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INSIDE: Family Law

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Audra Bayer

A Passion for Humanity



Photo by Sachelle Wotherspoon

I was born and lived in the French community of St. Boniface, in Winnipeg, Manitoba.

My parents are intelligent, compassionate, salt-of-the earth people. Both are advocates in different ways. I gained an intense and broad appreciation and respect for life from them . . . a strong and principled work ethic from my father and from my mother an unbridled willingness to allow others their humanity, even in very difficult circumstances.

In my practice of law, I have adopted my father's passionate, no-BS approach to advocacy and commitment. I attended a picket line with him on at least one occasion. I recall with great clarity the level of emotions and pride I felt as I overheard conversations he was having with the striking employees; he spoke his support with empathy and was present through their challenges, standing side by side with them at the line. He has strong political and social views and a black-and-white way of communicating them.

Dad volunteered in many capacities and although I may not have always felt it at the time, I was fortunate to have attended events and meetings with him and learned by his example.

My mother has one of the most beautiful hearts I know. She continues to make tireless efforts, working with her church, a cause, or an organization. In all she does, she is truly present to the people with whom she is engaging.

Some of my best days as a student "in life" were spent as a witness to my parents putting their values into action.

What has stayed with me the most throughout my life is her day-to-day affirmation of the individuals she has called "lost souls." When my mother has conversations with these people she does not know, you can tell she is listening with genuine intent, concern, and interest and, when appropriate, compassion. No matter the person's circumstances, from the word "Hello"

she makes an integral connection grounded in their mutual humanity. By her conduct she demonstrates what true kindness, empathy, and love in action contributes to life.

Some of my best days as a student "in life" were spent as a witness to my parents putting their values into action. Their uncensored expression of opinions and affirmation of humanity are felt by me on a cellular level in all I do, professionally and personally. That by far is the most valuable component of any education I have received to date.

My parents placed a very high priority on formal education. When I left high school, I went straight into Arts at the University of Manitoba and I was dating my future husband.

Many of my friends were engaged or married in their early 20s. My parents did not exercise any pressure for me to marry but like most teens/young adults, I knew it all. It didn't take long to figure out I knew very little. Then I adopted the mentality going forward in my life always to strive to learn more, to be pragmatic in my thinking, and to acknowledge there is always something more to consider.

The man I was dating had good values, came from a good family, loved to laugh, prioritized education, and well, we were strongly connected over our mutual love for The Rolling Stones. I was engaged at 20 and married at 21. My husband continued his education in the faculty of Commerce and I went to work in Petro Canada's administration office in Winnipeg.

In addition to the office and customer service skills I learned at an early age, I was fortunate to be a volunteer accommodation coordinator for the Olympic Torch Relay in 1988. That added a number of other abilities to my growing résumé, including organizational and communication skills.

I was introduced through my father to the Special Olympics in Manitoba and volunteered in their programs for a number of years. About 1988, I left Petro Canada to become the volunteer Coordinator at the Manitoba Special Olympics where I learned about working in a nonprofit environment with a Board of Directors.

We exercised a commitment to our athletes, their families, the community, and each other. I am grateful for the opportunity that helped cultivate my passion and commitment to the people with whom I work each day.

Enter kids—three beautiful girls. Just before I turned 30, my girls' father and I divorced. Neither of us did it particularly well. We are both good people. We shared important interests. Our first 4 years together are some of the best years I have lived to date. For all that we did right or wrong, we have intelligent, self-individuated girls. I am most proud of their differences. That tells me we have been able to affirm them as individuals.

We digressed through our conflict into what is characterized as “high conflict” parenting. We eventually committed to some modicum of civility that was tantamount to little to no communication or interaction. It is disappointing to think that was the best we could do.

I see that in my practice now with my clients, when they tell me with pride that they are doing the best they can do. I'll relate a story or two and ask them to think about how they can do things better or different.

My girls, all adults now, have each communicated that although my ex-husband and I thought (and at times still think) we were doing well—attending the same events and not talking, but not fighting either, our girls still felt the conflict at a microcellular level.

