



HUMOROUS STYLES OF CAUSE IN *IN REM* ACTIONS

A COMPARISON OF CANADA AND THE UNITED STATES

Florence Ashley

A CURSORY READING OF *IN REM* STYLES of cause is proof of their humor.¹ If you do not at least draw a smirk reading how, once upon a time, the illustrious state of South Dakota sued fifteen impounded cats, you might be beyond salvation.² Those who, in their misfortune, fail to appreciate feline humor might be comforted by the wise use of scarce judicial resources by glancing at the magnificence that is *United States v. One Tyrannosaurus Bataar Skeleton*.³ Why are these styles of cause so funny?

Among theories of humor, the Benign Violation Theory (BVT) seems best suited to explaining why *in rem* styles of cause are perceived as

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¹ This is not to deny that other types of cases cannot have funny styles of cause: *I Am The Beast Six Six Six of the Lord of Hosts in Edmond Frank MacGillivray Jr. Now. I Am The Beast Six Six Six of the Lord of Hosts IEFMJN. I Am The Beast Six Six Six of the Lord of Hosts. I Am The Beast Six Six Six of the Lord of Hosts OTLOHIEFMJN. I Am The Beast SSSOTLOHIEFMJN. I Am The Beast Six Six Six. Beast Six Six Six Lord v. Michigan State Police, et al.*, File No. 5:89:92, 1990 U.S. Dist. LEXIS 8792 (WD Mich July 12, 1990).

² *South Dakota v. Fifteen Impounded Cats*, 785 N.W.2d 272 (SD 2010).

³ No. 12 Civ. 4760 PKC (SDNY Feb. 13, 2013).

uniquely humorous. According to that theory, something is funny if it is perceived to be a benign violation of a norm, with violations being notably benign if (1) the putative violation is permitted under a stronger norm, (2) the norm attracts only weak commitment, (3) the violation is psychologically distant, or (4) the violation reveals itself not to be one upon closer consideration.⁴ We can identify at least one social norm that seems to be violated by *in rem* styles of cause: lawsuits are serious. The perceived violation occurs because of the (mis)perception that lawsuits against objects are not serious. That impression is only strengthened when the object is considered too unimportant or unusual to be the subject of a legal dispute. *In rem* styles of cause also sometimes involve a violation of our expectations regarding *how* objects should be named in a serious lawsuit, with terms that convey insufficient precision (“approximately”, “more or less”, etc.) or unnecessary precision (e.g., “One 1985 Nissan, 300ZX, VIN: JN1C214SFX069854”); either instance is seemingly incongruous. This latter norm strikes me as only a secondary reason why *in rem* styles of cause are funny, and I submit that the first one (“lawsuits are serious”) is the primary norm in play.

Are these norm violations perceived as benign? I would suggest that they are. While the seriousness of lawsuits more generally is related to their adversarial dynamic and deep implications for individuals, *in rem* cases typically also preserve adversarial dynamics despite the style of cause and can have immense impacts on the possessors, recipients, or owners of the objects – if not entire communities, in cases of stolen artifacts. This is thus a case of misperceived violation that turns out to be benign. Interestingly, if the underlying case is sufficiently serious it becomes an instance of dark humor, and there may be a counter-norm against finding it funny. Furthermore, “silly” lawsuits would not cause cognizable harm since any harm they cause will be indirect, through waste of judicial resources. For this reason, these violations are perceived as benign because they are permitted

⁴ A. Peter McGraw & Caleb Warren, *Benign Violations*, 21 PSYCHOLOGICAL SCIENCE 1141, 1142 (2010). Though not expressly adopted by McCraw and Warren, misperceiving a norm violation is equivalent to weak commitment to a different norm and permission under the same, stronger norm. For instance, misperceiving consensually hitting someone in a BDSM scene as a violation of “do no harm” is equivalent to a weak commitment to “do not hit people” insofar as it was mistakenly inferred from the stronger norm of “do no harm”.

Humorous Styles of Cause in In Rem Actions

under the stronger norm of “do no harm”, with the indirect harm they cause ultimately dismissed due to psychological distance.

