

# Goodbye litigator: Hello "breakdown consultant"

## Meet the new family law lawyer

*The introduction this past January of new spousal support guidelines has put the spotlight on family law practice. To put the impact of the guidelines in context – and to better understand the pressures of family law practice today – LAWPRO Magazine this spring convened a panel of family law practitioners from across the province. We asked them to step back and look at the larger picture: What has changed in the practice of family law? What are the issues facing those doing family law today, and how have our panelists adapted to these evolving issues? And what lies ahead for the family law practitioner?*

*The insights and solutions offered transcend family law practice. Lawyers in all practice areas will find this discussion thought-provoking and eye-opening.*

**LAWPRO:** *In your view, has family law changed – and if so, has it changed for the better or worse since you started in practice?*

**Mary:** I don't think of it in terms of better or worse. Because change is constant, family law practice – like other areas of practice – is certainly different from what it was five, 10 or 20 years ago. Society, our clients and the environment in which we practise also have changed. All of the changes make us more accountable, which I think is a very good thing.

Our clients demand more of us – and rightfully so. They want everything better, quicker and cheaper. Therefore we cannot stay the same.

As well the world is not such a very big place anymore – thanks to technology. We can communicate 24/7. People are very mobile and everyone expects to reach everyone else at the touch of a button, by voicemail, fax or otherwise. This increases our obligations in a very significant way.

**Daniel:** What's better is that our practice is not the "same old, same old:." Our clients and their relationships are more complex, break-ups more difficult, and the issues are different than say 10 or 15 years ago. Today we have same-sex relationships, second marriages, children in combined families and so on. All of this makes the legal issues more challenging and more interesting.

Technology puts greater demands on us, but it also lets me interact with my clients at a much higher and more efficient level. E-mail certainly can be a scourge – but can also be a tremendous tool for saving clients money. Take for example, the preparation of financial statements: I almost never get a hand-written one anymore, they are almost always typed which leaves little or no room for error. So when these clients come in, I already have the pertinent details that I've had a chance to review in advance, and we have a very different kind of meeting. Certainly the lawyer and clerk still have to go through the paperwork – but e-mail and computers have helped reduce the "grunt" work at our end.



Heather McGee

# The panelists

**Kristen Bucci:** An associate with Buset & Partners LLP in Thunder Bay, Kristen has practised family and general litigation law since being called to the bar in 1993. She lectures and instructs in the local Bar Ads course, and facilitates CLE programs for area lawyers. She is past president of the Thunder Bay Law Association.

**Mary M.S. Fox:** An experienced trial lawyer and trained mediator, Mary is a partner with the Windsor law firm of Ducharme Fox LLP, where she practises primarily family law. She is also a frequent lecturer, instructor and panelist in CLE programs on family law, professional practice and civil justice reform, as well as serving on numerous professional and community boards and committees. Mary was called to the Ontario bar in 1978.

**Heather McGee:** The founding partner of McGee & Fryer, Heather has practised family and estates law in the Markham area since being called to the bar in 1991. She is also certified in collaborative law practice. As well as a guest speaker and writer in legal education and practice skills, Heather has volunteered on numerous committees and special projects for CDLPA, OBA and the Law Society. Heather is the incoming president of the OBA for 2005/2006.

**Daniel S. Melamed:** A partner at Torkin Manes Cohen Arbus LLP, Daniel focuses on family law and estates litigation. He

is certified by the Law Society as a Specialist in Family Law. He served as faculty member on National Family Law Conferences in Victoria, Ottawa, Whistler and St. John's, was an adjunct Professor at the University of Toronto Faculty of Law, and has lectured and instructed for the Law Society, the OBA, and other organizations. Daniel was called to the Ontario Bar in 1988.

**Lawrence S. Pascoe:** A sole practitioner lawyer, Lawrence has practised both family and wills and estates law in the Ottawa area since establishing his practice in the late 1970s. He is a frequent writer, lecturer and instructor on a wide variety of family law-related topics, and a regular contributor of articles on family law issues for local consumer publications. His firm's Web site – [www.thepascoedifference.com](http://www.thepascoedifference.com) – is frequently cited as an example of how lawyers can use technology to improve client relations and to market themselves more effectively. He was called to the Ontario bar in 1977.

