

RULE OF LAW REPORT

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ANIMAL LAW ACCESS TO JUSTICE CLINIC TURNS ONE

By Victoria Shroff
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Access to justice for animals not only matters in theory, it matters in practice. And it's possible. About a year ago, I wrote about how access to justice for animals in B.C. got a boost via a new pro bono clinic for animals. A year after it started, our access to justice initiative, the Animal Law Pro Bono Clinic (ALPC) at the Law Students Legal Advice Program (LSLAP) in Vancouver, is thriving.



Grateful to say that our unique ALPC at LSLAP clinic is a Canadian legal first. People who are low income with animal law issues such as “dangerous” or “aggressive” dogs, municipal issues, cat cases, breeder problems, cruelty, housing and tenancy issues, human rights issues involving animals and other cases involving animals and the law are being helped. We even managed to run the clinic during the summer of 2021 with a few student animal law clinicians and the supervising lawyer.

Along with teaching animal law at Allard School of Law, I’m also the ad hoc volunteer lawyer providing continuity for the clinic and the general ALPC clinic booster.

I’m pleased to see some of my animal law students at Allard participating in and being enriched by their clinical experiences at the ALPC. They get a chance to experience some of the animal law lessons we learn in the classroom being turned into real-life files. Animal law is much more of a mainstream practice than many may realize. Yes, our “dog files” offer tremendous student learning opportunities while assisting the public. (For more about access to justice, and the applicability of Canadian animal law generally, please check out this LexisNexis podcast: Access to Justice (<https://lexisnexiscanada.podbean.com/e/canadian-animal-law-access-to-justice-revised/>) and access this article by Dr. Marc Bekoff, “How Animal Law Applies to Many Areas of Mainstream Practice” in **Psychology Today**.)

ANIMAL LAW PRO BONO CLINIC YEARS IN MAKING

Though the clinic was opened in autumn 2020, it was years in the making and establishment. When the animal law students I first taught in 2016 asked me to help them get involved in animal law work, I was able to assist several of them via mentoring or providing the chance to work on files, but I believed something more was needed both for the students and for access to justice. An idea formed in my mind to create an access to justice opportunity that would serve the community in need, help animals and help students gain clinical experience. Several years ago, Amber Prince and I began discussions with LSLAP, our students and experiential learning guru, professor Nikos Harris at Allard School of Law, for how we could bring about a new A2J animal law clinic. In October 2020, the Animal Law Pro Bono Clinic at LSLAP became a reality.

LSLAP has its roots in the 1960s as a non-profit with a mandate to help those who cannot afford legal advice. Read more here (<http://lslap.bc.ca>). For the sake of clarity, readers should know that

the ALPC/LSLAP is independent from UBC and from the Allard School of Law at UBC and neither Allard Law nor UBC manage, oversee or administer the animal law clinic.

In the U.S., animal law colleagues at Harvard and Lewis and Clark have been running animal law clinics, including specialty animal law clinics, for years and there's much to learn from them by example.

ACCESS TO JUSTICE AT HEART OF ANIMAL LAW CLINIC

There are many things I appreciate about the groundbreaking ALPC/LSLAP clinic, but my favourite aspects are watching students gain real world animal law client experiences while helping the community gain tangible access to justice for animals and humans. It's a win for access to justice.

“ There are many things I appreciate about the groundbreaking ALPC/LSLAP clinic, but my favourite aspects are watching students gain real world animal law client experiences while helping the community gain tangible access to justice for animals and humans. ”

Student clinicians speak with clients, review contracts, draft documents, they attend hearings and even run trials. They are supervised by program lawyers, and I am only too happy to volunteer my time coaching our clinical students. Those involved with the clinic are genuinely excited to get their feet wet; they are earnestly involved and engaged in serving animal law clients. Students gain other allied opportunities through our clinic as well. Not long ago, we set up an interprovincial collaborative project for ALPC and animal law club students to work on animal criminal law case briefs with Humane Canada – another win for the animal law community.

Access to justice for animals and humans includes access to information and was one of the main reasons I was inspired to write a book on animal law called *Canadian Animal Law*.

