



Let Justice Be Done.....NOW (A critical look at Family Law)

Canada's Chief Justice Beverley McLachlin recently expressed her concern that Canada's legal system has become too expensive and complicated for the vast majority of Canadians.

MacLean's magazine recently published a feature article and cover story called Lawyers Are Rats based on an interview with lawyer/author/educator Philip Slayton in which he agrees with the Chief Justice and expresses his concerns about the ethical underpinnings of the legal profession.

Matt Milczarczyk, a local lawyer, defends his chosen profession in the Record and suggests that the flaws in the system rest with the politicians for shortchanging legal aid and with a few bad apples who rob from the middle class.

The good news from all these musings should be that the legal profession will need to deal with the challenges presented by the Chief Justice and one of their own; unfortunately the bad news is that the profession (through the Upper Canada Law Society) has gone into attack mode on that Lawyers Are Rats headline and decided to shoot at the messenger.

In addition the Chief Justice failed to place proposals on the table and in fact also became defensive about the pointed criticisms of the legal profession when she stated, "I don't think name-calling and exaggeration helps." The retiring Ontario Chief Justice Roy McMurtry echoed her comments by suggesting the MacLean's article was scandalous and scurrilous.

To Ms. McLachlin and Mr. McMurtry the question must be posed: when were you last involved in Family Court or Superior Court dealing with families going through the most difficult time in their lives? If the problems faced by real families were less remote then pragmatic solutions would be advanced and less time would be spent on dissing Mr. Slayton and more on examining his observations and his solutions.

Anyone working intimately with families dealing with divorce and separation recognizes that the criticisms made by Mr. Slayton are valid and need public airing and not blind denial by politicians or the legal profession.

A few of his concerns follow:

1. Do many lawyers manipulate the rules for their clients? This would contradict their role to respect the rules. The truth is that the masters of manipulation and spinning are paid the big dollars.
2. Do many lawyers inflate their bills? Lawyer Michel Cochrane in his popular book *Surviving Your Divorce* devotes many pages to trying to help individuals understand the way lawyers' bill

and the appeal process for faulty billing. The implication from Mr. Cochrane is that at this dark time in your personal life, you must be vigilant on your lawyer's bill.

3. The legal profession has a 'value less' approach to cases. It is what one could call the O.J. Simpson approach. It is O.K. to get guilty people reduced sentences or off completely, for in the end the 'system' works best with competing barristers. Unfortunately our work with separated families would suggest the costs of this approach are too high for parents, children and extended family.

Every day in our attempt to provide support to separated families, documents prepared by lawyers cross our eyes that bare no resemblance to any reality. The assertions are made to gain advantage, to intimidate and even to bolster a lawyer's stature as a killer (and expensive) lawyer. It often works by emboldening a party to go after more than they should get or it may have a chilling effect on a parent and leads them to withdraw or disappear from their children's lives.

As such the more accurate headline should read:

Flawed Legal System Results in Children Losing Lifelong Support.

Now that would be more catchy and accurate.

The lawyers will perhaps react to this by stating again that; this is the way the system is suppose to work; hire a better lawyer; lawyers are only doing that 'what the client wants thing' (remember that value-less concept). Mr. Slayton suggests that lawyers have become enablers to client's whims. My observations would suggest it is more sinister because often it is the clients becoming enablers to the lawyer's professional whim.

4. A lawyer's hourly rate in family law cases ranges often from \$200-500. It would not be unusual for a middle class family to pay \$20,000- \$50,000 of their family's equity on legal and related professionals. The attempt to resolve conflict through collaborative law (lawyer wearing two hats including mediator) will likely result in similar costs, but hopefully result in less hostility. The catch 22 is that a failure to reach a settlement by this process then requires the parties seek new legal representation for a possible trial.

When the legal profession has a knee jerk reaction to criticism and fails out of self- interest to lead the way to reform the way Family Law proceeds in this Province, it is disappointing. The attack on Mr. Slayton has a chilling effect on other professionals who know that the system is flawed. Recently a client of our support group sat outside the courtroom with their lawyer for 3 hours waiting for their 15 minutes in front of the justice, all on the clock. This is not an uncommon experience.

The Chief Justice expresses a recognized problem; the well to do and the poor will have legal representation through ability to pay or legal aid. Ms. McLachlin expressed her concern around the cost to the middle class family. In some ways she is simply warning the legal profession, adapt or face a rebellion from the middle class, at your own peril.

Chief Justice McLachlin is still missing a significant segment of society and perhaps the most vulnerable. They do exist and need to be seen. The forgotten souls of the legal process are those families where the parents are working at or near minimum wage. They are subject to the same conflicts that mark many family law disputes; they are likely less able to represent themselves; they are in a desperate

place, trying to remain engaged with their children, overwhelmed by a process that will lead to lifelong financial desperation. There will be no financial recovery for most of these families.

This is perhaps the saddest part of this recent kaffuffle, the failure of those with clout to understand, no worse yet, to even recognize the problems faced by these families with children.

Ethical lawyers in our community know who practice law to reach just settlements for families; they also are aware of lawyers who will transgress every boundary in their attempt to gain for their clients what they don't deserve. Family Law cannot afford the latter form of legal practice nor can families involved in separation and divorce continue to condone the demand for silence from professional bodies over thoughtful discourse.

WITHOUT PREJUDICE

Kids 'n' Dad services families in the Waterloo Region. Its goal is to ensure that children from a separated family have two parents co-operating and actively supporting them as they develop and mature into adulthood.

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