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### Pop Culture References in Canadian Judicial Decisions: Monty Python and Beyond

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Should judges make pop culture references in judicial decisions?

This column argues that they should not. As elaborated below, pop culture references risk being more obscuring than elucidating, more alienating than welcoming, and possibly soon out of date. While judges and lawyers may find pop culture references “fun”, the public isn’t well served by this practice.

For readers seeking a thorough overview of this topic, I recommend Michael Conklin’s recent [article](#) arguing that American judges should refrain from making pop culture references in their decisions. Many of the points I make here are shared by Conklin, and his article was a major reference point in writing this column (as reflected in multiple citations below).

## Judges “Dropping Pop”[\[1\]](#)

I’ve been thinking about pop culture references in case law after reading a recent media [article](#) that mentioned a Tax Court decision referencing Monty Python. Only a year or so earlier, there was media coverage of a [post-publication removal](#) of a Monty Python reference in a British Columbia Supreme Court decision after a [CBC news story](#) of the sketch-inclusive original decision. In its [coverage](#), the CBC referenced “Canada’s judicial love affair with Monty Python.”

A quick CanLII search confirms repeated references to Monty Python material in Canadian judicial decisions. For example:

- “The testimony and the documentary evidence disclosed a certain Monty-Pythesque flavour to have permeated the entire matter....Like the obdurate owner of the pet shop in the Monty Python skit, they simply refused to accept the parrot was not napping or meditating but was, in reality, extremely dead” ([L’Hirondelle-Wilson v. M.N.R., 1998 CanLII 522](#))
- “There then occurred a somewhat Monty Pythesque exchange between the Court and John’s former counsel” ([Ricci v. Tully, 2009 FC 493](#))
- “In the world of Monty Python, [he] would be the Minister of Silly Explanations.” ([The Hearing Clinic \(Niagara Falls\) Inc. v. 866073 Ontario Limited, et al., 2014 ONSC 5831](#))
- “...but much of the rest of the 89 pages of testimony resembles a comedy routine that might have been inspired by Monty Python’s Flying Circus.” ([Noushin v Adesa Auctions Canada Corporation, 2015 ABQB 411](#))
- “To borrow from the satire of Monty Python, it is a non-entity and denial does not change that fact.” ([Wolfe v Shawcor Ltd, 2016 ABQB 261](#))
- “It seems to me at this point this is somewhat parallel to the Pythesque description of a particular parrot” ([Karl Hermanns v. John Dwight Ingle, 2019 ONSC 646](#))

While there does seem to be a particular affinity for Monty Python among some Canadian judges, other pop culture references can be found in judicial decisions. For example, while doing a non-exhaustive survey, I found [one decision](#) that referenced a Seinfeld episode, [another](#) mentioning Little House on the Prairie, [one](#) contrasting Father Knows Best and Modern Family, [one](#) discussing I Love Lucy and Three’s Company T.V., a [footnote](#) riffing on Gilligan’s Island and epigraphs quoting from [Mister Rogers’ Neighborhood](#) and [Game of Thrones](#).

## Increased accessibility and persuasive value?

Some suggest that pop culture references help increase the accessibility of judicial decisions. One law professor advocates in a [blog post](#): “appellate judges—throw in those pop culture references! Maybe, just maybe, it will increase awareness and interest in the judiciary.” Another professor [contends](#) that such references can serve to “liven up” judicial opinions and “help explain the law’s resolution of disputes brought to [judges’] public forums.” Relatedly, it has been [argued](#) that pop culture references can wield useful persuasive power for both judges and lawyers.

Such touted benefits strike me as overstated, if not entirely misplaced. When a judge drops a reference to a television show, movie or a celebrity into their decision, there is often an unstated assumption that the reference will be universally understood. Such universality, however, is elusive. While I might understand what a judge is getting at when [they write](#) that the trial, which was scheduled for four hours but took more than three days, “had as much in common with ‘four hours’ as the castaways on Gilligan’s Island had with a ‘three hour tour’”, I’m guessing that many of the students I teach will not understand the reference – they know nothing about Gilligan’s Island. Similarly, while many people have watched Monty Python skits, I generally have no idea what judges are referring to with their various Monty Python references. In our increasingly fragmented media landscape, these sorts of disparate cultural experiences are all the more common: [“these days, when we have what feels like a billion channels instead of a mere handful, it’s difficult to share the same set of cultural references.”](#)

The public’s uneven familiarity with any given pop culture reference has several negative effects. As Conklin [writes](#):

This can lead to the opinion losing momentum in the mind of the reader as he stops, turns to the footnote, learns about the reference, and then goes back to the text and applies this new understanding. This could further distract the reader in that the practice of explaining a reference often comes across as condescending, thus creating animosity between the reader and the author. Or worse, since judges are not required to cite non-legal sources, the reader may have to conduct an investigation to understand the reference. Or perhaps more commonly, the reader will simply read on in willful ignorance, hoping that understanding the pop culture reference is not relevant to understanding the case.

