

Pam MacEachern

March 29, 2018 – updated bio

Overview

- I was called to the bar in 1994, where I still practice.
- Areas of work - family, wills and estates, civil litigation (personal injury), human rights/constitutional/equality law. Although my work has most recently focused on family and estates law, I continue to be involved in personal injury litigation, primarily involving sexual violence, and human rights, constitutional and equality work including in the areas of violence, propagation of hate, defamation, and prisoners' rights.

Other Professional Experience

- Co-Chair, County of Carleton Law Association (CCLA), Family Law Institute Annual Conference in Family Law, 2013-present
- CCLA, Family Law Institute Annual Conference in Family Law, planning committee member 1999 to present
- CCLA representative for Justice Bonkalo review of expanding provision of services in family law, spring 2016
- CCLA, Family Law contact for Federation of Ontario Law Associations, 2016
- CCLA, member of Diversity Committee, 2016 to present (and planning member in 2015)
- CCLA, member of adhoc committee to take steps towards reconciliation following the TRCC, 2016 to present
- Practice Group Leader, Nelligan O'Brien Payne LLP Family Law Group – 2007 to present
- Practice Group Leader, Nelligan O'Brien Payne LLP, Wills and Estates Group – 2015 to present
- Law Society of Upper Canada, firm representative on the Justicia project to increase the representation of women in the legal profession, 2012 to 2014

- Participant in the Law Society's Ottawa focus group on professionalism, 2012
- Participant in the Ontario Attorney General Consultation on how to improve family law, Ottawa, 2009

Pro Bono Activities

- Canadian Association of Elizabeth Fry Societies, pro bono counsel on human rights tribunal, segregation/solitary confinement challenge, wrongful death investigations, inquest, test case and civil law suits 2015 to present
- Equality for Gays and Lesbians Everywhere (EGALE), pro bono counsel and member of legal issues committee 1994 to 2007

Teaching and Continuing Education

- Debate on the Law Society Statement of Principles, University of Ottawa, March 28, 2018
- Dealing with self-reps, publication and presentation at the Six Minute Family Lawyer, Law Society, December 2017
- Gender Dysphoria and Parenting Conflict, Family Law Institute Annual Conference in Family Law, County of Carleton Law Association (CCLA), Montebello, April 2017
- Workshop leader, Law Needs Feminism Because, McGill Law, Montreal, March 2017
- Family Law Institute Annual Conference in Family Law, CCLA, Ottawa, Co-chair of conference 2013-present, planning committee member 1999 to present
- Walsh Cup Family Law Moot coach, University of Ottawa law school, Ottawa, 2013 to present
- First year Nelligan O'Brien Payne LLP moot court judge and coach, University of Ottawa law faculty, Ottawa, 2009 to present
- Pam's Rant: Commentary on the Practice of Family Law, Family Law Institute Annual Conference in Family Law, CCLA, Ottawa and Montebello, 2012, 2014, 2015, 2016, and 2017

- "Reproductive Labour? Reflections on the Law and Policy of Surrogacy", presentation, Hosted by the Shirley Greenberg Chair for Women and the Legal Profession and Centre for HealthLaw, Policy and Ethics, University of Ottawa Law School, Ottawa, 2016
- Presentations to Outlaw student group at University of Ottawa Law School on LGBTQ legal issues, equality work, and being a feminist in the practice of law, Ottawa, 2014
- Demonstration, "Family Law Motions Workshop" Advocates Society, Ottawa, 2013
- Mentor, Women in Litigation Conference, Ottawa, 2013
- "How to prepare for an Effective Settlement Conference", New Lawyer Family Law Primary, Carleton County Law Association, Ottawa, 2012
- "Family Law for Corporate Lawyers", paper and presentation, CCLA East Region Solicitors' Conference, Montebello, 2012
- "The Development of the Constitutional Challenge to the Right to Marry", Presentation on Panel on Constitutional Issues, Canadian Association of Law Libraries Conference, Ottawa, 2007
- "Multiple Parents – Challenging our Concept of Parent", publication and presentation, CCLA Family Law Institute Conference, Ottawa, 2006
- "Sealing Orders, Lies and Videotapes: Protecting Our Clients' Privacy", publication and presentation, CCLA Civil Litigation Update Conference, Montebello, 2005
- "Same Sex Marriage – Practice Issues for Lawyers", publication and presentation, CCLA East Region Solicitors' Conference, Montebello, 2004
- "Same Sex Marriage" - Presentation to Family Law students at Carleton University, Ottawa, 2004
- "First Impressions of Miglin – Judicial Considerations", publication and presentation, CCLA Family Law Institute Conference, Ottawa, 2003
- "Nuts and Bolts of Drafting Court Documents Including Orders", presentation and publication, CCLA Law Clerk program, Ottawa, 2003
- Guest lecturer on family and equality issues in Paralegal program at Algonquin College, Ottawa, 2000 and 2003