Unsatisfied with leaving all the fun to our southern neighbors, I endeavored to find Canadian equivalents to these cases. Alas, having searched far and wide, I could find none as funny. There are *in rem* actions and some of them include object names – the United States does not have a monopoly on absurdity any more than on racism – but the softness of the northern land made the best of options as bland as a New York bagel. Where is our fun, our pizazz?

I decided to dig deeper. Why, when Canadian law is so clearly superior in all other aspects save for defamation law, do we miserably fail to compare when it comes to case name comedy? This essay is an attempt at answering that question. Against all expectations, the answer is not that Canada is more sensible and serious.

IN REM STYLES OF CAUSE: A RANKING

Before turning to why Canadian *in rem* styles of cause fail to compare favorably to United Statesian ones, it seems necessary to convince my reader that they are indeed not as funny. To do so, I surveyed all *in rem* styles of cause in Canadian law and compared them to a selection of my favorite U.S. ones.⁵ Since the best of all Canadian ones were much less funny than a selection of the best U.S. ones, a systematic review of all U.S. *in rem* styles of cause was unnecessary.

Comedy, belonging to the aesthetic arts, is eminently subjective and by its essence hostile to rank-ordering. However, as Scottish philosopher David Hume has pointed out in his essay *Of the Standard of Taste* (1757), taste is subjective but not everyone is equally perceptive. Those with a more refined palate are better critics than those who do not appreciate the subtleties of taste. As someone whose experience with academic humor is no

⁵ Canadian cases were searched on Westlaw using the string “advanced: NA(in & rem)”, giving 332 results. This misses some and perhaps even many *in rem* cases, but it is the best search strategy I could find. United States cases were my favorite from the pages *Category: United States in rem cases*, WIKIPEDIA (Jun. 15, 2020, 1:37 PM), en.wikipedia.org/wiki/Category:United_States_in_rem_cases and *In rem jurisdiction*, WIKIPEDIA (Jun. 15, 2020, 4:20 PM), en.wikipedia.org/wiki/In_rem_jurisdiction. *Ad hoc* Google searches did not reveal any funnier ones.

longer in question,⁶ I am confident that my subjective ranking will be, if not indisputable, at least good enough. And that's good enough for me; this isn't Dairy Queen. With methodological niceties (and rigor) now out of the way, I offer the following ranking of the fourteen funniest *in rem* styles of cause.

In first place is *South Dakota v. Fifteen Impounded Cats* (SD 2010). The hilarity of this one lies in the imagery it conjures. Reading it, I am imagining disheveled cats being handcuffed and taken into custody for being rowdy.

In second place is *Case of One 1985 Nissan, 300ZX, VIN: JN1C214SFX06 9854* (4th Cir 1989). Its comedy is purely situational and will perhaps disappear in a few months. But as of today, it sounds like it could be the name of Grimes' and Elon Musk's baby. "Oh, what's their name?" asks the parent at the playground. "Their name is 1985 Nissan, 300ZX, VIN: JN1C214SFX069854, or Vin for short".

In third place is *United States v. One Tyrannosaurus Bataar Skeleton* (SDNY 2013). It's a motherfucking T-Rex fighting against the United States, need I say more? And yes, I do believe it could defeat the *entire United States*. Life finds a way.

In fourth place is *United States v. Article Consisting of 50,000 Cardboard Boxes More or Less, Each Containing One Pair of Clacker Balls* (D Wisc 1976). Despite being a gigantic and profitable market, children's toys are quintessentially coded as unserious, *childish*. Upon first impression, one wonders why anyone would bother launching a suit over clacker balls. Was someone building an army of bola-wielding toddlers? The mention of "more or less" and the focus on the boxes instead of the clacker balls add to the humorousness. One would expect precision from the judicial system and, since the clacker balls were probably of greater concern than the box they were in, it is odd to first mention the boxes.