In short, there is a real risk that in attempting to construct a judicial decision that is more enticing to readers, the judge ends up confusing at least some and makes the decision more, rather than less, labourious to understand.

Admittedly, for many readers, most judicial decisions will be hard to digest and understand, whether or not they contain pop culture references. The law is often complex and judicial decisions are often relatively long. My point here is not that pop culture references necessarily render inaccessible what would otherwise be accessible. Rather, the point is that such references do not generally further accessibility and, worse, they can generate further barriers.

If accessibility is the goal, there are many more effective options, including using more plain language where appropriate, [avoiding “unnecessary legalese”](#) and [drafting better structured and more concise reasons](#). These are more difficult tasks than sprinkling a little [Mary Poppins](#) or [Tony Soprano](#) here or there, but they stand to be much more fruitful.

It should also be acknowledged that some pop culture references may be more generally legible and illuminating than others. Take this excerpt from a 2020 Alberta [trial court decision](#):

[22] In Seinfeld Episode 17, Season 6, called *The Kiss Hello*, George Costanza fails to give 24 hours notice of cancellation of a physiotherapy appointment, and the therapist charges him a \$75 penalty. When she later, without notice, cancels an appointment George had booked, the therapist refuses to reimburse him the same amount for his time. George rails against this injustice.

[23] To allow the Court here to penalize Mr. Burgess by refusing him his day in court because he was a half hour late, when the Court itself bungled its dates twice and required his attendance both times, would be a similar injustice.

A reader of these paragraphs can presumably understand the meaning of the included Seinfeld reference, even if they are not familiar with the specific episode or even the show itself. The reference is also arguably effective in underscoring the court's view of where the equities lie in the situation. This sort of explained reference, however, is not the norm. And, as will be elaborated below, there are additional negative side effects to be worried about.

## The risk of alienation

Pop culture references can also be alienating. Implicit in an assumed universality underlying a pop culture reference is the message that everyone should know what is going on, what the joke or analogy is, why it is so apt, hilarious or devastatingly cutting. Those who don't "get it" can end up feeling like interlopers. The judge brings along those in their "club" to laugh about a dead parrot (a favoured Monty Python reference of Canadian judges), while others stand outside, confused. Even where there is a well-explained reference—like the Seinfeld example above—a reader who is unfamiliar with the television show or movie being mentioned may still have a residual sense of "outsider-ness". The cultural marker that was so notable so as to make its way into a judicial decision is not one that they share.

The systemic impacts of this sort of alienation are all the more concerning if one pauses to consider how representative judicial pop culture references are likely to be. Given that the judiciary, as a whole, is less diverse than the Canadian population and lacks representation from marginalized communities, cultural references risk disproportionately speaking to those already in power. Although broad generalizations about who watches certain television shows or movies or listens to certain songs are problematic, cultural consumption undoubtedly varies across things like race, gender, class and age.

Potential negative effects on those actually involved in cases also require consideration. Including pop culture tidbits in a judgment can be trivializing. A judge who uses pop culture references ["run\(s\) the risk of parties thinking they weren't taken seriously."](#) Conklin [notes](#) that some cases "represent the culmination of years' worth of suffering, uncertainty, and financial hardship for the parties involved,...[placing such litigants] a heightened risk of interpreting such references as the judge making light of their predicament."

Such references can be even more problematic when they are used in reference to a particular party or witness. In one case, a judge [referred to a girl](#) who was the victim of multiple sexual offences as possibly "not quite Laura on *Little House on the Prairie*." I found this reference grotesque. I can't imagine how she might feel. What about the witness in a civil matter who the judge [said](#) would be "the Minister of Silly Explanation" in the world of Monty Python? The witness was, in the judge's view, "not trustworthy", but surely they are still entitled to a respectful process that they can reasonably perceive as fair-minded? What does a "Minister of Silly Explanation" reference add other than belittling the witness?

## Shifting meanings

A further danger of pop culture references is that the meanings of such references may shift over time. In referring to pop culture references made by Justice Elena Kagan in a 2020 Supreme Court of the United States decision, a commentator [notes](#) "Won't all of this be really dated really quickly?...I'm not sure that Supreme Court opinions from the 1920s would read better if they said things such as 'just like Al Jolson' or 'this statute is as mysterious as 'The Shiek.' (Look 'em up kids—they were big once)."

Indeed, it is easy to overestimate even the *current* popularity of one's own favoured cultural artifacts. I've experienced this when occasionally mentioning what I assume are "well known" TV shows or movies to my students, only to be met with blank stares. A [2016 article](#) arguing in favour of pop culture references in judicial

decisions and lawyers' briefs, suggests that "advocates and judges are on safe terrain when they cite iconic shows such as *Perry Mason*, *L.A. Law*, *Leave It to Beaver*, or *Seinfeld*...however, the terrain becomes more slippery when the brief or opinion cites such less remembered shows as *Hopalong Cassidy* or *Taxi*." Even six years ago, my list of "iconic shows" worth mentioning would be much different than this author's.