## Moderator

**Dan Pinnington:** The director of LAWPRO's practicePRO risk management program, Dan moderated the family law panel discussion. After his call to the bar in 1993, Dan practised law, including family law, in southwestern Ontario. He joined LAWPRO in 2001.

Technology also lets me service clients more effectively around the world: I have clients in Eastern Siberia, Africa, France, England, even Australia. Where it once would take many days to turn around a document such as a separation agreement by courier, today I can send the clients a draft by e-mail, they can approve it overnight by e-mail, and the next day I can get it drawn up, send it to them by courier and two days later it is done.

What's worse? The greater expectations, some of which are unrealistic. Because of the Internet, clients think they have more legal knowledge: They'll send case law that they think applies to their situation. They ask more questions, challenge you more, are less willing to accept your judgment: While that makes practice challenging and interesting, it also means you spend a lot more time educating clients. You have to explain jurisdictional issues, why that case does not apply, or why that precedent is really a bad one to use in their situation.

One client contacted me the day after the (spousal support) guidelines came out asking why I didn't consider them when we were making a settlement. A very good question right? But a very difficult one to defend completely because you sound defensive. On the one hand, things are more difficult, but on the other people are informed and I prefer that.

**Heather:** Our role as lawyers has shifted to being one of "break-down consultants." We're having to improve our client relations and active listening skills. What we really want to be able to do, at an early stage, is separate the legal from the non-legal issues, and sort out where we can offer legal solutions and where we cannot, so we can better manage expectations.

Lawyers need to be realistic about what they can achieve, and should point the client in other directions for everything else, particularly services and counseling to promote emotional wellness.



It is essential that our clients are well enough to be making good decisions, and able to process the trauma of what is happening.

One of the things I do in my practice is encourage clients to put together their own "transition team," in effect a support system – friends, family, a good physician, a real estate agent, an accountant, a business or financial consultant – because issues on marriage breakdown can be diverse and overwhelming. My impression of a more traditional practice is that everything, including the non-legal issues, came to the lawyer's desk. Now, with more services in the community and awareness, you can have a notional partnership between the lawyer, the client and the client's team.

Frankly, this is not just a major improvement for the client, but also for the lawyer. When the client builds in other supports, less of the trauma is directed at the lawyer.

Many lawyers do burn out because we are constantly with people during a highly traumatic stage of life. All the grief, anger, shock, sadness is projected onto us, and we are left with this job to do. Without careful management, the lawyer can soon find herself being more responsible for the client's issues than the client is.

As family lawyers, we need to be more aware of the effect on us personally when we are working in this field, as well as help our clients understand that they are going through a process. This is a much more specialized approach: I am a good lawyer, but that's

all I am, I can help you with the legal issues, but on the non-legal issues the best I can do is point you in the right direction.

**Lawrence:** The over-aggressiveness of some lawyers is one issue that concerns me. Perhaps the cause is that there are more litigators doing family law because there is less personal injury and criminal work. I believe that these litigators forget that they are not representing banks, criminals and corporate clients and take pretty hard lines and positions. Unfortunately they sometimes succeed (though generally not) with these arguments, and so continue to practise in this aggressive way.

To address this problem we need to make family law more of an exact science. This has been done with the *Child Support Guidelines* and the new spousal support guidelines. More certainty will not only make our jobs easier, but will also cut down on the over-aggressiveness. It will also be fairer to all parties.

**Kristen:** I see change in four key areas: Others have already talked about improved technology and the fact that the issues facing the profession are different, because we're in an environment of continuous change.

As a result of these changes, the style of practice for some family law lawyers has changed. We're using alternative dispute resolution, collaborative law, mediation and other approaches. The new Family Law Rules are a testament to this new style – they emphasize case conferences as opposed to traditional adversarial litigation for example. In my view, some of these changes are positive.