CHIEF JUSTICE BAUMAN, ACCESS TO JUSTICE, ANIMAL LAW

The Chief Justice of B.C., the Honourable Robert Bauman, is known for championing A2J in Canada. (He chairs Access to Justice BC (A2JBC)). I reached out to the chief justice last year requesting a quote for my plain language text book about animals and access to justice and the Chief Justice Bauman kindly responded as follows:

The rule of law requires that ordinary people can access the justice system to enforce their rights; it is untenable in a democratic society that people are prevented from pursuing or protecting legal rights because the justice system is too expensive or complex. This is so in all areas of law, and the law relating to animals is no different. It has to be acknowledged that animals are deeply entwined in our cultural, social and economic lives – whether we are talking about animals as pets, animals as part of our industrial food supply system, animals as sentient beings in need of protection from inhumane treatment or even animals involved in criminal offences.

When it came time to mark our one-year anniversary for A2J for animals and humans, we held an animal law event at Allard on Sept. 17, and naturally, were reminded of the amazing words on animal law, access to justice expressed by Chief Justice Bauman. I invited him to come and speak to us in person about his thoughts on animals and access to justice. Despite his very busy calendar, he attended.

After opening the event generally, talking about animal law, the ALPC/LSAP and access to justice, I introduced the chief justice and quipped that when spell checking his surname of Bauman my computer suggested Batman instead! The chief justice regaled the audience with a short and insightful speech about the importance of animals accessing justice in society, in our legal system. It was a true honour to have the chief justice attend in person, lending his supportive interest to our animal law access to justice initiative and marking its one-year anniversary.

The clinic to me is access to justice as its most basic, important and heartening level. It's been a collaborative process. I extend my gratitude to everyone involved in the LSLAP/ALPC and for helping to get us to this point. Here's to year two of the ALPC and continuing to grow access to justice for animals and humans in Canada.

WHAT LEGO CAN TEACH FAMILY LAW ABOUT DEALING WITH SELF-REPS

By Joel Miller
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LEGO makes little interchangeable plastic bricks as a toy. But to expand its market reach it also makes movies, has theme parks, T-shirts and pajamas and a number of TV series for kids and adults. *LEGO Masters* is a prime-time TV show challenging adults to build LEGO structures.

LEGO figured out that to increase business for its primary product, those little bricks, it should surround them with a universe of other, complementary, products. In *The Power of Little Ideas: A Low-Risk, High-Reward Approach to Innovation*, David Robertson and Kent Lineback use LEGO as an example of “complementary innovation.” They point out that traditional businesses and services think of either “radical” or “disruptive” innovation, or “incremental” or “sustaining” innovation. But there’s a third approach: complementary innovation.

Disruptive or radical innovation has been defined as something that simplifies products and services and makes them more affordable to undesirable or ignored markets. Think of Amazon, Netflix, e-books and music streaming. This increases the market at reduced prices, disrupting the status quo.

Sustaining innovation is making existing products and services better for the existing customer base. It doesn’t look for new markets or customers; it’s innovating to remain relevant to the traditional client base. Think of Coca-Cola introducing different flavours. Or grocery stores introducing online ordering and home delivery. All of this to continue to sell what they were

already selling to the people who were already buying in an attempt to keep those customers. This is doing something better for the same consumers without seeking to expand the market.

Most of us in our family justice system are too traditional and risk-averse to consider any sort of radical or disruptive innovation, so we opt for incremental or sustaining innovation (case conferences, dispute resolution officers, more disclosure rules) without recognizing that we're simply tinkering to serve our existing market without any interest in extending our reach.

But the third approach, complementary innovation, keeps our core product or service and looks for ways to reach new, but previously undesirable or ignored, customers who are not now buying what we're offering. It's innovation by finding ways to service those customers we traditionally ignore with different and less costly products or services without disrupting what we already do for our existing customers.

