

Trump's Trial Defines Justice in Disrepute

Canada and the US both have a Problem with Rogue Judges

by [Colin Alexander](#) (July 2024)



Three Judges, Georges Rouault (1936)

Whatever one thinks of former President Donald Trump, his criminal trial violates the principle established for Anglo-American jurisprudence by England's [Lord Chief Justice Hewart](#): "A long line of cases shows that it is not merely of some importance but is of fundamental importance that justice

should not only be done, but should manifestly and undoubtedly be seen to be done.”

It's become normal both in Canada and the US for judges to preside over cases despite having a connection that should disqualify them, Trump's argument had merit, that insistence on the Democrat stronghold of Manhattan as the venue for his trial was unfair. And the assignment of [Acting Justice Juan Merchan](#) to hear his case may reasonably be said to be corrupt. The first section of the [US Judicial Code](#) says: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

Republican [Congresswoman Elise Stefanik](#) says Justice Merchan contributed to the Democrat campaign in 2020. Also, his daughter, Loren Merchan, is heavily involved in Democrat politics through her work as head of the consulting firm Authentic Campaigns. Stefanik says her firm stood to profit greatly from Trump's conviction. So, one may presume bias against Trump. He speaks, therefore, of a witch hunt with some justification.

While [34 charges](#) against Trump make a long list, each one is just a separate piece of the money trail. The charge was that money was paid to porn star [Stormy Daniels](#) to keep her quiet and not undermine Trump's prospect of getting elected as president in 2016. Paying money to suppress prurient claims is not illegal. It was said to violate US election law if and only if in fact intended to influence the outcome of the election—and not merely to protect Trump's reputation. Given what everyone already knew, who could imagine that publication of Daniels's assertions would influence a single voter's intentions? No evidence was adduced on that question.

Separately, of course, there's the issue of what I call philanthropy, meaning love for lots of people. But how many other wandering public figures come to mind? Certainly,

Presidents Kennedy and Clinton. I think of [Pamela Digby Churchill Hayward Harriman](#). Said to be expert on the bedroom ceilings of rich men, she became Clinton's ambassador to France. Unlike Daniels's apparent payoff, when a prostitute attempted to blackmail the Duke of Wellington, he merely returned the letter after scrawling across it, "Publish and be damned."

For Canada, [textbooks](#) and case law forbid judges to preside over cases where there could be a perception of bias. A landmark case involved an application by the Spanish government to extradite former President Pinochet of Chile from England. The issue was whether a former head of state enjoyed head-of-state immunity when faced with charges arising from his term of office. Although he didn't deliver his own decision, [Lord Hoffmann](#) was the swing vote in the decision that immunity did not protect Pinochet from extradition. The House of Lords set aside that judgment because Lord Hoffmann had been chairman of Amnesty International, which had campaigned for Pinochet's prosecution. In setting aside the decision, the judges ruled that the Amnesty link was *an automatic disqualification* for his sitting on the case.

The Canadian problem with unsatisfactory judging starts with [Richard Wagner](#), Chief Justice of what he calls *the world's most progressive (woke!) courts*. During the 2022 truckers' protest in Ottawa, he made [outlandish comments](#) about an incipient revolution. The Canadian Judicial Council, of which he's also the head, said that complaining about what he said was more detrimental to public perceptions than his violation of judicial ethics! By contrast, [Justice Thomas Berger](#) of the BC Supreme Court resigned gracefully, after being scolded for commenting publicly on the entrenchment of Indigenous rights in the Charter. Without bringing the administration of justice into disrepute, how can the Chief Justice now preside over an appeal involving either the truckers or anything to do with COVID?

An evidently substantial case of conflicted judging, among many, is *MediaTube v. Bell Canada*, a billion-dollar claim discussed at length in my book [Justice on Trial](#). It's the only major Canadian case involving high-tech patents, with the plaintiff asserting that Bell stole the technology for FibeTV. The Federal Court's trial judge, Justice George Locke, had been a partner in the firm of Norton Fulbright that acted for Bell, and he had worked in their intellectual property group. His decision in favour of Bell is gobbledygook. He acknowledged that Bell had constantly changed the description of how their system worked, as if they didn't know that. Although, arguably, Bell and their lawyers McCarthy Tétrault committed the criminal offence of perjury and obstruction of justice, he awarded punitive damages against MediaTube. In the Federal Court of Appeal, Justice David Stratas took the lead for the appellate judges despite having previously represented Bell in a case before the Supreme Court. In 130 words, he justified the exclusion of new evidence by citing a case that had analyzed the purported new evidence in 9,000 words. The Supreme Court declined to hear an appeal despite its importance for the high-tech economy.

Trump's case adds to the long list of judicial travesties on both sides of the border that the late Christie Blatchford discussed in her [book](#), *Life Sentence: Stories from four decades of court reporting—Or how I fell out of love with the Canadian justice system (Especially judges)*. "The judiciary," she wrote, "is much like the Senate. Like senators they are unelected, unaccountable, entitled, expensive to maintain and remarkably smug."

If courts in US and Canada don't deliver credible judging for the rich, like Trump or the Ontario Teachers' Pension Plan as investors in MediaTube, what hope is there for lesser people? As now exists, although imperfectly, for [England and Wales](#), Canadians as well as Americans need outside accountability for lawyers. For judges that need is even more pressing. As US

Supreme Court Justice Louis [Brandeis](#) once wrote, “If we desire respect for the law, we must first make the law respectable.”

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