

## Judgitis

# Your Honour: I tip my wig to you | Marcel Strigberger

By **Marcel Strigberger**



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(February 27, 2019, 12:17 PM EST) -- I retired from my litigation practice in the Greater Toronto Area after over four decades in the trenches. I often wanted to express my thoughts about judges in general. All lawyers know they are supposed to act with courage and candour.

Given that my court appearances were usually before a judge, I thought it wise to exercise restraint on that courage part and certainly more so on the candour part of it. Now that I no longer experience these privileged appearances, I feel I can address these issues confidently and without fear of repercussions.

What can we reasonably say about judges, according them due process? Offhand most judges are a pleasure to deal with. They listen and they treat lawyers and clients with respect.

But ...

Firstly they all start off as lawyers. However, the lawyers naively expect the judges to remember those stressful days of slugging it out in front of hard-nosed judges. The problem is some judges develop a severe case of judgitis, which in short is Greek for "Move over Louis XIV, I'm on the bench now."

This is not totally surprising. They have the power to incarcerate felons, financially enrich or destroy litigants and even overrule political leaders.

And unlike the late comedian Rodney Dangerfield, they command respect. Bucketloads of it.

Right off the bat a judge's entry into the courtroom is preceded by a registrar bellowing, "Order! All rise." We lawyers and other mortals never get that type of greeting, not even when we enter a Walmart.

Then there are the obligatory judicial addresses. In England and not long ago here we used to address a high court judge as, "My Lord." A female judge was "My Lady." I once witnessed a police officer calling the justice, "Your Honour" to which the judge responded, "We'll wait til you get it properly." Things went down from there actually as the officer nervously tried by saying, "Sorry Your Worship."

We waited. Fortunately eventually opposing counsel whispered the magic phrase to the flustered policeman and the trial continued.

And back in my McGill law school days in Montreal, the salutation to a high court justice was, "Monseigneurie." When I hear that I almost expect the judge's court entrance to be heralded by a platoon of flags and trumpets.

I actually had the experience of acting as a justice at our law school moot court. I am reasonably humble but I will say the position, even temporary, can get to your head. Those monseigneuries sounded rather melodic. I was tempted to ask counsel to repeat some of their submissions.

But judgitis can get to the judges' heads, turning them nasty. I have seen judges who are sticklers for the garb the lawyers sport. One insisted that male lawyers appearing before him wear either black or gray pants. If some unsuspecting lawyer appeared in brown pants, Justice X would interrupt him saying, "I can't hear you."

The poor lout would just crank up his voice a few decibels. Before long some colleague would whisper to him that not his voice was the pariah, but rather his pant's colour. Justice X actually used to stand down the case. (I call him him "X" as I still fear him and I don't want to have to engage the services of the witness protection program.)

Then there is the critic judge, who obliterates the client's confidence in his lawyer. I once witnessed a newbie lawyer cross-examining a police officer in a drunk driving case. The officer never mentioned smelling alcohol but sure enough the potential Perry Mason asked the cop that question. The judge, known for his rudeness to lawyers, interrupted saying, "Counsel, you are doing a great job of convicting your client."

He may as well have said, "Honey, I just shrunk your lawyer."

Many other judges are polite, but over demanding. I have experienced judges who as they announce the lunch break, will say something like, "Mr. Strigberger, I would like some law on that hearsay issue. I suggest you go to the library and help me." This judge no doubt ascribes to the scientific theory that lawyers don't have to eat. At least he does not add insult to injury by adding, "Bon appetit." That judge with the problem with the brown pants might have.

A major predicament lawyers often encounter is appearing before judges who never read the written materials. We'd spend hours honing an affidavit or factum and you could just tell from the judge's stare that his most salient experience with your documents was a paper cut.

In addition to the respect, members of the judiciary enjoy incredible perks, including generous vacation time and pensions. And unlike the lawyers, they don't have to look for business. I have yet to see a sign at a bus shelter reading, "Justice William (Bill) Langley. Award winning judge."

Perhaps the greatest perk is the ability to slip up. A judge blows it and the appellate court can correct the error. Even then, the judge is accorded respect in the Notice of Appeal, reading something like, "1. The learned judge erred in not excluding the psychiatric evidence of Dr. Marvin Berman, who is actually a dermatologist."

Slip up in the business world and management gives you a pink slip. I doubt its contents contain the word "learned."

As I said most judges do get it right (generally). But if there are any judges coming across this oration, and some of the lamentations apply to you, please do read it diligently. And be careful not to get a paper cut.

All of which is submitted, respectfully of course.

*Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more serious business of humourous author and speaker. Visit [www.marcelshumour.com](http://www.marcelshumour.com).*

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