We introduced separate Family Law Rules with new rules for disclosure. We created case conferences and dispute resolution officers. But this is essentially stretching the existing system to make it work better for those already using it. At best we've practised



sustainable innovation. We can do so much better by doing what LEGO did. But we're stuck. Like other established companies and professionals, we family lawyers strive to improve what we sell to our most profitable clients. The sessions our continuing legal education offer tells us who they are. We have programs that teach us how to draft better insurance trust agreements or how to better protect a family business from the divorce of one of the members; how to examine and cross-examine an expert; or how to deal with cross-border custody and international kidnapping cases.

These exist to make us better lawyers in a system we've designed to work best when both litigants hire one of us to plead on their behalf, at a fee we decide we're worth. It's a system based on proof, not truth, where success depends on knowing the rules of evidence and procedure, none of which are known to the layperson.

We don't have courses about how the system can serve those who can't afford lawyers. Hire a lawyer or be at a disadvantage. Even collaborative law requires the hiring of two lawyers. And all of this ignores the needs and desires of the larger market of helping self-represented litigants who can't afford us.

We see the self-rep market as unprofitable without recognizing that this pool of litigants — larger than the pool of paying clients — can be serviced without radical or disruptive change to our traditional way of doing things. We think of any innovation other than sustaining or incremental as disruptive and destructive to what we now have.

We're what LEGO would be without all of the things it does to extend its customer base and if it had simply stuck to selling its little bricks. We forget that the family justice system should be serving the litigants, not the lawyers.

Adapting Robertson and Lineback's thinking of complementary innovation to the family justice system, we need to ask and answer these questions:

1. WHAT'S OUR KEY PRODUCT OR SERVICE?

Kodak thought it was film and cameras. Blackberry thought it was handheld telephones.

Apple realized it was about making it easy for people to take pictures, play games and use a computer on little devices that were also cell phones. It ate Kodak and Blackberry for lunch.

Sears thought it was about providing a place for people to see and touch products and to try on shoes and clothes. Amazon realized it was about giving people easy access to choose what they wanted in their own homes from a selection they curated. It ate Sears for lunch.

For us, the family justice system is – should be – about providing a system to resolve family law disputes that meets the needs of those seeking the service in a trustworthy way. It's not how to create a system that works best with two experienced and trained professionals standing between the litigant and the decider. Our key service is serving the litigants, not the professionals.

2. WHAT'S OUR BUSINESS PROMISE?

Currently our business promise is that the more experienced and qualified a lawyer you hire the better you'll do in family court. A recent Loom study showed that for civil and family cases in Ontario's Superior Court an unrepresented litigant facing a lawyer will lose almost 1 out of every 10 times. The best indicator of success for a family law self-rep is whether the other party can afford a lawyer. That's a crummy promise. A system that works for those with money but not for those without is broken.

The secret we keep to ourselves is that family law matters lie on a continuum. At one end are complex cases, requiring clear and detailed rules of evidence and procedure. That's the system we have. But there are also straightforward and simple cases at the other end, that don't need the same approach. Our business promise should be to provide a service that accommodates the needs of both cases and those between without requiring that the rules needed for the complex case at one end must be applied for the case at the simple end.

3. HOW WILL WE INNOVATE?

We'll do this by looking for new services that surround, or complement, our traditional system. That will extend the reach of our consumer base, while leaving our traditional system intact for those for whom it makes the most sense. We'll recognize that this may

“ We should create services that value flexibility over rigidity, that focus on truth as well as proof. And that recognize that the family justice system exists to serve litigants, not lawyers.”

mean systems and cases that don't need the lawyers or rules that the complex cases need. We should create services that value flexibility over rigidity, that focus on truth as well as proof. And that recognize that the family justice system exists to serve litigants, not lawyers.

It's a lot easier to translate this into specifics than we might think at first. Ontario just initiated a pilot project of Binding Judicial Dispute Resolution that's a perfect example of complementary innovation. It's neither disruptive nor sustaining, but is something that should extend the reach of the family

justice system to a wider user base. This is an example of creating a service that doesn't interfere with the traditional way of doing things, but which recognizes that the traditional way doesn't always make sense.