**Without question,
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with it has affected
our children.**

Without question, our divorce and the way we dealt or did not deal with it has affected our children. I think about that frequently and hope for a transformative change some day soon for them and for us. We were very young. We did not know ourselves, let alone each other. It takes two, but when you are young it is so much easier and so much more commonplace to blame rather than to claim responsibility.

Shortly after our divorce, I married a man who was the polar opposite of the first. It lasted 18 months. To say it was volatile is a significant understatement. Two beautiful young men were born out of this relationship. The effects of the family violence that characterized our relationships with their father continue today for all of us in very different ways.

What I have learned from my marriages and my separations and divorces is independent from what I have learned from formal education. What I do as a lawyer and how I do it are inextricably linked to my life experiences as a daughter, wife, mother, and developing person.

I spent a number of years in the Arts program primarily studying English, Philosophy, and History courses. My favourite subject was

Philosophy. Those classes lit up my brain; I looked forward to them and writing for them. I recognize now that my Philosophy courses gave me the foundation for “out of the box” thinking and problem-solving—critical skills in my tool kit as a family dispute-resolution professional. Through those classes, I learned more about myself and about challenging what purported to be rational thinking.

That background has served me well in my practice of law; it has encouraged me to question and challenge not only the laws I must apply or consider in my practice but the system in which I work—all of which are tempered by my passion to affirm the humanity of the people I am helping.

There I was with five children, my education a mishmash of Arts courses and Management (commerce/business) courses in marketing and accounting, and a number of years both as an employee and running a few businesses of my own. When I separated from my first husband, I went to work for the Jack Fraser Menswear chain and was soon appointed manager. I was fortunate to be able to set my own schedule.

From the age of 14, I knew I wanted to be a lawyer. I was always opinionated—the colloquial term was “big mouth,” which I accepted then and do now. My parents had instilled advocacy into me when I was young, whether it was advocating for myself, for others in the workplace, or for “lost souls.”

I was committed to going into either labour law or constitutional law. It became apparent to me that constitutional law, which I loved, would not work because I would have to be in Ottawa. My responsibilities as a single parent with small children would not permit that.

I took my law degree on an extended program. Initially, my two young boys accompanied me to school; I had the support of my classmates and some incredible members of the faculty at Robson Hall at the University of Manitoba. I would not be a lawyer today without them.

My youngest was in a stroller. A revolving number of my classmates and I held him as we learned. My toddler son was either napping or on a matt with headphones in the class, watching *Scooby Doo* on a TV I had borrowed. When the boys were more mobile and active, I took many of my classes at home and did my reading and research there. Again, I was blessed with professors who set time to talk to me during the day and evening to review classes and lessons.

I articulated at a civil litigation firm and at one point was given some family files. By then, I had been through two divorces. The work seemed a natural transition for me.

My next position was with a very busy rural firm whose practice consisted primarily of family law files. I had an instant family law practice. I also learned real estate conveyancing—another tool in my professional tool kit. The owner of the firm is a man who reminded me very much of my father in terms of his values, affirmation of family, and approach to the law. I learned a great deal by his example about practice management and, more important, the humanization of the practice of law.

Some years later, I opened my own practice in Winnipeg where I practised family litigation, collaborative law, and real estate law.

Prior to opening Audra M. Bayer Law Corp., I hired my assistant Deborah. She grew to be my right and left hands in my practice, friend/sister, and confidante and she is akin to a grandmother to my children. Our relationship has survived many difficult times; we often joke that we have a stronger marriage than most.

When I moved to Kelowna, Deborah moved as well. She would say she and her husband had always contemplated retirement in BC but it was well known in our office that I was frequently heard to say, “Where I go, you go . . . and if you try to leave, I will put up a tent in your front yard until you relent.” She talks about retirement from time to time. I have been watching Canadian Tire flyers for a sale on tents.

While still in Winnipeg, I began attending the ADR LL M program at York University in 2001 and completed all my courses. I was parenting my kids and had an established full-time law practice. Then life intervened. I suffered a number of serious health issues and was unable to complete my practicum and thesis and obtain the actual LL M designation.