Relatedly, the meaning and public reception of a cultural reference may shift over time as the lives of those connected to the underlying artifact evolve. For example, Monty Python star John Cleese was recently in the news because it was announced that he is becoming a ["host \[of\] a regular show on \[a\] right-wing news channel"](#) and, last year, [publicity](#) surrounded Terry Gilliam, another Monty Python star, after one theatre cancelled the revival of a musical he was set to direct "after a dispute in which [he] was accused of endorsing transphobic views and playing down the #MeToo movement." I don't know how this recent media coverage may (or may not) impact the public's reception of Monty Python. The point is that it may. And the judge who has referenced Monty Python has no control over what people will associate with their pop culture reference going forward. In general, celebrity controversies arise with some regularity, making pop culture references a real liability. As Conklin [observes](#), "pop culture icons who enjoy near-unanimous adoration today can quickly turn into social pariahs." A reference that is innocuous when a judge includes it may carry an entirely different set of cultural referral points in the future.

## What about our entertainment?

As noted above, some have argued that pop culture references "liven up" case law and make legal decisions more entertaining for the readers. In [his article](#), Conklin has handily taken on this point:

Pop culture references are not a necessary element to creating an entertaining opinion. And even if they were, entertainment value is not the primary goal of a judicial opinion. Focusing too much on reader entertainment risks an opinion that leaves the reader with memorable takeaways not relevant to the case. In psychology, these are called "seductive details." A seductive detail is something sensational added to increase audience attention, but people tend to remember the sensational concept rather than the substantive part that the sensational element was intended to enhance. Examples include the advertising campaigns featuring memorable lines of "That's a spicy meat-a-ball" and "Where's the beef?" While highly memorable, the campaigns are viewed as a commercial failure because consumers remembered the catchphrase but not what product or brand was being promoted—Alka-Seltzer and Wendy's, respectively.

I find it difficult to see how entertainment is ever a valid goal of a judicial decision. In any event, Conklin provides a compelling argument for why pop culture references risk being distracting *because* they are attention-grabbing. In this sense, the entertainment value of a pop culture reference can undermine, rather than enhance, the public's understanding of the case law.

Additionally, one must wonder *who* is being entertained here? How much are pop culture references about judges amusing themselves? To what extent does this phenomenon involve a ["sort of self-aggrandizing without really contributing a meaningful way to people's understanding of the cases."](#)

Here, I am reminded of comments in a [prior Slaw column](#) by Alice Woolley, where she notes that when a case is before the courts, the parties have a lot at stake, including not only the substantive issues but also potentially large amounts of legal fees or even their liberty,

[a]nd the judge who uses that moment – where everything is at stake for the parties and nothing is at stake for him – to be clever and witty for a purpose extraneous to the decision itself has acted improperly. A judge can be clever and erudite. He can even be funny. But he should do so only where necessary to achieve justice in the matter at hand, not to entertain himself or bolster his reputation. Otherwise he has put himself and his interests in the decision and, by doing so, has contributed to a culture where arrogance, rather than humility, becomes the norm.

While judging is undoubtedly hard work and can sometimes be isolating and lonely, a judge who craves entertainment or connection has better options than employing pop culture references.

## Conclusion

Not all judicial pop culture references are alike. Comparing a sexual assault complainant to Laura Ingalls Wilder is not the same as joking about the length of a trial using a Gillian Island reference which, in turn, is not the same as trying to highlight a potential injustice using a Seinfeld episode. In some (rare) cases, judicial pop culture references are well-explained, used to underscore an important point and don't involve "punching down". In most cases, however, pop culture references seem to be plunked into reasons without context or awareness that some portion of readers will be unfamiliar with the reference. Or, worse, they are made with little regard for how they may demean parties or witnesses. Sometimes they are even wielded with disdain, if not cruelty.

In all cases, pop culture references risk being misunderstood, confusing, alienating or trivializing. Why take this risk? Deploying pop culture references is never necessary and can bring negative consequences. The fact that it might be "fun" is beside the point. If judges and lawyers are looking for entertainment, they should seek it out in other ways than "pop drops" in case law.

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[1] The phrase "dropping pop" is taken from Michael Conklin, "Be a Lot Cooler if You Didn't": Why Judges Should Refrain from Pop Culture References in Judicial Opinions", (2022) 46 Journal of the Legal Profession, online: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3898900](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3898900). Conklin, in turn, attributes the phrase to Victoria S. Salzman "Honey, You're No June Cleaver: The Power of 'Dropping Pop' to Persuade," (2011) 62 Maine Law Review 242.