



What keeps you up at night?

Ontario family lawyers answer our question

Like many areas of practice, family law is going through a period of change. Both clients and their lawyers are questioning traditional modes of practice. Economic woes both cause legal problems, and leave clients with limited resources with which to resolve them. Stress – for both families in crisis and for their lawyers – is a constant reality. Still, within this challenging climate, family lawyers are expected to work diligently and professionally in the service of their clients' interests.

On page 25 of this issue of the magazine, you'll find an extract from practicePRO's new Domestic Matters Toolkit. The full kit aims to help family lawyers ensure that they are covering the necessary bases when drafting a domestic contract, and will be released later this summer. Self-review tools such as this can help safeguard against the oversights that can occur in a busy, demanding and increasingly complex area of practice.

Also, to understand how the bar is coping with the demands of modern family law practice, we invited a sampling of lawyers from across the province to answer the question "What keeps you up at night?" Their comments start on page 17.

As well, on page 33 we provide a summary of the top 10 cases that all family law lawyers should have on their radar. Our thanks to Epstein Cole LLP for this contribution.

Two perspectives on self-represented parties

Helene Desormeau and Christopher Giggey are partners in a Cornwall family law practice. Each identified self-represented family litigants as an issue of particular concern. Ms. Desormeau's comments focus on access to justice, particularly for victims of family violence; Mr. Giggey talks about the challenges of representing a family law client where the opponent lacks representation.

Helene Desormeau

The problem

I'm concerned when I encounter victims of domestic violence who earn under \$19,000 annually or who are in receipt of public assistance, but who are refused traditional legal aid because the violence was "not serious enough." I have also encountered people who have to go to court because they are afraid that the ex-partner will attend to kidnap the children, but who don't qualify for legal aid because the ex-partner lives 200 kilometres away; or men or women forced to bring motions to vary support after a drastic change in financial circumstances (such as losing their employment) who must attend court without legal counsel. Although the situations described above are serious from my perspective, they do not qualify for legal aid.

What helps

I've served as family court duty counsel, and I've assisted in the local Family Law Information Centre. Also, I often accept clients funded under special domestic violence duty counsel certificates. These certificates – often issued by shelters – entitle the recipient to two hours of legal assistance. Two hours is usually not enough time to meaningfully help someone in dealing with the breakdown of the relationship, to provide advice about legal rights and possible remedies, or to assist these people in cutting through the cobwebs of the legal issues they face. In many cases, all I can do is draft pleadings for these clients so that they at least have a good first step into the family court world.

The bigger challenge

Duty counsel and advice lawyers from the Family Law Information Centre are generally extremely knowledgeable and exceptionally helpful and patient. However, they often lack the time to follow a matter through, especially when both sides tend to be self-represented. And they cannot shelter victims of violence by sending correspondence on their behalf, or by ensuring that the aggressor does not have their personal contact information. When unrepresented, the victims of domestic violence may continue to be victimized by the



Helene Desormeau
Christopher Giggey

aggressor by having to communicate directly with that person, often when they are at their weakest. Legal aid budgets and services continue to shrink; if this trend continues, the only people likely to have legal counsel in family court are those who earn substantially over \$50,000 annually, and can afford to privately retain a lawyer.

Helene Desormeau is in her eighth year of practice, and is a partner at the law firm of Desormeau & Giggey LLP in Cornwall. Her main areas of practice are family law and criminal law. She is also a children's lawyer.

Christopher Giggey

The problem

The ever-increasing proportion of self-represented litigants in family court means the proceedings often become protracted and more time intensive, due in part to the fact that the other side does not have the benefit of ongoing legal representation. This can translate into increased legal fees for represented clients, because additional time must often be spent in dealing directly with opponents who have a limited understanding of the law and of legal procedure.

What helps

In my initial correspondence to the self-represented litigant, I set out my obligations under rule 2.04(14) of the *Rules of Professional Conduct*. (See the sidebar on page 18 for Giggey's specific wording.) Notwithstanding this, I have found that the self-represented litigant will attempt to obtain direction – and sometimes legal advice – from me. As a result, it often becomes necessary to remind the other party of my role and my obligations throughout the proceeding.

Sometimes a self-represented opponent sends an unmanageable volume of email; when this happens, I have followed the suggestion

of other lawyers, and have asked that all future correspondence be via mailed letter. I also take the time to explain to my client, at the outset of the retainer, that courts may provide a self-represented party with some leeway in presenting their case and complying with deadlines. Hopefully, this assists in managing their expectations down the road, when procedures are relaxed somewhat to account for a party being self-represented.

Advice for new lawyers

Establish contacts with more senior lawyers in your area of practice. Senior counsel are usually more than willing to pass on their knowledge and experience. There will come a time when you need to rely on this support network, and therefore, you should ensure that it is in place at the outset.

Christopher Giggey is in his eighth year of practice, and is a partner at the law firm of Desormeau & Giggey LLP in Cornwall. His main areas of practice are family law and civil litigation.

High conflict cases require empathy, professionalism, civility

Rachel E. Baron

The problem

High conflict cases can cause a lawyer to lose sleep. In a family law crisis, clients are often overwhelmed with emotional and financial issues. Unreasonable and difficult counsel can also cause further conflict, increasing stress on the lawyer and costs for the clients.

What helps

It is important to refer clients to the appropriate resources so that they can obtain the emotional help that they require due to their situations. It is critical for the lawyer to remain objective and professional. However, one must also be aware of the client's social problems and deal with clients effectively and with empathy at an extremely difficult time in their lives – all without losing one's objectivity.

A trusting relationship between opposing lawyers can help the parties work towards a resolution. When other lawyers see you as cooperative, it is easier to create an environment in which constructive solutions are possible, even in circumstances where the clients cannot solve the problem themselves.