The focus of my research and education in that program related to family violence and family law. I have been one of the family violence coaches for the CLEBC training for lawyers on Family Violence and Screening for Family Violence. I am a passionate advocate for the utilization of processes that keep families safe and empower victims and children.

There is a fine line between empathy and mirroring back to the client those strong and very personal emotions. That can be a disservice to the client.

My Winnipeg practice evolved quite quickly into a family law practice that consists primarily of high-conflict cases and cases where family violence is a factor.

I had one student and two lawyers working with me. I have maintained a close relationship with Ainsley, my student that I met through the University of Manitoba’s Faculty of Law Mentorship program and with Sarah, one of my lawyers who remains the primary agent for my work in Manitoba. They are welcome to pitch their tents with me in BC anytime.

In August 2012, Deborah and I accepted positions with MacLean Law, a dynamic, forward-thinking, client-centred firm. We officially opened their West Kelowna office in December 2012.

At this time, I am certified in collaborative law, mediation, and arbitration. My goal is to develop my practice in collaborative law,

mediation, arbitration, and law practice management and spend the remainder of my professional time in education, empowerment, and advocacy within and without the profession.

The blessing and the curse for me in my practice is the recognition of the importance and the influence of my own experiences in my advice and advocacy and, on the other hand, the need to compartmentalize and resist mirroring those feelings and experiences when dealing with my clients to avoid the escalation of emotion and the diminishment of rational thinking.

There is a fine line between empathy and mirroring back to the client those strong and very personal emotions. That can be a disservice to the client. Rather than assisting with the management of emotions and empowerment, you contribute to an escalation of emotion and disempowerment that leads to an inability to engage the rational mind, make wise decisions, and give rational instructions.

At the end of the day, do I think my experiences make me a better lawyer? Most of the time, yes.

About Me

My approach in my practice is not exactly what I would call the norm. Anyone who is referred to me is told to expect a down-to-earth, no nonsense kind of girl—most often dressed in casual attire and generally low maintenance—no makeup, hair up.

I tell my clients not to worry. In the event of a Court appearance, discoveries, and other more formal proceedings, you get the full-meal deal—makeup, hair, suit—the window dressing for the passion and the preparation.

Depending on the cut of the collar of my shirt, you may get a glimpse of the tattoos on my back that tell you some of the most important things about me . . .

- A big beautiful butterfly. The pattern in the wings is the face of a tigress. The image stands for strength and femininity.

- 5 flowers in 5 different colours, each symbolic of one of my children
- A snake entwined around a vine, symbolic of Caduceus, the medical symbol. My image is symbolic of my medical journey and my love for and commitment to the environment, hence the vine, rather than the staff.
- A tribal symbol for strength, in black, my favourite colour

I typically have a coffee or bottle of water on the go. Without question there will be chocolate involved in my day. You will find it in my desk drawer, in a bag on my desk, in each of my briefcases, in the console of my car, and of course in my purse.

My Manitoba firm's mantra is Education. Guidance. Empowerment. Those principles dictate my practices.

The following are the nuts and bolts that underpin the case management and lawyer/client relationship with my clients and the principles that help guide clients as they begin to restructure their family and lives.

Get Your Ducks in a Row



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That is one of the first things you will hear in a consultation with me. As a client, it will also be one of the things you will hear most frequently from me. I will not begin the dialogue, go to Court, or draft an offer to settle unless your ducks are in a row.

Right out of the gate, I provide my clients with a homework list and a client tool kit. Although I am frequently told that first meeting can be like being in a hurricane because of all of the information I provide, I have not had one client communicate to me after that first meeting that he or she **did not** achieve the intended goal a short time later—the goal of empowerment.

With respect to finances, I have found many people are disempowered in their relationships with respect to finance management. That is not to say their partner necessarily made

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it so, although that can be the case. Restrictions on personal and financial autonomy are forms of controlling/coercive behaviour but in some cases, it is a function of the roles people assume in their relationship.