⁶ See, e.g., *Recommendations For Institutional and Governmental Management of Gender Information*, 45 N.Y.U. REV. LAW & SOC. CHANGE, fn 50 (2020); *Surgical Informed Consent and Recognizing a Perioperative Duty to Disclose in Transgender Health Care*, 13 MCGILL JL & HEALTH 73, fn 1 (2020); *Genderfucking Non-Disclosure: Sexual Fraud, Transgender Bodies, and Messy Identities*, 41 DALHOUSIE L.J. 339, fn 26 (2018); *Don't Be So Hateful: The Insufficiency of Anti-Discrimination and Hate Crime Laws in Improving Trans Well-being*, 68 U TORONTO LJ 1, fn 34 (2018).

Humorous Styles of Cause in In Rem Actions

In fifth place is *United States v. 11 1/4 Dozen Packages of Articles Labeled in Part Mrs. Moffat's Shoo-Fly Powders for Drunkenness* (WDNY 1941). Counting to 135 in dozens is questionable in the utmost, even in a country known for its nonsensical units of measurement. The name of the powder is straight out of another era (and indeed is), conjuring strong snake-oil merchant vibes. The language of “labelled in part” seems not only unnecessary but makes us wonder what else it was labelled with.

In sixth place is *United States v. One Solid Gold Object in Form of a Rooster* (D Nev 1960). Chickens are kind of funny by default.⁷ Furthermore, two words would have sufficed: Gold Rooster. Taking up nine words was wholly unnecessary. No one would have thought it an actual living, breathing, clucking rooster made from gold. Besides, why are you suing a gold rooster? It's innocent. Fly, fly away you majestic bird! This one also gets bonus points for making me search for the metric volume of a rooster. And though it does not contribute to the comedy of the style of cause itself, I am amused by the fact that the government's lawyers argued that the rooster “was a threat to the American economy, and even to law and order”. No, I will not elaborate on why.

In seventh place is *United States v. Approximately Thirteen Unoccupied Burial Plots Situated at Forest Lawn Memorial Park's Hollywood Hills Cemetary [sic]* (CD Cal 2017). Do you want zombies? Because that's how you get zombies. If we get a zombie apocalypse because of an overeager government lawyer, I swear to god. I know lawyers are bad at math but counting to thirteen is not that hard. But at least it says approximately thirteen and not approximately unoccupied.

In eighth place is *United States v. Ninety-Five Barrels (More or Less) Alleged Apple Cider Vinegar* (SCOTUS 1924). This case reads as though it managed to get all the way to the Supreme Court of the United States without anyone being bothered to take a quick sniff or swig. What do you mean *alleged* apple cider vinegar? Isn't that the sort of thing you're supposed to check before you file?

In ninth place is *United States v. Approximately 64,695 Pounds of Shark Fins* (9th Cir 2008). If you'll excuse my French, *tabarnak ça en fait d'l'aileron d'requin*. That's a lot of shark fin. No wonder they're endangered. The

⁷ See *CLUCK!* [Quest], Patch 1.13.2.30406 *WORLD OF WARCRAFT* (Blizzard Entertainment, 2007). Surprisingly, the *BLUEBOOK* does not cover how to cite video game quests.

Florence Ashley

contrast between the word “approximately” and the specificity of “64,695” is striking. They would have had to weigh the shark fins to get so precise a number. And even rounding to the nearest five pounds, the number is still precise to the tune of 99.992%. If they weighed them so precisely, they could have removed the word “approximately”. And if they didn’t, then they included way too many significant digits and someone needs to go back to high school math.

In tenth place is *United States v. One Package of Japanese Pessaries* (2d Cir 1936). Pessaries is a fun word. Pessaries. Pessaries. Pessaries at the time were used as a diaphragm-like contraceptive. There’s an amusing-yet-sad imagery to someone importing birth control so they can just. get. laid. but getting coochie-blocked by the customs people. Can’t you just let people fuck, Chadwick? Just because you and Karen are all about vanilla missionary once a year doesn’t mean *we* must be.