In subsequent articles we'll discuss that and other things we can do using complementary innovation as our guide to keep our core product, the traditional court process, in place but surround it with additional means of accomplishing our business promise.

This is part one in a series in The Lawyer's Daily. Part two: What economists can teach family law about dealing with self-reps; part three: The 'Brumagem screwdriver' and family law self-reps; part four: Things we can do if we're serious about self-reps.

ONTARIO'S CHIEF JUSTICES ADDRESS BACKLOGS, STRESS NEED FOR ACCESSIBILITY AS COURTS MODERNIZE

By Amanda Jerome
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The quick modernization of the justice system in the wake of a global pandemic and the “historic backlog” of cases that COVID-19 has created were consistent themes throughout Ontario’s opening of the courts ceremony, held virtually on Sept. 14. One thing was made clear: technology is needed to keep justice moving, but ensuring the courts remain accessible to the most vulnerable is an important priority.

“Our modernization has been rapid. In the coming months and years we will need to evaluate what we have done and continue to invest in technology to ensure that we have the best tools and support to provide efficient and effective access to justice. We will also need to ensure our courts remain accessible to everyone, not just those equipped with laptops, cellphones, and high-speed Internet, but also the most vulnerable amongst us who may lack those tools or the abilities to use them,” stressed Chief Justice of Ontario, George Strathy in his remarks.

Chief Justice Strathy noted that “prior to the arrival of the coronavirus, our courts had functioned in ways unchanged for generations” and during his 50 years as “an observer of the law,” it often struck him that “the law was changing much faster than the way in which lawyers practised, judges judged and courts functioned.”

“In the course of 18 months, our courts have successfully catapulted themselves out of a dusty and fusty 19th or 20th century existence into a world of remote appearances, digital records and electronic filing,” he added, noting that this change was “driven by the pandemic, but realized through unprecedented collaborative efforts of the bench, the bar, and the Ministry of the Attorney General.”



Chief Justice Strathy stressed that “public trust is also fragile” and will “be eroded if those responsible for the administration of justice fail to understand and respect all those we must serve.”

“Public trust in the judicial branch as an institution, and public confidence in the administration of justice, are undermined when some of the most vulnerable members of society believe in their hearts that the system is beyond their reach, doesn’t understand or appreciate their concerns, takes too long, or it is too expensive and cumbersome to serve their needs,” he explained, noting that COVID-19 “shone a bright and critical light on the vulnerabilities of our society, magnifying pre-existing inequalities.”

Chief Justice of the Superior Court of Justice, Geoffrey Morawetz, recalled that when he began his role two years ago his “long-term vision was to bring the court into the 20th century.”

“Then the pandemic happened, which, in a surprising turn of events, pushed us rather quickly into the 21st century instead,” he added.

☞ Chief Justice Morawetz noted the “over 180,000 virtual or hybrid hearings” the Superior Court has held “since the beginning of the pandemic, most commonly in family and civil.”

Chief Justice Morawetz noted that this “new environment has shown us the need to implement a new technological foundation to deliver more accessible justice at this moment and into the future.”

However, he made clear that this approach “comes with its challenges, and we are assessing the situation as we seek to improve.”

“Remote work has had its consequences on mental health, and technology poses a challenge for people who work within the justice system as they adapt to these new processes. The pandemic also exposed issues that we need to fix and improve, namely access to justice and the backlog,” he added.

Highlighted as a success, Chief Justice Morawetz noted the “over 180,000 virtual or hybrid hearings” the Superior Court has held “since the beginning of the pandemic, most commonly in family and civil.”

“This pandemic has bluntly reminded us not only of the need for our software and services to modernize, but for our workforce’s skills to modernize as well. We must equip our staff with the skills necessary to utilize new technology to effectively serve the public in the digital age,” he explained.

Chief Justice Morawetz said a “prime example of technological advancements in the courts is CaseLines, a document sharing platform that allows us to access documents for hearings anytime and anywhere.”