A. Empowerment in the Realm of Financial Issues

- Knowing what money you have, where it is being spent, and what your budget is and perhaps should be, particularly when dealing with support issues
- Where to find the financial information including online resources and statements, how to go to/deal with and what questions to ask financial planners, wealth management professionals, accountants, management consultants, valuers, and other financial professionals including lenders, account and investment managers, insolvency professionals, and others
- Assistance with the transition from a one/two income, one-home family to a one/two income two-home family, with the acceptance of the economic reality that comes with the restructuring of the economics of the family household income and expenses

The financial homework includes the following.

- **A financial statement** (in the form required by the Court [F4 BCPC; F8 BCSC and 70d MBQB], setting out income/expenses/assets/liabilities) and my guidelines on how to complete the financial statement and what documents to attach to the financial statement, concurrently including valuations for assets and debts. Typically, I will want values as at the date of cohabitation/

marriage, and separation. That is critical if you want to exclude certain assets pursuant to section 85 of the *Family Law Act*.

- **A request** that you provide me with full copies of your last 3 years' income tax returns and supporting documents and the last 3 years' Notices of Assessment and re-assessment—and those of your partner, if you have them
- **3 recent and consecutive paystubs** from all income sources
- **Statement of income** from all income sources year to date. That will capture any self-employment income, rental income, income from investments, and so on.

Disclosure is the Achilles' heel in many family litigation matters. For the most part (with a few exceptions), I will direct my clients to provide the needed disclosure immediately—**before** the other lawyer/party requests it. Get organized. Give the lawyers what they need, without delay, to do their jobs and move your issues to settlement.

If we are preparing evidence for Court, I will provide you with the "headings" for your affidavit, including but not limited to the following.

- History of relationship
- Parenting history, including parenting time and responsibilities
- Issues in relationship including
 - communication issues,
 - substance abuse,
 - family violence (that may be a subheading), family violence defined broadly to include physical abuse, mental/emotional abuse, verbal abuse, sexual abuse, restrictions on personal/financial autonomy, with clear examples of any controlling/coercive conduct; issues in parenting relationship (some issues may mirror those in the couple relationship)
- History of employment
- Financial issues and management
- Property

You will then provide me with your “story” in point form under those headings. The process is fundamental to the empowerment of the client and assists the individual with the organization of his or her story. The storytelling process is both cathartic and empowering and is integral to the determination of the issues if we are going to Court. Storytelling is an essential component of the healing process.

B. The Client Tool Kit



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During the course of my consultation, I take notes that I will email to you, myself, and my assistant by the close of the consultation. In addition, depending on the issues that require resolution, you will receive several emails from me regarding my Blog, which is essentially a wish list of provisions relating to parenting that you may want to see in your agreement or Court Order. The provisions include matters relating to the following.

- Travel, travel documents, and authorization for travel
- Activities and attendance to activities
- Nonremoval and residency
- Sharing of holidays and special days
- Personal and financial disclosure
- Information-sharing
- Clothing
- Regular and urgent communication
- Encroachment on time and make up time
- Dispute resolution
- Other provisions relating to parenting and the restructuring of the family

I encourage the individual to highlight or underline the provisions he or she would like to see in an

agreement or Order. That forms the basis for a dialogue on what the parenting plan could look like.

The goal is to have the individual think “big picture” and into the future with the goal of having a structure that will help the parents navigate through the parenting journey, hopefully without having to return to their lawyers anytime soon.

This is some of the recommended reading, again depending on the issues to resolve.

- Dr. Joan Kelly’s document “Helping Children and Parents Cope with Divorce – Current Research and Implications for Practice” contains child development research and parenting plans. It is research and information on high-conflict parenting and family violence.
- Dr. Joan Kelly’s document “Top Ten Tips to Protect Your Family from the Fallout of a High Conflict Break-up”
- A brochure for the web-based communication program called OurFamilyWizard.com that I recommend to all my clients
- A brochure for the Parenting After Separation Course – BC / For Sake of the Children Program MB
- Jocelyn Coupal’s brochure “Spot the Signs”
- Jocelyn Coupal’s brochure on Safety Planning
- Professor Nicholas Bala’s research on relocation law in Canada
- The Federal Government’s documents called “Making Plans – A Guide to Parenting Arrangements” and “Parenting Plan Tool,” a companion document to the Guide

From the outset, all clients are told that for me to assist them and to properly case-manage their matter, they must tell me everything. I don’t like surprises.