In eleventh place is the only Canadian showing on the list, *Royal Bank of Canada v. “I Wonder” (The)* (Can Fed Ct 1985). I probably ranked this one slightly higher than I should have out of pity. Nonetheless, the style of cause sounds like a corporate lawyer getting a bit saucy. “Oh, who we’re suing? *I’ll never tell*”.⁸

In twelfth place is *A Quantity of Copies of Books v. Kansas* (SCOTUS 1973). The order of terms reads like Kansas is getting sued by books. Might one even say it was an . . . attack of the clones?

In thirteenth place is *United States v. 2,507 Live Canary-Winged Parakeets* (SD Fla 1988). I am grateful for the confirmation that they are indeed not dead. It would be quite grim to read a case about 2,507 Canary-Winged Parakeets only to learn they’re all dead. This may have been one of the most appropriate times to use uncertain terminology like “approximately”, as parakeets breed readily while in a group and I guarantee that there were more than 2,507 parakeets by the time judgment was rendered. Since they’re a party to the suit, did they get to choose their lawyer by majority vote? Did they pick a bird from among themselves since they’re too poor to pay for a human lawyer? Does it get to wear a little suit to court? Did it graduate top of the class from *Birdmingham* School of Law? Okay I’m done.

⁸ Read in the voice of cartoon Jeff Winger from the end skit of *Community: Paradigms of Human Memory* (NBC television broadcast Apr. 21, 2011).

Humorous Styles of Cause in In Rem Actions

In fourteenth and last place is *62 Cases of Jam v. United States* (SCOTUS 1951). I'm going to guess that this is a defamation case initiated after a high-ranking government official called them jelly. How dare they compare them to that inferior, processed product. What next, orange juice *without pulp*? Heretics, all of them.

Although I have decided to stop at fourteen, honorable mention goes to *United States v. Various Pieces of Semiconductor Manufacturing Equipment* (8th Cir 1981), *United States v. 422 Casks of Wine* (SCOTUS 1828), and *United States v. 1855.6 Pounds of American Paddlefish Meat and 982.34 Pounds of American Paddlefish Caviar* (SD Ind 2018).

The sole Canadian showing in the top fourteen was a fluke. Besides a few ships with barely amusing names, almost all other styles of cause were in the whereabouts of *Ontario (Attorney General) v. \$104,877 in U.S. Currency (In rem)* (Can FC 2012) and *British Columbia (Director of Civil Forfeiture) v. Owners and All Others Interested in the Real Property* (Can BCSC 2018). Nothing to write home about. I doubt that any of them would rank in the top thousand U.S.-Canada *in rem* styles of cause. I also excluded *Application to Destroy the Dog Tuppence* (2004 BCPC 27) because that's just sad and not otherwise funny since it's not *against* the dog. Even the Canadian case in the top fourteen wasn't that funny; if there's one thing I learned by talking to U.S. jurists, it's that in a list of fourteen only HYS matter.

Writing this ranking, I learned three things. First, comedy gets exponentially less funny the more you try to explain it. Second, it's hard to explain why some things are funny. There's a *je ne sais quoi* about humor. Third, I am not as funny as I thought I was. In any case, I have established on a balance of probabilities that Canadian *in rem* styles of cause are less funny than U.S. ones. I now turn to why.

THE LAW OF *IN REM* STYLES OF CAUSE IN CANADA AND THE UNITED STATES

A comprehensive survey of all laws and areas of law in which *in rem* actions appear would be excessive for a lighthearted article. Instead of striving for exhaustiveness, I have endeavored to select a few representative laws from a few areas of law known for their incongruous *in rem* styles of cause. Reviewing this selection sheds light on why funny *in rem* styles of cause are so much more common in the U.S. than Canada.

Florence Ashley

Incongruous *in rem* styles of cause arise in various contexts. In this section, I focus on three areas where they are relatively common: admiralty law, customs and shipping, and police forfeiture. I will consider them in turn, comparing how styles of cause emerge under U.S. and Canadian law.

Admiralty Law

Canadian admiralty law falls under federal jurisdiction and its *in rem* style of cause is set out by the Federal Court Rules.⁹ Under the appropriate form, the style of cause must include the name of the ship and specify whether the action is against “owners and all those interested in The Ship [. . .] and freight”, owners and all those interested in “her cargo and freight” (floating wood uses she/her pronouns), against the cargo itself, against the proceeds of sale of the ship, or against the proceeds of sale of the cargo. Styles of cause including the name of a ship may be whimsical although the illusion can be broken by the affix “(Ship)”.