“We began implementing CaseLines August of 2020, and it was quickly adopted across the province. It is an important part of our strategy for tackling the backlog of cases. Last summer, the Ministry of the Attorney General procured CaseLines for our court. CaseLines can change how we do business, allowing us to access files from across the province and beyond. Its ability to make the justice system work will be integral to our services moving forward,” he added.

Chief Justice Morawetz also noted that the Superior Court’s “family law work has been incredibly busy” and throughout the pandemic it has “conducted over 96,000 virtual or hybrid hearings in family alone, including an unprecedented number of urgent requests.”

“Since the start of the pandemic, family cases have been a high priority to ensure the safety and well-being of children and families who have turned to the court for assistance,” he explained, noting that “despite these efforts, many challenges remain.”

“COVID-19 has caused delays that have aggravated the already significant difficulties of making post-separation arrangements, whether relating to children or financial support,” he said, adding that the court is trying to address delays by implementing improvements, such as the “new province-wide Notice to the Profession specific to family law cases and the introduction of the court’s Binding Judicial Dispute Resolution pilot.”

He stressed that the court is “working collaboratively with the bar and working groups to determine how virtual hearings can continue to be utilized once physical attendances can resume.”

“This remains a priority for the court moving into the future,” he added.

With regards to the criminal courts, Chief Justice Morawetz said the Superior Court has “heard over 34,000 proceedings over the course of the last 18 months.”

He stressed that this “is in no small measure attributable to the input and dedication of the prosecutors and criminal defence lawyers to the criminal justice system and ensuring that it kept moving.”

“This required technological solutions and rules of practice to allow for appearances by accused persons and witnesses virtually,” he added, noting that with “the health and safety protocols in place in our courthouses, we have been able to resume and continue to expand our capacity for in-person hearings including jury trials.”

Chief Justice Morawetz explained that “as with civil and family,” moving forward the Superior Court has taken “temporary measures and made them a permanent feature of criminal practice: including e-filing, virtual proceedings and document sharing during proceedings.”

“We will also be developing a set of guidelines for the determination of which proceedings should be virtual and which in person in criminal which will be mindful of the particular access to justice issues involved,” he added, recognizing the “unique constitutional obligations and other issues that delay in criminal cases raise.”

He stressed that the “delay in conducting jury trials has compounded this concern.”

“I have identified addressing the backlog in criminal as a priority for our court,” he said.

Chief Justice Morawetz noted that “brick and mortar courtrooms” are needed for family and criminal cases, so the pandemic “necessitated an exponential increase in virtual hearings” for civil matters.

“Since the beginning of the pandemic, we have conducted over 50,000 civil hearings virtually,” he said, highlighting the civil court as a “prime example of the power of the CaseLines software” as the platform has been “embraced by judges and the bar.”

Chief Justice Morawetz stressed that virtual hearings “will be extremely helpful in the shorter term to help address the court’s pandemic backlog, and are here to stay in the longer term for routine appearances in each court system where appropriate.”

Lise Maisonneuve, the chief justice of the Ontario Court of Justice, said that though “justice participants can feel proud of many accomplishments during the past 18 months, some challenges remain.”

“One challenge we cannot ignore is the backlog of cases in our courts. This past year has seen an extra 60,000 criminal cases added to our backlog. There is also a backlog in provincial offences court. While the number of family matters in case management court has been reduced, there remains a concerning backlog in family trial matters,” she noted.

She stressed that the Court of Justice is “working to address pandemic-related trial backlogs in criminal, family and provincial offences act court” and a “number of initiatives have already been identified to reduce the criminal case backlog.”

“These initiatives include judge-led case management courts; an increase in availability of judicial pretrials to get these matters ready for trial or resolution; and additional plea and trial courts,” she said.

Elizabeth Dowdeswell, lieutenant governor of Ontario, noted in her address that there are “lessons we must continue to heed.”

“One of those is that we really understand and accommodate our interdependents. For climate change is the next existential crisis that we’re facing, and technology and geopolitics will surely intensify global instability and forced migration. We are ultimately and mutually vulnerable on this earth and the challenge of how to protect and support the vulnerable will only deepen and be magnified,” she stressed.