C. Expert Resources

If you are likely to be retaining an expert such as a social worker or clinical psychologist to complete a family assessment, you will receive a document called “Do’s and Don’ts during the Assessment process.” They are useful and important basic guidelines to conduct during an assessment/family valuation.

D. Guidance Materials

If you are likely to be the subject of an examination for discoveries, I have a document that educates you on the process and gives you guidance on what to expect and how to conduct yourself.

We also have a binder in our office that contains brochures and other information on the resources available in our community including shelters; counsellors and psychologists; financial resources; communication tools and resources; parent coordinators; parenting coaches; research and articles on parenting and family law; and other information.

Tell Me Everything

I learned through my own challenges and the development of my practice that my clients want someone who is relatable, approachable, empathetic, and knowledgeable—all crucial to the family lawyer/client relationship. They need to be in a comfort zone from the moment they sit down.

I need my clients to be able to tell me all I will need to know to effectively case-manage their file and advocate for them and their children. That can mean having to tell a perfect stranger some dark secrets, embarrassing details, particulars of shameful events, disclosures of abuse (victim/perpetrator), and other things they may feel depict them as a flawed partner, parent, or person.

From the outset, all clients are told that for me to assist them and to properly case-manage their matter, they must tell me everything. I don’t like surprises. It will not help them and it certainly does not help me as a professional. If there are things they believe are not helpful to their case, I must know about them; we will deal with them honestly and effectively.

Effective case management and resolution frequently mean the involvement of other professionals. That may mean, for example, attending a parenting course; an anger management program/counselling; obtaining other counselling/therapy; an AFM/NA assessment; drug/alcohol testing; engaging in a supervised parenting program; hiring a business valuator, forensic accountant, tax expert, property appraiser, or other financial professional.

Telling me your whole story not only gives me what I need to give you—a fully considered opinion and the tools to navigate you through the process, it is critical to the financial case management. Clients need to know at the outset, to the best of a lawyer's ability, the services they will need to engage and, realistically, what the resolution of their matter could cost.

Keep Your Backyard Clean



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In the words of George Bernard Shaw, *Never wrestle with pigs. You both get dirty and the pig likes it.*

- Take the high road.
- Don't be vengeful.
- Don't retaliate.
- Even in difficult moments, be child-focused.
- Don't be your own worst enemy.
- Think things through.
- Send the email to yourself or to me to vet before you send it on.
- Don't write/say anything you would not want the Judge to hear or that you would not want to see on the front page of the newspaper.

Your Children are Your Children, Not Property

They have a right to their childhood. To the healthy development of their

life. To a relationship with each of their parents (although there are a few exceptions). To a relationship with their siblings and not to have those relationships qualified because they are siblings from a blended family.

In the words of George Bernard Shaw, *Never wrestle with pigs. You both get dirty and the pig likes it.*

Their time is their time, not your time. It is their time with Mom. Their time with Dad. Their Christmas Break. Their Spring Break. Their Summer Break.

With all we do and the choices we make, we are modelling relationships for our children . . . relationships with other adults with whom we once made a commitment and built a life and relationships as co-parents. We teach children how to deal with conflict; how to forgive; how to move on; how to treat others and ourselves.

As a parent, you stand between your child and the rest of the world. That is a responsibility we assumed the day we brought the children into the world. It is also a tremendous privilege.

Something my mother said has stuck with me each day as I raise my children and practise family law. "They did not ask to be born."

Parents frequently fight over the scrapbooks and/or photo albums they made for their children. It strikes me that they ought to fight all the more to zealously protect the pages of the living memory books they are making with their children. The day-to-day memories; the special occasions; the games, tournaments, competitions, recitals, performances, and other special events. Parents can do that only if they pick and choose their battles and remain child-focused for themselves as parents and individuals.

When you and your former partner are congratulating yourselves on your maturity and discipline because you managed to sit in the same

space—albeit in different parts of the room—and you each enjoyed your child's performance without incident, it may well be that from your child's perspective, all he or she saw and heard was the deafening silence between you.