The same occurs in the United States, since Rule 10(a) of the Federal Rules of Civil Procedure declares that the short form name only the first party on each side, which includes the vessel.¹⁰ These styles of cause tend to be less funny than actions involving random objects since ship names are individualized and readily attract personification – as attested by the fact that official forms-speak give them the personal pronoun “she”.

Admiralty actions *in rem* do not stop at vessels, however. They can also bear on a vessel’s cargo. While in Canada the suit would still be styled after the ship name, the same is not true in the United States and the targeted cargo may be named defendant of the action. See, e.g., *United States v. Approximately 64,695 Pounds of Shark Fins* (9th Cir 2008). While admiralty law places Canada and the United States on more or less (pun intended) of an equal footing when it comes to actions against vessels, the same cannot be said of actions against the cargo of a ship.¹¹

⁹ The Constitution Act, 1867, 30 & 31 Vict, c 3, s 91(10); Federal Court Rules, SOR/98-106, s. 477(2) (1998).

¹⁰ Suits against vessels are provided for in, *inter alia*, 46 U.S.C. § 2106.

¹¹ The forfeiture action of the shark fins was pursuant to 16 U.S.C. § 1860, which is part of the National Fisheries Management Program. The action is a maritime lien and subject to jurisdiction over the vessel. 16 U.S.C. § 1858.

Humorous Styles of Cause in In Rem Actions

Customs and Shipping

Turning to customs and shipping, the contrast between U.S. and Canadian law is well exhibited by *United States v. One Package of Japanese Pessaries* (2d Cir 1936) and *Little Sisters Book and Art Emporium v. Canada* (2000 SCC 69).

In the U.S. case, a shipment of contraceptives to one of Margaret Sanger's birth control clinics was seized as obscene under the Tariff Act of 1930. Seized items may not be disposed of unless forfeited by passage of time or under a judicial order resulting from proceedings initiated by the government.¹² When customs seize assets, they can't do as they please with them and must sue for forfeiture or hope that no one claims the assets for long enough.¹³ Since the pessaries had been claimed, the government sued . . . and lost.

In the Canadian case, shipments to an LGBT bookstore were often seized or ordered returned by customs under the pretext that gay and lesbian erotica was obscene content contrary to the Customs Act. The bookstore sued the government alleging a violation of their freedom of expression and won. Compared to the U.S. case, the dynamics were noticeably reversed with the bookstore launching the lawsuit. As in the U.S., seizure is initiated upon reaching a threshold level of belief that the law has been violated.¹⁴ The difference, however, is that the government may do as it pleases with seized goods.¹⁵ Instead of the government having to sue for forfeiture, the owner or recipient must ask the government for a decision on whether a violation has indeed occurred and, if no violation, the government must return the goods or proceeds from sale (because yes, they can sell it whenever they want).¹⁶ That decision can then be appealed to

¹² Seized assets must remain with customs officers until disposition according to law (19 U.S.C. § 1605). Seized items are forfeited if no one claims them within 20 days (19 U.S.C. §§ 1608-1609). Violations of customs law leading to seizure must be reported and proceedings instituted, at which point judicial forfeiture may be ordered (19 U.S.C. §§ 1603-1604).

¹³ There are, of course, exceptions to this process. See, e.g., 19 U.S.C. § 1612.

¹⁴ Customs Act, RSC 1985, c 1, s 110(1); see also s 122.

¹⁵ Customs Act, *supra* note 19, s 119.1.

¹⁶ Customs Act, *supra* note 19, ss 129-133.

the Federal Court but is treated as an action against the executive such that the style of cause will be [Plaintiff's Name] v. Canada.¹⁷ In other words, Canadian law lets customs officers take your stuff and then forces you to beg and sue to get it back. Meanwhile, the government gets to sell your shit whenever it wants. While *Little Sisters* was a more direct constitutional challenge, the dynamics were similar.

