [**97**] This Court thus affirms the decision of the High Court. However, this Court cannot conclude its judgment without referring to the use of slang or colloquialisms in a formal judgment of the High Court. The judgment refers to 'gaslighting' the decision-maker and equates the issuing of judicial review proceedings with walking 'into Mordor'. Thus the judgment can only be understood by reference to literary tropes which may or may not be properly understood by a reader and which certainly lack the precision required in judgments of the High Court. This is inappropriate and this Court deprecates the tendency to do so. Judgments must be written in clear, understandable language but that does not mean that it is appropriate to resort to slang or colloquialisms (other than in quotes): it is not. To do so militates against the precision and clarity required in judgments of the High Court.

Mr Justice Mellor

This final entry (and I emphasise again there is no real reason to the order of smackdowns) comes from Mellor J, who delivered a brutal smackdown to the man who falsely claimed

26 *Carrownagowan Concern Group s v An Bord Pleanála* [2024] IECA 234

(and repeatedly sued over such claims) that he invented Bitcoin. In *Crypto Open Patent Alliance v Wright*,[27] His Lordship eviscerated Craig Wright (the fabulist) over his claims. This is a wonderful smackdown and I think a perfect close to this list and 2024. To a judicially brutal 2025!

> [**1**] Dr Craig Steven Wright ('Dr Wright') claims to be Satoshi Nakamoto—*ie*, he claims to be the person who adopted that pseudonym, who wrote and published the first version of the Bitcoin White Paper on 31 October 2008, who wrote and released the first version of the Bitcoin Source Code and who created the Bitcoin system. Dr Wright also claims to be a person with a unique intellect, with numerous degrees and PhDs in a wide range of subjects, the unique combination of which led him (so it is said) to devise the Bitcoin system.
>
> [**2**] Thus, Dr Wright presents himself as an extremely clever person. However, in my judgment, he is not nearly as clever as he thinks he is. In both his written evidence and in days of oral evidence under cross-examination, I am entirely satisfied that Dr Wright lied to the Court extensively and repeatedly. Most of his lies related to the documents he had forged which purported to support his claim. All his lies and forged documents were in support of his biggest lie: his claim to be Satoshi Nakamoto.

27 [2024] EWHC 1198, ChD

For more Notes on the
style of the law, visit
legalstyle.co.uk

Published
by

GRANET
PRESS
LIMITED