You Came to Me with this Problem

It is useful to remind myself as a lawyer and my clients from time to time that they came to me with this problem. They need to own that. I did not create it. It is not mine. I will be a support. I will be an advocate. I will be an educator. I will be an advisor. I am not the decision-maker. I work for you, which is why you instruct me. The day will come when the lawyers go away and you have to continue to live your life.

The responsibility for the decisions that will affect your life and the lives of those you care about is yours. I am not a magician. I do not have a crystal ball or a magic wand. I am just a lawyer and another human being.

It is my considered opinion that the legal system in of itself is not the most appropriate process for dealing with family issues in most cases. When all else fails, it can be necessary and it can be effective and useful but frequently not without a fair amount of collateral damage to people, relationships, and finances in the end result. That is why I rely upon and refer to a broad spectrum of other professionals in my practice.

The human condition is complicated. The practice of family law demands that be acknowledged and respected. The constructs of our justice system cannot and do not meet all the needs we as human beings have when we are dealing with the deconstruction and restructuring of our relationships; the well-being and best interests of our children; the disintegration and reconstitution of our finances.

Manage Your Case and Your Money

- Ask questions.
- Challenge assumptions and opinions in a respectful way.
- Be prepared and organized for meetings.

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- Have a list of goals and priorities that you update as your matter progresses.
- Obtain regular statements of your account with your lawyer and read them.

If you have concerns about your statements or any other matter arising from the relationship with your lawyer, discuss them with your lawyer as they arise. Not a week later. Not a month later. Not once your matter is resolved or your relationship with your lawyer has come to an end.

Use email wisely. If there is a lot going on for you in your separation, it may be useful at times for you to jot notes in a document on your computer during the course of the day or— if there is no urgency, over the course of days or the week—and send the items all at once, rather than sending 10 emails in a day or two.

If you are providing me with materials that need to go to the other lawyer or to an expert or the Court or into a binder to be used in Court, and the materials cannot be sent electronically, bring me 3 copies. Pay me for my time, not for copying and printing.

My View on What I Do

I take what I do very seriously. The work we do as family lawyers with our clients affects people, our communities, and by extension our society at a fundamental level. The work we do with our clients can have a profound effect on how much money they will have at the end of the month to support themselves and their family.

That affects

- where they will live;
- what community/communities the children will grow up in;
- when their children will be able to spend time with them;
- who will make critical decisions for their children;
- who will care for their children;
- where the children will go to school, which affects the curriculum available to them, whether they will continue to go



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to school with their friends, and the likelihood they will obtain a postsecondary education;

- what activities, if any, they will be able to participate in;
- what holidays the parents will get to spend with their children from year to year.

All those things affect who the parents and the children are and will become as members in our community, as part of the fabric of our society. They are adults and children, living in my community, for the most part. Working in my community. Going to school with my children or participating in activities with my children. They may be future teachers to my grandchildren. A future surgeon to me or someone I love. A tradesperson building the homes for the families in our community.

The relationship between a lawyer and client is so important. The work we do together is the weaving of the fabric of our families and communities. It's a huge responsibility. And a tremendous privilege.

I interview my clients, just as they are interviewing me. The fit must be right. The crucial factor to the fit is that my client must be child-focused in words and conduct and there must be a commitment to picking and choosing the battles.

Outcomes

The outcome belongs to the client. I help choose and define the process and also assist with the navigation through the process.

The outcome is dependent on and defined by the client. I recently had a very challenging file that began with an abduction and ended with a 1-week trial that ultimately was extended and concluded in the third week. In the end, everyone was exhausted. The parenting relationship was decimated. My client and his family were financially eviscerated. The resulting terms of the Court Order were exactly as my client had requested before the trial.

In the days following, I received a heartfelt Thank You from my client

that moved me beyond words. His mother had sent me her handwritten appreciation days earlier and gave me a birthday card to take home to my son because I had missed his birthday as a result of the trial extension.

