

Reflection on Half a Century in the Commercial Litigation Trenches: Part IV

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By and Bryan Finlay KC

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I ended the last chapter where I had just finished my two years in the Department of Justice in Ottawa. We returned to Toronto to WeirFoulds where I had practised since I had started practising law in 1970.

I now commenced that stage of my practice which ran up to my decision to retire in 2018. In my mind, it constitutes a distinct chapter. I had grown up professionally in the firm and then had spent two years in Ottawa which really allowed me to see the practice from a completely different angle. I was now back in Toronto in my old firm as a seasoned lawyer.

First, let me describe generally how I practised during this latter period. I was very fortunate in that there was a small team of lawyers with whom I practised. We knew each other professionally very well. While we were aware of our respective home lives, we really did not socialize together other than for lunches and the all-too-rare celebratory dinners. But, speaking for myself, the bonds of friendship ran very deep. We had the highest respect for each other's professional abilities. And, I believe, we instinctively knew what each other's reaction would be to a particular situation. This, for me, was very important in litigating the large cases.

Each senior counsel brings his or her own idiosyncrasies into the case. Mine was to view the litigation in military terms. I used such language as: landing on the beach, getting off the beach, the breakthrough, holding the hills, and the winter offensive. This language caused my colleagues to wonder where on earth I came from. But this brings me to another point. While a court case is indeed a very strenuous battle – exhausting, at times terrifying, a real struggle with the inevitable crises – I do not think that we ever lost our sense of humour through it all. We always seemed to be able to retain the ability to laugh, usually at ourselves. Not all the time, but every now and then, at a critical point when the sky seemed very dark, something would happen that would cause us to laugh, often at ourselves, and these episodes of humour lightened the sky. For me, a sense of humour is absolutely necessary to litigate.

Let me turn to my approach to managing large litigation files. While we might bring in a fourth lawyer for fresh eyes for advice, I believe that we were never more than three lawyers engaged in any one case, no matter how large. For me, this was important. While different responsibilities in the case would be divided up, it was important to me that each member of the team know exactly what was happening across the group. We always met as a team to discuss any issue of substance. We might speak to a single member on a particular point, but for any brainstorming on an important matter, the whole team was involved.

I certainly needed the support of the other team members, both intellectually and morally. This closeness sometimes resulted in heated debates, but that was to be expected and welcomed.

One of the by-products of this practice is that, looking back, I now regard each of those team members as a good friend. It is difficult for me to conceive of spending the time we did without the collegial support, informed as it was by strong bonds of respect and

friendship. Of course, it goes without saying that each of the team members was a superb lawyer, and it was an honour for me to practise with each one of them.

Secondly, let me speak briefly about the relationships with other lawyers outside the firm with whom I crossed swords on various occasions. With very few exceptions, it is a group of individuals I am proud to have known and practised with. While there are always lawyer jokes, I have never felt that they were very funny. For me, it has been a privilege to practise law. I have frequently used the analogy that practising law is very much like sailing in a convoy. We all leave port novices and sail out across the ocean, each in our own ship, knowing that each other is there, sometimes communicating, sometimes exchanging a shelling, but all fellow travellers headed to the same end.

Thirdly, let me speak about retirement. I know that some of my colleagues intend to go down fighting with their colours nailed to the mast, but I came to a different conclusion. For much of my practice, I was either not home or at home but missing in action. Carol raised the children. It struck me that it was important to spend the end game with Carol. After all, we had been married for almost 50 years and it was time to live as a couple, enjoying each other. Who knows how much time any of us has? I am also a great believer in the best before date when it comes to litigation lawyers. I have seen some older lawyers litigate far too long. I certainly did not want to become one of those. However, this was not the primary reason for my decision to retire.

Now that I have been retired for a few years, I can say that I have enjoyed it thoroughly. Carol was concerned that I wouldn't know what to do with my time. But that has never proved to be a problem.

This ends the story of my life in the litigation trenches... For those of you who have hung on to the end, many thanks. Save for the priesthood, I can think of no finer profession.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[For more information or inquiries:](#)

Toronto

Email:

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110

Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110

Fax: 905.829.2035