- “Changing Rules for Common Law Spouses - Beware!”, publication and presentation, CCLA Family Law Institute Conference, Ottawa, 2001
- “A Brief History of Same Sex Marriage Challenges”, publication and presentation, CCLA Family Law Institute Conference, Ottawa, 2001
- “Recent Legislative Amendments Dealing with Same Sex Partners”, publication and presentation, CCLA Family Law Institute Conference, Ottawa, 2000
- Moot Court judge, Queen's Law, Kingston, 2000
- Seminar on family law to University of Ottawa legal aid clinic students, Ottawa, 2000
- “Spouse or Not Spouse - Same Sex Issues in Family Law”, publication and presentation, CCLA Family Law Institute Conference, Ottawa, 1997

Community Activities

- Member, Ottawa Police LGBTQ Liaison Committee, approximately 1996 to 1998
- Member, Criminal Justice Round Table Against Violence Against Women, 1999 to 2003
- Board member, Equality for Gays and Lesbians Everywhere, approximately 1994 to 1998
- Legal Issues Committee Member, Equality for Gays and Lesbians Everywhere 1992 to 2007

Legal Experience

- **Family Law:**
 - I have practised in the area of family law since 1994. This has been my primary area of practice since approximately 1998. I have been the practice group leader of the family law group at Nelligan O'Brien Payne LLP since 2007, growing the group from two lawyers to nine. I deal with legal issues on family dissolution (custody, support, property, divorce) but also on family creation (domestic contracts, step-parent adoptions, including same sex parent adoptions, declaration of parentage, and new challenges arising from reproductive technologies (donor agreements, surrogacy agreements)). I have significant

experience dealing with matters involving domestic violence, including safety planning, restraining orders, and creative and practical problem solving when dealing with issues of abuse. I appear in court regularly, at lower courts and appeal levels, but am also a strong proponent of alternative dispute resolution methods, including mediation, where appropriate.

- **Estate planning, administration and litigation:**

- I have practised in this area since 1994, including estate planning, estate administration, and estate litigation. I have been the practice group leader of the wills and estates group at Nelligan O'Brien Payne LLP from 2015 to 2018.

- **Civil litigation (personal injury):**

- My practice has included personal civil litigation since 1994. Most of my civil litigation practice has focused on issues of sexual violence, including seeking civil remedies for victims of sexual abuse, both historical and recent. My civil litigation practice has also involved defamation, civil litigation surrounding reproductive technologies, and most recently deaths in custody and prisoners' rights.

- **Human rights, constitutional, equality law:**

- My work also includes significant experience in the areas of human rights, constitutional and equality law. These areas have often overlapped with my other areas of practice. This work began with my involvement in the LGBTQ equality challenges surrounding relationship recognition and same sex marriage. This work expanded to be applicable in a number of labour law cases where we advanced equality concerns on behalf of unions, and also in estate litigation cases, in civil litigation cases involving sexual violence and prisoner rights, and in family law cases.

- **Human rights:**

- I have acted as counsel for the Canadian Human Rights Commission in a number of matters, including pay equity, workplace harassment and hate on the internet. I have also provided legal advice and representation for clients, both organizations and individuals, in their human rights complaints.

- **Defamation:**

- I have advised and represented a number of clients with respect to defamation claims, for both plaintiffs and defendants.

