The Binding Effect of Precedent

I hear it a lot from OPCA adherents, *"Oh but that's not a fact, that's just some judges opinion."* in an attempt to ignore a certain ruling. The difference between OPINION and a FACT in law, is known as "non-obiter" and "obiter".

When a particular point of law (or *"ratio decidendi"*) is determined by the higher courts, (example: a State Supreme Court or the High Court) it creates a "precedent" which is then binding on all courts below it in the hierarchy or pecking order of courts, for example: a Magistrates Court, or District Court. The decision is not binding on courts of higher rank within that jurisdiction or in other jurisdictions, but it may be considered as persuasive authority.

This is known as *"stare decisis"*. The words originate from the Latin maxim *"stare decisis et non quieta movere"* which means: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by the decision and not disturb settled matters. Under this doctrine, judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same.

Section 76 of the *Constitution* grants the High Court *"original jurisdiction"* in all matters relating to its interpretation. Even when it is *"carefully considered dicta"* these decisions are binding on all the courts in Australia (see ***Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2010) HCA 22***, at 134, ***Garcia v National Australia Bank Ltd (1998) HCA 48***.

https://freemandelusion.com/wp-content/uploads/2022/04/Farah-Constructions-v-Say-Dee-2007-HCA-22.pdf

https://freemandelusion.com/wp-content/uploads/2022/04/Garcia-v-National-Australia-Bank-Ltd-1998-HCA-48.pdf

As Justice Michael Kirby wrote in ***Precedent Law, Practice & Trends in Australia***:

"Where a ratio decidendi exists in the reasoning of one of its decisions, it is not permissible for any other Australian court, whether in an appeal or at trial, to ignore, doubt or qualify the rule so stated. The rule may be analysed and, where thought appropriate, elaborations suggested or distinctions upheld. But the legal duty of obedience requires that it must be followed and applied."

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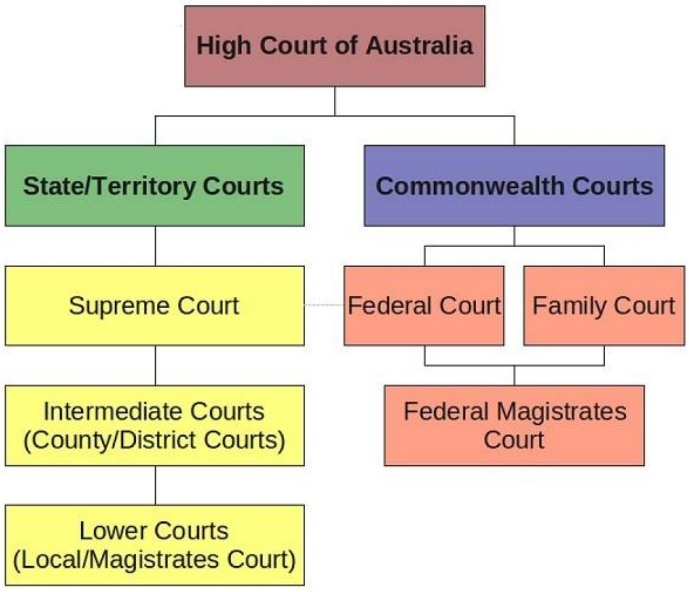
In ***Queensland v. The Commonwealth (1977) HCA 60***, (at 9) Gibbs J. remarked:

*"Further, it has been said, and with some justification, that "the doctrine of stare decisis should not be so rigidly applied to the constitutional as to other laws" (see the passage cited by Isaacs J. in **Australian Agricultural Co. v. Federated Engine-Drivers and Firemen's Association of Australasia (1913) HCA 41**, at p 278) because in such cases the Parliament cannot legislate to correct the errors of the courts. It has been said, too, that since this Court has the duty of maintaining the constitution, it has a duty to overrule an earlier decision if convinced that it is plainly wrong. In the case already cited, Isaacs J. went on to say (1913) 17 CLR 261, at p 278 :"Our sworn loyalty is to the law itself, and to the organic law of the Constitution first of all. If, then, we find the law to be plainly in conflict with what we or any of our predecessors erroneously thought it to be, we have, as I conceive, no right to choose between giving effect to the law, and maintaining an incorrect interpretation. It is not, in my opinion, better that the Court should be persistently wrong than that it should be ultimately right."*

But like most generalizations, this statement can be misleading. No Justice is entitled to ignore the decisions and reasoning of his predecessors, and to arrive at his own judgment as though the pages of the law reports were blank, or as though the authority of a decision did not survive beyond the rising of the Court. A Justice, unlike a legislator, cannot introduce a programme of reform which sets at nought decisions formerly made and principles formerly established. It is only after the most careful and respectful consideration of the earlier decision, and after giving due weight to all the circumstances, that a Justice may give effect to his own opinions in preference to an earlier decision of the Court."



