



## Retrospective

*By Justice Marvin A. Zuker*

George Burns once said, “I was married by a Judge, I should have asked for a Jury.”

When Victoria Starr kindly asked me if I would write a retrospective piece about my days at 47 Sheppard, I thought about this quote and how many of the parties who appeared before me at 47 Sheppard for the past 15 years, another 7 years before that at 1911 Eglinton Avenue East, and another 12 years before that in Small Claims Court, may well have preferred a jury?

If I may be permitted a bit of a detour, I would like to go back to my days at Osgoode Hall Law School. It was there that my interest in family law, my interest in women and the law was awakened, and my awareness became acute that there was no such a thing as equality between women and men and the notion that all people are equal under the law was only a dream. The jurisprudence of the day was heavily weighted in favour of men and, when a man and a woman married, they became one – him. With these thoughts in mind, I set out to write in lay terms of the disquietude of the day and painful disequilibrium of the slow-to-change legal system.

Who better to share my ideas with than the incredible June Callwood? If ever there was a champion of civil rights it was June Callwood. And, by some sort of miracle, June agreed to co-author a book with me in 1970 called Canadian Women and the Law. We were not finished. In 1976 came The Law is Not for Women. So the seeds of my interest in Family Law and family court began in law school and the desire to communicate the inequities of the laws came long before 47 Sheppard. Radio and television shows with June, Laura Sabia and Xaviera Hollander (“the Happy Hooker”) were quite the thing and the appetite certainly was whetted. Articles in the Toronto Star, etc., etc., and the race was on. And then, finally, in a news release dated May 29, 1978, I was appointed a full-time judge of the Small Claims Court by then Attorney General Roy McMurtry.

For our purposes, I will skip along. The door started to open a little at a time and, on August 27, 1990, following more than one request by yours truly, I was transferred to the Provincial Court (Family Division), being welcomed by Ted Andrews, the then Chief Judge. My base location was 700 Bay Street in Toronto and I presided throughout the Province. Great fun, great experience. Then in May 1991, I was assigned to the Family Court in Scarborough where I presided until December 1997 when I moved over to 47 Sheppard. In an article in The Toronto Sun by Ian Harvey dated September 16, 1995, he describes Scarborough’s provincial court as “The McDonald’s of Justice.”

I was certainly one of those delightful (I hope) servers for sure. A few quotes from September 16, 1995: “...It’s not a happy place,” notes Judge Marvin Zuker, “except on every other Wednesday.” He smiles. “That’s when we do adoptions.” Ian Harvey was so right. Seeing those incredibly happy (except when they were crying) children was heartening and extremely gratifying. The photographs always being taken and, of course, those great families. Another quote in the context of dysfunctional families and their ever-strained relationships: “My guess is they didn’t celebrate Mother’s Day together...”. That certainly sounds like something I would say.

And then the move to 47 Sheppard, the tail end of the full-time careers of Justices McClachy, Weisman, Felstiner and Wilkins, and the beginning of the influx of the newcomers – myself, Justices Waldman and Nevins – and the ultimate additions of Justices Brownstone, Spence, Sherr, Curtis and Murray.

So much has changed since I first started in family court and so much has remained the same. The *Family Law Rules* did not exist when I came on board but, for many of the parties, it still wouldn't matter. A high percentage of litigants appear before us on their own without a lawyer. And for me, please, please add competent counsel to the mix in a family court proceeding. What a difference! Almost, in fact, a pleasure. The unrepresented litigant simply cannot keep it simple nor brief. It is hard to fill a sack that is full of holes.

But the *Family Law Rules* have been truly a lifesaver, in particular, naturally, Rule 2. Of course, the procedure must be fair and just to all parties. Unfortunately, the parties forget to be fair and just to each other. For many, I found it was all about getting even, revenge, forgetting the most important person(s) in the case happens to be their child.

Dr. Larch, the founder of St. Cloud's orphanage in John Irving's *The Cider House Rules*, lamented, "There are no heroes in the world of lost and abandoned children." Well, the good doctor was wrong. I have seen many heroes in family court, many family members who have stepped up to the plate, to be the hero of their own life for themselves and for the good of others. God bless them.

For me, the tragedy is that the cycle often never ends. All you have to do is read *I Know Why the Caged Bird Sings*, Maya Angelou's autobiography. It is really all about four words: The Future of Hope. I think we all well appreciate that the best interests of children should be paramount in all our decisions. The Office of the Children's Lawyer has proven to be invaluable in its representation of children. Great people, and always the right mix of empathy and understanding.

Case Management is another area that our *Rules* took hold of. And Conferences, Case Conferences, Settlement Conferences, Trial Management Conferences, never mind orders that can be made at these conferences have greatly changed the landscape. And finally, without dwelling too much on the *Rules*, thank goodness for Motions for Summary Judgment – what a significant *Rule* in our court, particularly in child protection proceedings.

What I came to realize – at 47 Sheppard and, in fact, over the past 34 years in the civil and family court – is the incredible *emotion* of the parties, the pain and joy, the hopes and dreams, and the terrible sadness in the eyes of so many. There are only so many roles we can play and the reality, at least for me, is that role of a judge at 47 Sheppard or any family court is unbelievable. Try adding psychiatrist, psychologist, social worker and, yes, parent. It is great to know the law, although we have appeal courts to set us straight, but what about all these intangibles? Talk about bringing our own history and background to the table, to the Bench. This is it, in spades. Human dignity should not have to be earned. It is an inherent right.

Our childhood makes us what we are. Our hurts and our happiness. Our loves and our hates. Our successes and our failures. All of our childhood experiences are woven into the fabric of our adult characters. If hate gets out of hand for kids at home, it often is fuelled later by hate groups. Or sometimes fanned by their anti-hate counterparts. No matter when the hatred gets out of control, it generally is traceable to childhood. Kids learn bigotry from their parents. Bigotry and hate. Love and tolerance. If parents can teach their kids the importance of the difference, they can make a bigger difference than all of our laws. The issue has less to do with poverty as such than with culture, with conscious values as well as unconscious behaviour.

We can only do our best, try our best. Charles Dickens began *David Copperfield* asking, "...[W]hether I shall turn out to be the hero of my own life, or whether that station will be held by anybody else..." You can choose not to wait for someone else to act but instead to be the hero of your own life – for the good of others. By making that choice, you not only help but inspire, and so keep lit around the world the lights of valour in the cause of justice.

So, thank you, 47 Sheppard. What we keep in memory is ours. The brightest and the best. That is what it is all about. That will continue, for sure.

*\*Justice Marvin A. Zuker, Ontario Court of Justice*