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Lawsuit, shmawsuit': Yiddish livens up courtroom

Latin's on its way out as the language of law

When I was studying Latin in high school, the common wisdom was that if I had any intention of being a lawyer, I had to have a working knowledge of that ancient language.

By the second day of law school, I discovered the remarkable invention called a law dictionary, and realized it was not necessary for a lawyer to understand a single word of Latin.

As a law student, whenever I would see an archaic Latin word or phrase in a court decision I would simply look it up in a law dictionary. I very quickly learned *de minimis non curat lex* (the law does not concern itself with trifles) - and nothing can be more trifling than the pretentious use of Latin when a simple English phrase or word would do nicely.

Back in the 1980s, the Ontario courts adopted new Rules of Practice and the legislature passed the Courts of Justice Act. Together, they were supposed to eliminate, as much as possible, all use of Latin expressions or, according to Justice James Southey in a 1985 case, "expressions in any other strange, foreign language."

Frankly, it didn't work, and although the use of Latin has declined considerably, our court decisions are still peppered with some archaic Latin expressions such as *ex parte* (without notice), *mens rea* (guilty mind), trial *de novo* (new trial) and *caveat emptor* (buyer beware).

But if *vox populi est suprema lex* (the voice of the people is the highest law), and that voice never uses or understands Latin, perhaps it is time to say *requiescat in pace* (rest in peace) to all judicial use of that language. But at the same time as Latin is on its way out of our court system, another, far more expressive language is apparently on its way in.

Writing in the *Yale Law Journal* in 1993, Judge Alex Kozinski and Eugene Volokh argued that, of all languages, Yiddish is quickly supplanting Latin as the spice in American legal jargon. The title of their scholarly research is *Lawsuit Shmawsuit*.

Their theme was brought home to Canada last month in an article by lawyer Jeffrey Miller in *The Lawyers Weekly*, entitled "High-Schticking Judges Have Chutzpah."

Computer searches of American and Canadian legal databases show hundreds of uses of Yiddish expressions, and the use seems to be increasing.

The first known use of a Yiddish term in Canadian jurisprudence occurred in 1943 in the Alberta Appellate Court. In the case of *R. v. Hellenic Colonization Association*, the accused club was charged with being a common gaming house.

In his reasons, Justice Ford described the association as a club where members gathered to play cards, billiards or pool, to gossip, have refreshments, read magazines and *kibitz* (fool around).

Another Yiddish word that has crept into the vernacular is *chutzpah*, loosely translated as unmitigated gall or nerve. This word has appeared in more than 200 U.S. court cases, and at least 17 on this side of the border.

The best definition of *chutzpah* was cited by the British Columbia Court of Appeal in 1996. In the case of *Doman v. British Columbia Securities Commission*, Justice Southin reports that one of the parties had unduly delayed the proceedings and then complained about abuse of process.

This, said the judge, "calls to my mind the delightful Yiddish word *chutzpah*, which is sometimes explained as a man who has been convicted of murdering his parents seeking mercy on the ground he is an orphan."

Even that definition was not enough for Justice Stephen Borins in the 1997 case of *East York v. Attorney General*. Commenting on the government's plan to amalgamate all the Toronto municipalities, Justice Borins thinks the provincial government may have displayed mega-*chutzpah* if it thought the citizens of Toronto would accept a megacity without a say in the process.

But, he said, "the Charter does not guarantee an individual the right to live his or her life free from government *chutzpah* or imperiousness."

Last year, Master Julian Polika of the Ontario Superior Court of Justice characterized the actions of the defendant's counsel in a case he was hearing as the "height of *chutzpah*."

Justice Francis Muldoon of the Federal Court of Canada in Winnipeg also has a fondness for using *chutzpah*.

Two months ago, he described the actions of the lawyers in a case before him as "impolite and unprofessional." Then, he says, they had the "mutual *chutzpah*" to ask for costs against each other. Muldoon also used the word *chutzpah* in two earlier court cases.

Chutzpah has even entered British jurisprudence. In the 1995 case of *Barclays Bank v. Schwartz*, the defendant tried to get out of a contract he signed because he was illiterate and didn't understand it. Lord Justice Simon Brown of the Court of Appeal in England described the feeble defence in the case as "a perfect example of *chutzpah*."

In 1983, the Ontario High Court of Justice heard the case of *Courtenay v. Polkosnik*, a copyright infringement case involving the *Story of Blueberries*. The main character in the story is Small One, one of Santa's elves who fumbles and interferes with the other elves in packaging Christmas toys. Justice Eugene Ewaschuk characterizes Small One as a klutz.

My local Yiddish maven (expert), Mayer Kirshenblatt, tells me a klutz is literally a log or tree stump, and is usually used to mean a graceless bungler or clumsy person. Maybe Santa's elves speak Yiddish.

Speaking of mavens, that word appears in a number of American court cases, as does *schlemiel* (loser, clumsy person, simpleton), which is twice used to describe Woody Allen's screen persona.

In *The Joys of Yiddish*, author Leo Rosten says a *schlemiel* is always knocking things off a table, and a *nebbish* always picks them up. (A *nebbish* is also a loser or unlucky person.)

Schtick (routine) appears in a 1993 U.S. decision written by Judge Alex Kozinski, one of the authors of *Lawsuit Shmawsuit*. Vanna White, hostess of *Wheel of Fortune*, sued Samsung Electronics for running a parody of her TV character.

The majority of the court said White had a good case, but Kozinski dissented, saying Samsung's ad wasn't simply a copy of White's *schtick*. Like all parody, he wrote, it created something new.

I could go on and on with examples of Yiddish expressions in court cases, but oy, I've run out of space.

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