Publications

- Dealing with self-reps, Six Minute Family Lawyer, Law Society, December 2017
- "Gender Dysphoria - New Enlightenment or New Alienation?", paper and presentation, CCLA Family Law Institute Conference, April 2017
- "Bill 28: How does it change Ontario's Parentage Laws?", www.nelligan.ca, 2016
- "What Legal Fees Can I Deduct on my Tax Return?", www.nelligan.ca, 2016
- "Don't Forget - Legal Fees to enforce or establish child and spousal support are often tax deductible", Linked In, 2016
- "Top Ten Things I have Learned as a Lawyer", SupremeAdvocacy Lawletter, January 22, 2015
- "Gifts and Net Family Property: What is Included?", www.nelligan.ca, 2015
- "Don't Forget to Apply for a Division of CPP Credits", www.nelligan.ca, 2015
- "Separation and Employment Pensions", www.nelligan.ca, 2015
- "What's So Special About the Matrimonial Home", www.nelligan.ca, 2015
- "Do You Need A Family Law Check Up?", www.nelligan.ca, 2014
- "Ownership Matters", www.nelligan.ca, 2013
- "Divorce: Then and Now", www.nelligan.ca, 2013
- "The Emotional Divorce", www.nelligan.ca, 2013

- "Why Common Law Couples Should Consider a Cohabitation Agreement", www.nelligan.ca, 2012
- "Family Law for Corporate Lawyers", paper and presentation, CCLA East Region Solicitors' Conference, 2012
- "Dividing Your Property After Separation", www.nelligan.ca, 2011
- "What You Should Know Before You Separate From Your Spouse", www.nelligan.ca, 2011
- "Same-Sex Survivors Now Entitled to Canada Pension Plan Benefits - including Back Payments", www.nelligan.ca, 2007
- "Multiple Parents – Challenging our Concept of Parent", publication and presentation, CCLA Family Law Institute Conference, 2006
- "Sealing Orders, Lies and Videotapes: Protecting Our Clients' Privacy", publication and presentation, CCLA Civil Litigation Update Conference, 2005
- "Same Sex Marriage – Practice Issues for Lawyers", publication and presentation, CCLA East Region Solicitors' Conference, 2004
- "First Impressions of Miglin – Judicial Considerations", publication and presentation, CCLA Family Law Institute Conference, 2003
- "Nuts and Bolts of Drafting Court Documents Including Orders", presentation and publication, CCLA Law Clerk program, 2003
- "Thinking of Getting Married? Same sex couples win the right to marry in Ontario", www.nelligan.ca
- "Changing Rules for Common Law Spouses - Beware!", publication and presentation, CCLA Family Law Institute Conference, 2001
- "A Brief History of Same Sex Marriage Challenges", publication and presentation, CCLA Family Law Institute Conference, 2001
- "Recent Legislative Amendments Dealing with Same Sex Partners", publication and presentation, CCLA Family Law Institute Conference, 2000
- "Spouse or Not Spouse - Same sex Issues in Family Law", publication and presentation, CCLA Family Law Institute Conference, 1997

- “No Means No: Sexual Assault Claims”, Canadian Bar Association Conference, co-authored, 1997
- “Rosenberg v. Canada: The Impact of Egan v. Canada on Lesbian and Gay Equality Claims”, Canadian Labour & Employment Law Journal, Vol. 4, No. 1, 1996
- "Update: Civil Remedies for Sexual Abuse", CCLA Civil Litigation Conference, 1995
- “Stalking”, Lawyers' Weekly, co-authored, 1995
- "Special Considerations for Civil Sexual Assault Cases", Ontario Practice Guide, Civil Litigation, Personal Injury Actions, Carswell, co-authored, 1994
- "The Disclosure of Mental Health Records - New Obstacles for the Sexual Assault Complainant", Nelligan/Power Health Law Vol.5, No.2, 1994

Other Presentations

- Presentation to youth queer group on history of LGBTQ equality litigation, Jer's Vision, 2014
- "The Advantages and Challenges of Being Out at Work", primary speaker, Career Service LGBTQ+, University of Ottawa, 2013
- Presentations on family and estates law to various LGBTQ community groups in Ottawa, including Pink Triangle Services (2009) and Lesbian Outdoor Group (2009) (and other groups such as LAMBDA and Sage for earlier periods)

Significant cases

1. LGBTQ+ Equality Issues (1990 to 2007):

I began working on LGBTQ+ equality issues when at law school, when I was one of the planning members for Canada's first Lesbian and Gay Legal Issues Conference (1990, Queen's Law). I continued this work after law school, as an articling student and lawyer, working with EGALE as well as on files with our firm (Nelligan O'Brien Payne) in the labour (union side), family and estates areas.