I told my client and his family that the result had nothing to do with me. I was an advocate, a facilitator, a mouthpiece. The result was all about them. My client and his family are steadfast, child-focused, good-hearted people who live their values. They are genuine and honest and in each step along the way, they chose their battles, remaining true to themselves, their values, and their goals.

The outcome belongs to the client. I help choose and define the process and also assist with the navigation through the process.

They demonstrated their love for each other and the little girl caught in the midst of what could only be described as a gong show, by their word and conduct. It was such a privilege to work with them. They affirmed who they are, what I do, and who I am.

My investment is in the people and my returns are the relationships I have made and retained. I have been very blessed in meeting and working with so many good people through my practice; I am fortunate to maintain many as friends.

Family Law in BC

The introduction of the *Family Law Act* and its codification and expansion of the definition of family violence was right up my professional alley. It mandates that family dispute-resolution professionals (lawyers are included by definition as FDRPs) assess and help families manage the risk of family violence and educate clients about the advisability of using various dispute-resolution processes to resolve their matter and the facilities and other resources known to us that may be available to assist in resolving the dispute.

I was and remain excited about the possibilities that could follow from a commitment to putting those principles into practice. I say that in terms of what could and should be a kinder, gentler, less-stressful practice for family lawyers and what could and should be more holistic and less-stressful options for family dispute resolution for our clients.

Although not without its problems, the legislation overall, in my opinion, is progressive. Like any other tool, it is valuable only if it is used and used properly and challenged when appropriate. The provisions relating to family violence screening and to the obligation to educate our clients about and advocate for the use of dispute-resolution processes and community resources will make a difference only if the lawyers embrace and commit to their implementation and our Judiciary, to the extent possible, encourages and enforces them.

There are provisions in the Act that allow the Court to make Conduct Orders. Section 224(1) of the Act gives the Court the authority to

- make an Order to require the parties to participate in family dispute resolution;
- require one or more parties or without the consent of the child's guardian, a child, to attend counselling, specified services, or programs; and
- make an Order as to who is required to pay the fees relating to the dispute-resolution process, counselling services, or other programs.

Parties need to be educated about the Orders. Lawyers need to ask for those Orders. Judges need to grant them. They are what distinguishes this piece of family law legislation from others across the country. I am hoping the family law professionals in BC will own them and use them with pride and conviction.

The legislation was a huge step forward for family law in BC. The legislation works in concert with the Court rules and Court process.



I am admittedly a transplant who comes with my own history and biases, but I have taken time to talk to family lawyers in British Columbia, conferring with them about the Court process, rules, and systemic issues.

As a result of those conversations and my own experience, I have begun to bang a drum about two issues.

1. Case Conference Rules and Process

Case conference rules and process are due for an overhaul. The case conference is a mandatory process (with a few exceptions) that must be engaged prior to setting your application for hearing. The parties, the lawyer, and a Judge sit down to discuss the issues and process.

That is to be

- an opportunity for the parties to explore settlement if possible of the issues or some of the issues, and
- an opportunity for the Court to assist in that process and also to monitor and effectively manage the case through the judicial system with a view to reducing costs and delay and facilitating party-driven solutions.

As it stands now, lawyers and parties are not required to exchange briefs nor are they required to file briefs with the Court.

There is a significant benefit to the lawyers and the Judiciary having briefs in advance of the proceedings rather than going in blind. In my experience, having to provide a brief and financial disclosure in advance of a case conference results in better use of the time of the parties, the lawyers, and the Court and also leads to better results that in turn engender credibility and respect for the “system” and those of us who work in it.

In some other provinces, the case management Judge is seized, meaning you will have the same Judge throughout the case-management process. That provides a continuity to the process and can promote credibility and respect for the process. That Judge will not be your Judge at any contested hearing or trial. Anything you say in case management cannot be used against you in later hearings.

“It is in the interest of individuals and society to find better ways of dealing with family problems.”

2. Unified Family Court

Seven provinces in Canada have a Unified Family Court—Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick, and Newfoundland and Labrador.

Over the years since about 2001, there has been an active dialogue in British Columbia about the benefits of implementing a Unified Family Court. Currently, family matters are heard in both Provincial Court and the Supreme Court, although there are limitations on the Jurisdiction of the matters that can be heard in Provincial Court.