Some recent examples of a Supreme Court stating this rule can be found in ***Southdale Stud Pty Ltd v RJR Trading Pty Ltd [2020] SASC 106*** (at 26) in relation to the binding effect of ***Attorney-General (WA) v Marquet (2003) HCA 67*** and ***Shaw v Minister for Immigration and Multicultural Affairs (2003) HCA 72*** on their court.

> *"The appellant has not raised any argument of merit that is capable of challenging the validity of the Australia Act at all. Further, the existence of this Court is not dependent on the validity of the Australia Act. In any event, as the respondent submits, it is not for this Court to depart from what is manifestly 'seriously considered dicta' of the High Court as to the validity of the Australia Act, even if, against all probability, I had concluded that the Notice of Appeal contained a proposition of merit. (See Farah Constructions v Say-Dee Pty Ltd (2007) 230 CLR 89 (at 134, Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ.)"*

Likewise in ***Commonwealth Bank of Australia v Haughton [2020] SASC 135*** (at 44) in relation to the same contention:

> *"There is nothing in the argument to which Mr Haughton took me that affects the outcome in Marquet, nor the ruling later made in Shaw v Minister for Immigration and Multicultural Affairs. Ultimately, this point goes nowhere. .. Even if this is merely regarded as seriously considered dicta of the High Court, it remains binding on me, Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2010) 230 CLR 89, [134] (Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ)."*

One of the best explanations I've found regarding the binding effect of precedent, particularly in relation to the "Strawman" premise, is in the following two Canadian cases.

Crossroads-DMD Mortgage Investment Corporation v Gauthier, 2015 ABQB 703 (paras 32-46):

> *"As a preliminary point I will respond to Gauthier's argument that I should not consider myself as bound by the Alberta Court of Queen's Bench Meads v Meads decision of Associate Chief Justice Rooke. Gauthier called it "obiter". My suspicion is that Gauthier views a declaration of that kind*

to be a kind of simple invocation that will allow him to escape otherwise binding court authorities. It does not, but I think it would be helpful to offer him an explanation of "obiter" or "obiter dicta", and what that term actually means.

Obiter are statements of law, principle or conclusions, that do not directly relate to the outcome of a court decision. For example, a judge might write a decision that says because of facts A I conclude B, and therefore do C, but if I the facts had been X, I would have concluded Y, and then I would have done Z. The X, Y and Z analysis is obiter. The court did not use that part of the decision to reach its actual conclusion. An obiter component of a judgment is not binding on other courts. It is, however, potentially influential.

Next I should clarify stare decisis. This principle dictates when a court has the discretion to address an issue, point of law, or a fact. In South Side Woodwork v R.C. Contracting (1989), 1989 CanLII 3384 (AB QB), 95 AR 161, 33 CLR 43 (Alta QB), Master Funduk explained where Masters of this Court fall in the judicial hierarchy: Any legal system which has a judicial appeals process inherently creates a pecking order for the judiciary regarding where judicial decisions stand on the legal ladder. I am bound by decisions of Queen's Bench judges, by decisions of the Alberta Court of Appeal and by decisions of the Supreme Court of Canada.

Very simply, Masters in Chambers of a superior trial court occupy the bottom rung of the superior courts judicial ladder. I do not overrule decisions of a judge of this court.

The Meads v Meads decision was made by a justice (judge) of the Court of Queen's Bench of Alberta. I cannot ignore any non-obiter findings and principles of law in that decision. Those have binding authority on the Masters of the Court of Queen's Bench of Alberta

Though this will come up again later, one point that Gauthier argued is that he is "an individual human being, or man with inherent jurisdiction on the land commonly known as Canada", and "not a person as defined by Interpretations Act RSC 1985". He is "... the Beneficiary and Grantor of the account referred to as the juristic person ADAM CHRISTIAN GAUTHIER ...". This is obviously an attempt to invoke the OPCA double/split person or "Strawman" concept: individuals have two interlinked aspects, a physical "human" element and an attached or interlinked non-corporeal legal element, what Gauthier calls a "person" or "juristic person".