Help self-represented litigants understand your role

Self-represented litigants sometimes fall into a pattern of relying on the other party's lawyer for information and even advice about the legal process. It's important to prevent or correct this pattern early so that the self-represented party doesn't develop unreasonable expectations.

In his first written communication with a self-represented opponent, Cornwall lawyer Christopher Giggey includes the following plain-language explanation of his obligations under the *Rules of Professional Conduct*:

As you are not represented by legal counsel at present, I am under a professional obligation to:

- 1. urge you to obtain independent legal representation;*
- 2. ensure that you are not proceeding under the impression that your interests will be protected by me; and*
- 3. confirm and clarify that I am acting exclusively in the interests of xxxx and accordingly my comments may be partisan.*

Some parties may not understand this message the first time, or may lose sight of the role of the other party's lawyer as the matter unfolds. Where requests for assistance from the opponent persist, this message should be repeated to protect the interests of both parties and of the lawyer.

For more insights on how to deal with self-represented litigants, see "Self-represented litigants: A survival guide" in the Winter 2006 issue of *LAWPRO Magazine* (www.practicepro.ca/LawPROMag/SurvivingSRLS.pdf)

The broader challenge

I believe the most significant practical challenge for the family bar in the next decade is the diversity of our population and cultural differences in Canada. Language barriers and cultural issues and differences will become more prevalent. It will be critical that lawyers understand and communicate effectively with their clients.

Advice for new lawyers

Learn to negotiate amicably with other counsel and deal with matters with honesty and integrity. The lawyer must be cooperative and respectful of other counsel and clients, and must remain organized, conscientious, meticulous and diligent in meeting all deadlines.

Rachel E. Baron is a sole practitioner in Toronto, practising family law with particular emphasis on marriage contracts and cohabitation agreements, custody, support and property disputes.



Rachel E. Baron

Providing relevant, high-quality service while managing expectations

Mary M.S. Fox

The problem

What keeps me up at night is ensuring that I remain an effective problem-solver given factual, legal and procedural challenges in the complex area of family law. The nightmares occur when I envision complaints to the Law Society, assessment of accounts or a requirement to defend a statement of claim.

What helps

I try to remain current on the law and procedure, to manage client expectations, and to be considerate, courteous and a good listener. The real challenge is to do so in a timely and cost-effective manner given the complexities of today's families and our duties and responsibilities. Navigating the long and winding road and minimizing professional risk and liability force me to stay focused, work hard, be realistic and find effective ways of dealing with stress while maintaining a balance in life.

The broader challenge

The most significant practical challenge the family law bar faces is maintaining its relevancy. The expectations of our clients, our roles

as lawyers and the skills required to remain effective problem-solvers are changing at a rapid pace. The well-off are buying "private justice" with mediation and arbitration. Others are supported by the taxpayer: legal aid, self-represented and unrepresented. Our courthouses are akin to hospital emergency rooms: expected to serve all who enter.



Mary M.S. Fox

The obligations on lawyers mean that the cost of legal services is prohibitive for most people. How do we deliver a quality service at an affordable price when client expectations, no matter how well managed, often remain unrealistic? When a client does not like the result, his or her first step is to complain about everyone involved, including the lawyer. Lawyers must nevertheless rise to the occasion, tackle the challenges and justify how we bring real value to the way in which we resolve complex family problems.

Advice for new lawyers

Speak to those who have done it successfully. Establish a network of individuals known for modelling best practices, and seek their guidance and advice. Most lawyers are willing to help if asked. Do not assume you can do this alone if you intend to do it well.

Mary M.S. Fox is a partner in the Windsor firm of Ducharme, Fox LLP. She practises family law with emphasis on financial issues involving business owners and professionals.

Manage your stress so you can deal with clients in crisis

Erinn A. Fitzpatrick:

The problem

Like most other family law lawyers, I often work with clients who are in crisis. Clients often attend my office immediately after being blindsided by a sudden separation, or after months of careful planning to leave an abusive relationship. The fear, pain, and anger they express is very real, and my office is sometimes the first place they have had an opportunity to disclose their extremely personal problems. These accounts at times quite literally keep me up, especially when I receive multiple panicked email messages on my mobile phone from clients requesting instantaneous advice at all hours of the night.

Working with clients in crisis is rewarding, but stressful. Although our job as lawyers is to provide meaningful legal advice and not therapy, it is impossible not to be affected by the depressing and sometimes horrific narratives of our clients.

As many family law lawyers have not been formally trained in dealing with crisis or trauma, I fear that we are not always able to recognize the symptoms of burnout before it is too late. I have witnessed family law lawyers become overly cynical, disengaged, frustrated, and exhausted by the difficult work that they do every day. Some suffer even more serious consequences, including depression and substance abuse.

What helps

The first step is simply to recognize that family law is very stressful, and to take precautions against burnout. Lawyers are notoriously guilty of working long hours and having poor work/life balance. Taking adequate time to spend with friends and family, to engage in favourite activities, to get enough exercise, to rest, and to eat right are all ways of ensuring wellness and preventing burnout. While these



Erinn A. Fitzpatrick

suggestions might seem self-evident, they are often surprisingly difficult to incorporate into our busy days.

Lawyers must also set appropriate boundaries between their work and private lives. Sometimes I go as far as to lock my mobile phone in my vehicle for the evening to feel completely unplugged from my office.

Advice for new lawyers

New lawyers can easily become overwhelmed by the stress of working with family law clients. It helps to keep in mind that while it is important to be patient and compassionate, it is equally important to remain professional and to avoid becoming personally engrossed in a family law client's situation. ■

Erinn A. Fitzpatrick is an associate lawyer at Valin Partners LLP in North Bay. She practises in the areas of family law, real estate, and wills and estates.