She noted that a “return to normalcy” is “an opportunity to design something better.”

“This pandemic has laid bare for all of us the reality of inequity in our society. We need to have a place for genuine respectful conversations about who and what is essential, who and what matters. We need to break down silos between social and economic sectors. We need to think and act in

a holistic and systemic way if we're going to build resilience in this era of profound and fast-paced change. And we need to listen, really listen, to those who ask questions about justice," she said.

Attorney General of Ontario, Doug Downey, noted that the pandemic revealed "the gravity of Ontario's outdated justice system."

"We cannot be an offline justice system in an online world. So, when we look at how outdated parts of the system still are and the added stresses of backlogs due to COVID-19 it's clear to me that greater action is needed and I'm here today to tell you new help is on the way," he said.

Downey noted that in March the Ministry launched the "Justice Accelerated strategy to break down long-standing barriers in the system, overhaul processes and move more services online closer to Ontarians no matter where they lived, including rural, northern and Indigenous communities."

“ We believe justice accelerated is justice delivered and we can get there by refocusing the system around people and their expectations for how justice can be done,”

"We believe justice accelerated is justice delivered and we can get there by refocusing the system around people and their expectations for how justice can be done," he said, noting the dramatic expansion of "e-filing, reducing the lineups at courthouse terminals by allowing online searching and saving people's time and gasoline by allowing 24/7 online filing from anywhere."

"If the banks can let you do so many of these day-to-day tasks at home, I've always thought 'why can't we?' But that's just the tip of the iceberg," he explained, noting that the Ministry recently "enacted a small change that will save time and money for lawyers and their clients by enabling the table of contents in the Rules of Civil Procedure to be hyperlinked in e-logs in the same way other table of contents on e-logs are."

“We’re pivoting to new and retrofitted courthouses engineered for the future, built with people in mind in the same way most public buildings are designed these days, like airports and hospitals, incorporating intuitive technology,” he said, noting that as jury trials resume in some jurisdictions, prospective jurors “can now do their pre-screening and check in online.”

“We’ve screened well over 70,000 potential jurors this way. It’s a great example of how technology can help people improve their experience with the justice system and at the courthouse,” he added.

Downey stressed that “demand for trials is forecasted to be 33 per cent higher than in 2019 until at least March 2023.”

“While we continue to take measures to keep people safe and address the threats of the pandemic we’re applying a strategy to address this historic backlog of cases on all fronts. That means working closely with each other, the courts, the police, other justice sector partners, on our shared priorities, ensuring justice continues to be done and that public safety is always prioritized in our communities,” he noted.

Teresa Donnelly, treasurer of the Law Society of Ontario, said the “ravages of the pandemic will continue to be felt for years as we grapple with the long-term medical, economic and mental health challenges.”

“While society will struggle with these impacts, so will the justice system,” she stressed.

“During last year’s opening of the courts, Chief Justice Strathy posited that we were at a turning point in history and pondered whether we could and would apply the same energy and resources devoted to COVID to the viruses of systemic racism, economic inequalities and other barriers to justice. Have we?” she asked.

Donnelly stressed that it is “incumbent upon each of us to harness that same spirit of co-operation and innovation that confronted the pandemic to continue to confront and overcome barriers to

justice. And central to that work is transforming to a modern, responsive justice system.”

“We need a system that is diverse, inclusive and reflective of the public, from the judiciary, to the legal professions to clients. A justice system values the diversity of views and recognizes that perspective from varied experiences enrich the fabric of our judicial system and increase access to justice,” she said, further stressing that a “modern, responsive system is one that is timely or there is no justice.”

“Our already overburdened system has additional pandemic related backlogs and unabated these delays will wash away the integrity of our system,” she added.

The ceremony concluded with the chief justice of Ontario presenting the annual Catzman Award for Professionalism and Civility to Jennifer McAleer, a partner at Fasken.

McAleer said she was “truly honoured” to receive this award and told the family of the late Justice Marvin Catzman that she would “endeavour” throughout the rest of her career to “honour this award and your father’s legacy.”

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