In Meads v Meads this concept is reviewed and rejected at paras 417-446. Rooke ACJ concludes that in Canadian law the double/split person concept is entirely unfounded in any sense, and has been systematically rejected every time anyone has ever raised it in a Canadian court. He then goes to evaluate the documents that the respondent, Dennis Larry Meads, had filed in the Meads v Meads action. Rooke ACJ explains at paras 432-439 that the Meads' documents are meaningless because they attempt to invoke the double/split person concept, and concludes at paras 438-439: [438] ... everything good and of value attaches to the physical person of Mr. Meads, while all obligation and debt is allocated to the unfortunate DENNIS LARRY MEADS, corporate entity. [439] Of course, that does not work. Mr. Meads is Mr. Meads in all his physical or imaginary aspects. He would experience and obtain the same effect and success if he appeared in court and selectively donned and removed a rubber Halloween mask which portrays the appearance of another person, asserting at this or that point that the mask's person is the one

liable to Ms. Meads. Not that I am encouraging, or indeed would countenance, the wearing of a mask in my courtroom.

This means that ACJ Rooke's conclusion that the double/split person "Strawman" is a myth is not obiter. He used that conclusion of law to reach the result in Meads v Meads. As a consequence, that conclusion is binding on me. To be explicit, even if that were not the law I would come to exactly the same conclusion. Gauthier's claim that distinguishes an "individual human being" from the "person" is entirely meaningless. They are one and the same. Gauthier's apparent belief as to the legal meaning of the word "person" is entirely false and incorrect.

I note that the "Strawman" double/split person concept was also rejected by the Newfoundland and Labrador Court of Appeal in a recent judgment, Fiander v Mills, 2015 NLCA 31 (CanLII) at para 20: This notion of treating a named individual as an "estate" that is somehow separate from the person who is subject to the law and that is free from governmental regulation is also a concept unrecognized by the law of Canada. It is just nonsense. Chief Justice Green concludes the "Strawman" is so obviously and notoriously false that he directs that anytime a trial court encounters "... the fractionating of human personality to support claims of not being subject to law ..." that the litigant who made that argument should be presumed to have sued in a vexatious and abusive manner and only is appearing in court for an improper and ulterior purpose: paras 39-40.

The "Strawman" is therefore not merely a myth. It is litigation poison.

The Fiander v Mills decision is not binding upon me, but it has significant weight because that instruction was from a Canadian Court of Appeal.

Another rule Gauthier should be aware of is that there are parts of Meads v Meads which are obiter, but which are nevertheless binding on me because those passages originate in other, nonobiter court decisions. For example, at para 216 Rooke ACJ indicates notaries do not have judge-like authority. Meads did not argue that in his materials or court appearance, so that statement is obiter. However, Meads v Meads then references an Alberta Court of Appeal decision: Papadopoulos v Borg, 2009 ABCA 201 (CanLII) at paras 3, 10. That decision includes the following explicit statement: The appellant put great stock in the fact that his unconventional documents had been notarized by a Notary Public, but the involvement of the notary could not give these legally ineffective documents any force of law. ... The passage in Papadopoulos v Borg is not obiter and is binding on me. It is from the Alberta Court of Appeal.

There is a third important point for Gauthier to understand concerning Meads v Meads. The weight and influence of a judgment increases when other judges and courts accept that a decision provides the correct approach to a legal issue. Judicial reasoning operates in that sense on a consensus basis, and if a judge's obiter reasoning is generally accepted then that obiter becomes increasingly influential. Consensus results in a generally understood and agreed upon principal of law. The Meads v Meads judgment is very widely cited and accepted in Canada. Five Canadian Courts of Appeal have explicitly endorsed the decision as correct:

R v Blerot, 2015 SKCA 69 (CanLII) at para 4; Minicozzi c Royal Bank of Canada, 2013 QCCA 1722 (CanLII) at para 1; Fiander v Mills at paras 11, 19, 38; Bossé v Farm Credit Canada, 2014 NBCA 34

(CanLII) at para 43, 419 NBR (2d) 1, leave denied [2014] SCCA No 354; Tupper v Nova Scotia (Attorney General), 2015 NSCA 92 (CanLII) at para 53. In those provinces Meads v Meads is the law.

And Canada is not the only country which has accepted the analysis and conclusions in Meads v Meads; it has also been cited both in the Commonwealth and the United States:

Australia: Kosteska v Magistrate Manthey & Anor, [2013] QCA 105 ACM Group Ltd v Jenner, [2014] QMC 7; Deputy Commissioner of Taxation v Aitken, [2015] WADC 18.

Northern Ireland: Parker v McKenna & Anor, [2015] NIMaster 1.

The Republic of Ireland: Freeman & anor v Bank of Scotland (Ireland) Ltd & ors, [2013] IEHC 371; Kearney v KBC Bank Ireland Plc & Anor, [2014] IEHC 260; McCarthy & Ors v Bank of Scotland Plc & Anor, [2014] IEHC 340, Harrold v Nua Mortgages Ltd., [2015] IEHC 15.