Why such difference? Unlike the U.S., Canada does not offer constitutional protections for property rights. Instead of the U.S. Bill of Rights' "life, liberty, or property", the Canadian Charter of Human Rights and Freedoms protects "life, liberty and security of the person".¹⁸ I would venture to guess that but for the exclusion of property rights, the government couldn't take stuff and force individuals deprived of their property to sue. Nor is it likely that the government could have the first adjudicative kick at the can in the form of a ministerial decision before a lawsuit can be launched. If the government had to initiate proceedings to obtain a declaration of forfeiture, styles of cause would possibly be much closer to those in U.S. customs cases.

Police Forfeiture

Civil forfeiture following police seizures has attracted significant media attention in recent years and is often what people have in mind when talking of civil forfeiture.¹⁹ Coverage has often focused on seizures of money

¹⁷ Customs Act, *supra* note 19, s 135; Federal Court Rules, SOR/98-106, s 67. Since *Canada v. Vavilov*, 2019 SCC 65, the decision will be overturned if incorrect rather than if unreasonable.

¹⁸ Canadian Charter of Human Rights and Freedoms, being Part I of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11. The deliberate substitution of property for security of the person was commented on by the Court in *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927.

¹⁹ William H. Freivogel, *No Drugs, No Crime and Just Pennies for School: How Police Use Civil Asset Forfeiture*, PULITZER CENTER, February 18, 2019, pulitzercenter.org/reporting/no-drugs-no-crime-and-just-pennies-school-how-police-use-civil-asset-forfeiture; Deanna Paul, *Police seized \$10,000 of a couple's cash. They couldn't get it back – until they went public*, WASHINGTON POST, August 31, 2018, www.washingtonpost.com/nation/2018/09/01/police-seized-couples-cash-they-couldnt-get-it-back-until-they-went-public/; German Lopez, *"It's been complete hell": how police used a traffic stop to take \$91,800 from an innocent man*, VOX, December 1, 2017, www.vox.com/policy-and-politics/2017/12/1/16686014/phillip-parhamovich

Humorous Styles of Cause in In Rem Actions

alleged to be connected to the drug trade during traffic stops.²⁰ In both the U.S. and Canada, police forfeiture predominantly applies to assets believed to be connected to crime.

Under U.S. federal law, the procedure of *in rem* admiralty actions governs and leads to similar results for styles of cause.²¹ At the state level, procedures often follow the same general lines as federal law. Let me take South Dakota as an example (because of the cats). Under South Dakota law, police may seize property if they have “probable cause to believe that the property has been used or [was] intended to be used in violation of [listed] crimes”.²² Once the property is seized, the government must file an action for forfeiture against the seized property in circuit court.²³ The short style of cause satisfies itself with the first party on each side, which is often the seized asset.²⁴ Notice is given to *known* owners and people in interest, a specification which is rife for abuse.²⁵

Although the government must file suit, it need only prove probable cause, at which point the burden of proof shifts onto those opposing the forfeiture.²⁶ Since probable cause is easy to meet and disproving connection to criminality on a balance of probability can be expensive, the law is often abused to seize large amounts of cash under the pretext that it signals drug trafficking. However, the law doesn’t limit itself to cash seizures and

civil-forfeiture.

²⁰ See, e.g., the federal 21 U.S.C. § 881 or the South Dakota S.D. Codified § 23A-49.

²¹ The procedure under 21 U.S.C. § 881 is statutorily defined as the same one as under 18 U.S.C. § 981(b), which refers to the Federal Rules of Civil Procedure’s Supplemental Rules for Certain Admiralty and Maritime Claims (Title XIII). The Legal Information Institute, *Forfeiture*, WEX, www.law.cornell.edu/wex/forfeiture also mentions that federal civil forfeiture also incorporates some customs procedures by reference. What a fun little ping pong game!

²² S.D. Codified § 23A-49-8(4). Property can also be seized under a search warrant or an administrative inspection warrant, or if it is directly or indirectly dangerous to health or safety.