This work included being involved in developing the legal argument and factums in EGALE's interventions before the S.C.C. in the Egan, M. v. H., Trinity Western, Little Sisters, the Marriage Reference, and other cases; as well as work to amend the Canadian Human Rights Act to include sexual orientation as a prohibited ground of discrimination. I worked in coalition with other equality seeking groups (for example, the Women's Legal Education and Action Fund (LEAF) and DisAbled Women's Network (DAWN) Canada) to develop strategies that took into account the legal impact of various equality arguments on other vulnerable equality seeking groups.

I was an active participant in multiple consultations with other equality seeking groups, including within the LGBTQ+ communities, to build coalitions and move forward strategically. The same sex marriage challenges are a prime example of this coalition building, and my ability to encourage groups to work together to develop effective legal strategies. Ultimately, we were successful in gaining the right for same sex couples to marry across Canada, as well as in advancing equality jurisprudence.

2. Vanasse v. Sequin (2011):

This case went to the S.C.C., which released its decision in 2011. The decision, in this case and that of Kerr v. Baranow (released as one decision), has been described as the most important family law decision in Canada in the last decade. I was the first lawyer in this case, and counsel at trial. Although I was not counsel of record on appeal, I continued to work on the case and developed the legal argument and factum that was ultimately successful before the S.C.C.

My client was in a common law relationship. She sought to share in a portion of the property accumulated by her spouse during their relationship, under the principles of unjust enrichment. My challenge was that much of the existing case law from the Ontario Court of Appeal limited the remedies available to her, such that, if the existing precedents were followed, no meaningful remedy was available. We were successful at the S.C.C., achieving a significant development in the law that created avenues for common law spouses, most often women, to achieve a meaningful remedy for their unjust enrichment claim.

3. Civil Claims for Sexual Assault

I have acted on a number of civil cases seeking remedies for victims of sexual abuse, both historical and recent. One case, in particular, is notable to me.

We were successful after a six week trial in achieving an award of damages for our client, and then spent many years trying to enforce judgment through bankruptcy court. This case involved complex evidential and legal issues. It was a long trial, that required even longer to prepare for and develop. But more importantly, to me this case represents the importance, and limitations, of our legal system for victims of sexual violence. Our client, though suffering from a number of mental health issues, compounded by the abuse, showed incredible strength and courage in pursuing her claim. She taught me invaluable lessons on how to listen, support, advise, and counsel clients with complex and multi-faceted mental health issues and extensive histories of sexual abuse. She taught me how important the role of a lawyer is in assisting people in vulnerable and marginalized circumstances.

4. Dr. Barwin cases (2010 to present)

I have been involved in a number of cases, including most recently a class action, seeking damages based on allegations that a medical doctor (Dr. Barwin) implanted his own sperm and other unknown sperm in women using his medical fertility services to have a child. We have acted for the plaintiffs in these matters, which include single women, opposite sex couples, and same sex couples. These cases present an opportunity to develop the law to adapt to new legal challenges, presented by new technologies.

5. Prisoner Rights cases (2015 to present)

Since 2015, I have assisted the Canadian Association of Elizabeth Fry Societies (CAEFS) in a number of matters, as pro bono counsel. CAEFS is an association that works with and on behalf of marginalized, victimized, criminalized and institutionalized women and girls. I have assisted CAEFS in their systemic discrimination complaint before the Canadian Human Rights Tribunal,

challenging segregation/solitary confinement, several wrongful death investigations, developing test cases and advising on civil lawsuits for deaths in custody and damages pertaining to conditions of confinement. I have also assembled a counsel-team at my firm to assist the families of three women who have died in federal custody over the past two years. Most recently, I acted as counsel on behalf of the intervenors, CAEFS and the Native Women's Association of Canada, before the S.C.C. in the R. v Ewert appeal, which involved a challenge to the classifications tools applied to indigenous prisoners.