Scotland: Watson v Lord Advocate Sheriff Court, [2013] GWD 19-378.

The Isle of Jersey: Vibert v AG, [2013] JRC 030.

United States: USA v Phillips (2 October 2014), US District Court North District of Illinois Eastern Division, Case No. 1:12-cr-872; Wik v Kunego, DC, WD New York 2014 No 11-CV-6205-CJS; Wik v Dollinger, DC, WD New York 2014 No 12-CV-6399-CJS.

If Gauthier thinks he can wave away Meads v Meads by a simple declaration that decision is just one judge's opinion or because it is obiter, then he is wrong. What was one opinion is now a judicial chorus. Not one court has sung a dissenting note. Anyone who makes claims like the "Strawman" clause and then says Meads v Meads does not apply to them is going to face a very, very steep uphill battle in our Courts."

https://freemandelusion.com/wp-content/uploads/2018/07/crossroads-dmd-mortgage-investment-corporation-v-gauthier-2015-abqb-703.pdf

Pomerleau v Canada (Revenue Agency), 2017 ABQB 123 (CanLII):

"Mr. Pomerleau in his written filings at various points criticizes the Meads v Meads decision of Associate Chief Justice Rooke of this Court. For example, in his April 18, 2016 filings Mr. Pomerleau says this decision is irrelevant to his litigation. He "object and REBUT" the Meads v Meads judgment. Mr. Pomerleau's arguments and evidence are valid. He states that relying on Meads v Meads is "frivolous, improper, irrelevant and would constitute an abuse of process", and is "PRIMA FACIE evidence that there is NO MERIT" to the CRA's defence. More drastically, Mr. Pomerleau's March 23, 2016. Application in Pomerleau v CRA #1 states that the Meads v Meads judgment is invalid. It is a fraud designed to deceive and injure humanity:

As a decision of the Alberta Court of Queen's Bench, the Meads v Meads judgment is a binding authority for a Master of this Court. I inquired during the hearing on Mr. Pomerleau's position concerning that decision. He confirmed he had read it. Mr. Pomerleau was at this point more

circumspect. He restated his respect for the Court and its decisions, but nevertheless indicated he believed the Meads v Meads judgment was engineered with the intent of concealing from Canadians their true rights, particularly when they did not use the exact correct terminology and/or language.

Meads v Meads is binding case law on a Master and relates to many elements of Mr. Pomerleau's litigation. In Crossroads-DMD Mortgage Investment Corporation v Gauthier, 2015 ABQB 703 (CanLII) at paras 32-46 I reviewed how the Meads v Meads decision is not merely a binding authority in this Court, but has been broadly endorsed by courts in Canada and the Commonwealth. I therefore reject Mr. Pomerleau's argument that I cannot rely on this decision, or that it is "in FACT, NULL and VOID, ab initio, nunc pro tunc, ad infinitum." Meads v Meads is instead a correct statement of Canadian law on this subject."

https://freemandelusion.com/wp-content/uploads/2018/07/pomerleau-v-canada-revenue-agency-2017-abqb-123.pdf

To demonstrate the persuasive effect this Canadian judgment has on the Australian judiciary, which themselves are cases in the higher courts here, so they have a binding nature on all Magistrates Courts in that State in regard to these concepts, and persuasive on all other courts in every other State, here are a few Australian judgments that refer to ***Meads v Meads 2012 ABQB 571***:

- ***Ennis v Credit Union Australia [2016] FCCA 1705***
- ***Kosteska v Magistrate Manthey & Anor [2013] QCA 105***
- ***Adelaide City Council v Lepse [2016] SASC 66***
- ***Deputy Commissioner of Taxation v Woods [2018] FCCA 1815***
- ***Lion Finance Pty Ltd v Johnston [2018] FCCA 2745***
- ***Coshott v Spencer [2016] NSWDC 43***
- ***ACM Group Ltd v Jenner [2014] QMC 7***
- ***Hewitt & Corbett 7 Anor [2016] FCCA 776***
- ***K Sheridan v Colin Biggers & Paisley [2019] NSWSC 528 / 621***
- ***Warren Ronald Wichman v Pepper Finance Corporation Limited [2019] NSWCA 195***
- ***Rossiter v Adelaide City Council [2020] SASC 61***
- ***Bauskis v Wainhouse & Ors [2020] NSWCA 17***
- ***Petrie; Trustee of the property of Aitken (Bankrupt) v Aitken & Ors [2019] FCCA 16***
- ***Bendigo and Adelaide Bank Limited v Grahame [2020] VSC 86***
- ***Deputy Commissioner Of Taxation v Cutts (No.4) [2019] FCCA 2866***

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