²³ S.D. Codified § 23A-49-13 & § 23A-49-14.

²⁴ S.D. Codified § 15-6-10(a).

²⁵ S.D. Codified § 23A-49-14. The provision mentions the name of owners and parties in interest after the description of the property when describing the required content of the complaint.

²⁶ S.D. Codified § 23A-49-13 & § 23A-49-19.

covers almost all real or personal property, leading to the occasional humorous styles of cause.

In Canada, police forfeiture predominantly falls under provincial law. Blurring the boundaries between criminal and civil forfeiture, federal law provides for forfeiture in relation to terrorism, which could lead to humorous styles of cause if no one is known to own or control the property.²⁷ However, the provision is rarely used. Assets may be seized under other provisions of the Criminal Code, but people who want the assets returned must file for such return, and the style of cause will either be under the related criminal case's style of cause (e.g., *R. v. Flynn*) or styled with the person's name against the government.²⁸ When the government is the one who applies for an order, the style of cause sometimes refers to the location of the seizure or the enabling legal provision.²⁹ The potential for funny styles of cause is relatively low in these instances, and most often the style of cause is merely that of the related criminal case.

At the provincial level, most provinces have adopted a civil forfeiture law. In British Columbia, for instance, the government can file for forfeiture of proceeds or instruments of unlawful activity.³⁰ The application must name the owner(s) or person who there is reason to believe is an owner.³¹ For personal property worth less than \$75,000, the government may also obtain forfeiture without a court order.³² As a result of the two provisions, civil forfeiture suits in relation to personal property are extremely rare and will typically name the owner(s) or suspected owner(s). Suits for forfeiture of real property are a little bit more common but are usually boringly styled *British Columbia v. Owners and all Others Interested in the Property*. Nothing to write home about. The burden of proof is only reversed for large amounts of cash or negotiable instruments found near

²⁷ Criminal Code, RSC 1985, c C-46, s 83.14.

²⁸ *Ibid*, s 490(7). See citing cases. The "R" in criminal case names stands for "Regina", the Latin word for Queen, because Canada is somehow still a monarchy.

²⁹ *Ibid*, s 409(5) and (6). Property may also be forfeited pursuant to other criminal laws such as the Controlled Drugs and Substances Act, SC 1996, c 19. Similar comments apply.

³⁰ Civil Forfeiture Act, SBC 2005, c 29, s 3.

³¹ *Ibid*, s 4.

³² *Ibid*, ss 14.02-14.04. Those seeking return of the property would have to file against the government as with customs law, leading to a boring style of cause.

Humorous Styles of Cause in In Rem Actions

controlled substances or “bundled or packaged in a manner not consistent with standard banking practices”.³³

Of the provinces, Ontario is a major exception to the trend of naming individuals in *in rem* actions. Styles of cause referring to sums of money or addresses are common in the province. Unlike other provinces, Ontario’s civil forfeiture law doesn’t require (or disallow) naming known or suspected owners as parties. Instead, the law lists who must be given notice and deems them parties to the proceedings “as if they were a named defendant or respondent”.³⁴ As a result, nearly all *in rem* styles of cause not naming ships come from Ontario. The legal difference is unlikely to reflect a major difference in the incidence of civil forfeiture between the provinces and is likely little more than a procedural quirk.

CONCLUSION

When I asked why the U.S. had noticeably more humorous *in rem* styles of cause than Canada, I expected the main reasons to be greater police powers in the U.S. and remnants of British haughtiness in Canada – our lawyers still wear robes. While greater police power and British haughtiness may play a secondary role, they are eclipsed by the protagonist: Canada has no constitutional protections for property rights, which starkly reduces mandatory court oversight of seizure and forfeiture. I was struck by how Canadian laws often speak of seizure and forfeiture as one unit, like “cease and desist”, where U.S. laws carefully separate them. For better or worse, Canada protects life, liberty, and security of the person. Not life, liberty, and property.



³³ Civil Forfeiture Act, SBC 2005, c 29, s 19.03.

³⁴ Civil Remedies Act, 2001, SO 2001, c 28, s 15.5.