For example, the Provincial Court will not hear matters related to the division of property. The members of a Family Division of the Court in other provinces are specialized, meaning they have education and training that makes them very familiar with the unique dynamics of family conflict. The specialization is also beneficial for the development of the law.

The response of the Provincial Court of British Columbia to the Unified Family Court Justice Review Task Force Background Report is set out in part as follows.

The Provincial Court has concluded that the public interest favours the amalgamation of all

family cases into one Court, whatever its name. We have concluded that in a general sense, amalgamation will create efficiencies, and avoid the undesirable duplication of proceedings. Specifically, the Court supports the concept of one Court to deal with all family law problems in a timely, cost-efficient manner with

- simplified rules, procedures, and forms;
- modest fees based on ability to pay;
- complementary family justice support services;
- assignment of judges who are interested and well educated in, as well as committed to, family law; and
- accessibility to all British Columbians.

From what I can gather from the report and the Response from the Provincial Court, the endorsement of this model was made provided there be a commitment by the government “to provide adequate, permanent funding to support all aspects of a Unified Family Court and to ensure that such a Court maintains or enhances levels of access to justice.” At the end of the day, what was and seems to be lacking is a governmental commitment to put “the needed resources into place over the long term.”

I don’t know nor do I pretend to know where Government is with respect to the commitment required to make a Unified Family Court a reality in British Columbia. Traditional approaches to dealing with legal rights and responsibilities are not well suited for family law matters. The problems in those cases have special characteristics and a high degree of emotionality. They can involve mental health issues, complex financial and property issues, parenting issues, sometimes substance abuse and/or family violence issues, and child-protection issues.

The Government of Alberta noted in the report issued by its task force in 2001 on the Unified Family Court Model that “Family problems can, and often do, have profound effects on many aspects of the lives of those involved. They also have a great effect on public services and institutions, including the health care system, the educational system, social services and the criminal justice system. The cost of family problems to individuals and to society is enormous. It is in the interest of individuals and society to find better ways of dealing with family problems.”

As I began to initiate the dialogue on the Unified Family Court Model in the Interior, I was not surprised that many of the other transplants affirmed they missed the practice of family law in a specialized Unified Family Court Model and felt that model is far more effective, simple, and supportive. It promotes continuity, sensitivity, and civility, in terms of the process and in terms of relationships among the members of the bar and between the bar and the Bench and the parties themselves.

The model also promoted and encouraged creativity in resolving issues as the result of, in part, an enhanced case-management process that can include judicially assisted dispute resolution (extended case-management time in some provinces) and a specialized Bench with additional training and education and experience who provide at times what has been called therapeutic justice.

That cohesive model also builds trust and confidence between and among the families, counsel, and the Court. As this dialogue has continued, I have heard from several lawyers who have practised family law only in British Columbia; they feel the current process is fragmented for both the lawyers and families and is at times chaotic.

I am banging the drum for those two changes and banging it loud. I have frequently said that my move to Kelowna is like Erin Brockovitch coming to town. I don't know that I am

as brash as Erin, although I am quite certain there are those who disagree.

Balance: Qu'est-ce que c'est?

I strive for an integration of work life and personal life. These activities help provide balance for my intense workload.

- Spending time with my family. I embrace my children's individuality, differences, and independence; they each bring a completely unique measure of joy to my life.
- Laughing with my dad and talking to my mom on the phone
- Playing guitar and anything to do with music
- Hiking
- Spending time with my Rescues—4 cats and 2 mammoth dogs
- Photography and writing
- Baking and cooking for my family
- Gardening
- Dancing
- Spending time with friends
- Working out
- Travel

When my second husband and I separated, I took my engagement and wedding rings to a jeweller and had them made into one ring with a very unique mount. I sized it to my ring finger and had it engraved, “To thine own self be true.”

Sometimes that means reminding myself that I need quiet time in the bush with the dogs to work out the noise in my head from the day.

Sometimes it means banging the proverbial drum.

At all times, it means allowing myself my humanity and embracing the humanity in others. ▲

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