

Remembering Justice John Gomery

At the Philadelphia conference held by PASG in 2019, there was an extraordinary plenary session where there were multiple presentations given by leading members of PASG in honour/memory of the first generation of pioneers in this difficult area of professional practice.

However, I don't recall any tribute to a legal pioneer. Therefore, when it was reported in the National Post [one of Canada's leading daily newspapers] in May 2021 that Justice John Gomery had passed at the age of 88, it occurred to me that a tribute to a legal pioneer would be an appropriate topic for this column.

The late Justice Gomery was a Judge of the Superior Court of the Province of Québec, where he distinguished himself as a jurist, not the least of which is in the case referred to below. He later went on to fame for some of the work he did in a Judicial Inquiry.

Justice Gomery studied law at McGill University and worked in private practice in Montréal before being made a Judge in 1982. During his career on the bench he led a team of judges that reformed statutory approaches to Family Law, which he later described as one of his proudest accomplishments. He retired to his farm southwest of Montreal in 2007, but remained active in public life.

A search of historical jurisprudence shows the somewhat undeveloped state of the law in the late 1980s when Dr. Gardner was formulating his construct of what was then referred to as "parental alienation syndrome". However, as various publications of PASG members have shown, the earliest references to these concepts can be found in US and UK jurisprudence in the early 1800s and there is a fairly long history of the use of the phrase "parental alienation" in many contexts.

However, with some notable exceptions, Canadian responses were unsophisticated and cautious and not evidence-based.

A pertinent example can be found in the Province of British Columbia. In the early 1990's and extending through the bulk of the 1990's, there was the unfortunate case of *Hart vs. Hart*, where the concept of "parental alienation" was dealt with. However, only a tepid and ineffective intervention resulted for the child, who had been wrongfully withheld from his mother for many years. The lack of effective and expedient and timely intervention could not protect the child from the trauma and ultimately a death by suicide resulted. This saga is the subject of the book "*A Kidnapped Mind*" written by my good friend Pamela Richardson in memory of her son Dash (<https://akidnappedmind.com>).

It was in this rather undeveloped legal landscape that Justice Gomery conducted a Trial in Montréal with judgement rendered February 15, 1991. This decision,

known by its acronym *PSM vs AJLC*, is still required reading today, more than 30 years later, for the tremendously insightful analysis and Judicial statements of understanding of child development and children's needs, as well as for the remedy imposed.

Some of the early insight from this case was only empirically validated by other PASG members decades later, such as the statement by a social worker quoted in the Judgment as follows: *"The complete and total rejection of a parent is almost never seen, even in cases where that rejected parent has abandoned or abused a child"*.

The recognition of the dangers to the future mental health of alienated children, years prior to the well-quoted peer-reviewed work of various PASG members, is stated in the Judgment as follows: *"[all four children] have chosen to renounce and suppress their natural feelings for the mother they love, or loved until the marriage broke down, and to identify themselves totally with the hatred for her, which animates their father. The Court cannot remain indifferent to the danger to their future emotional stability this behaviour represents"*.

The dangers of a "one-sided assessment", a common tactic of alienators who unilaterally take the children to see a therapist who will have no input from the other parent, was recognized as follows: *"The Court has the impression that Dr. Lefevre allowed herself to be used by the Defendant. A Psychological Assessment which does not attempt to include the point of view of one of the parents is of limited value, and no explanation is attempted as to why the children were so openly hostile to their mother, for whom they had had great affection until only a short time before"*.

PASG board member Dr. Abe Worenklein actually was involved in that case and provided thorough input on the dynamic the children faced. With the input from Dr. Worenklein, Justice Gomery specifically referred to Dr. Gardner's work [this Trial taking place only several years after Dr. Gardner started publishing his analysis] and Justice Gomery provided the following pertinent insight: *"The rejected parent is in a situation where he or she cannot do anything which is not perceived by the child as being bad or wicked. Even the most innocent remark or gesture is used by the child as evidence justifying the child's alienation"*.

The absence of empathy [both a key diagnostic criterion and an essential target of reconciliation therapy] is demonstrated by Justice Gomery writing: *"the children have seen their mother weeping on many occasions, and they unanimously conclude that she is faking and that that is a demonstration of her lack of sincerity. They do not seem to be able to comprehend that their contemptuous rejection of her causes her genuine grief"*.

The failure of conventional therapeutic interventions was also recognized by the Court: *"Mrs. Greenberg testified about the failure of her attempts at therapy, a*

failure which she attributes to the systematic obstruction of her efforts by the Defendant”.

The Decision recognized the necessity to take children's views and preferences in context where it appears they are not genuine:

“the desires and preferences of each child are factors to be taken into consideration, particularly in cases where the child's wishes are freely expressed and are not influenced by pressure or manipulation. In this case, the wishes of the children, especially the younger children, may be safely ignored because they are the result of distortions of the truth that their father has told them, and the psychological pressure to which they have been subjected” ... “Children do not always know what is best for them. The law leaves it to the Court to decide this question, when their parents are unable to agree, and the law does not state anywhere that the Court must be guided by what the children have to say, although it does require that they should be given an opportunity to be heard’.

Of the targeted parent, the Court observed:

“This case represents an extreme example of parental alienation syndrome. Plaintiff is not a perfect person and has not always acted wisely. She loses her temper at times and may use inappropriate language on those occasions. But nothing that she has said or done could remotely explain or justify the rejection and hostility to which she has been subjected at the hands of her children. She is, if anything, the woman who loves her children more than the average mother. She has never mistreated them. She is not mentally unstable as the children repeatedly suggest; indeed, her persistence and determination in pursuing this action are proof of a remarkable capacity to absorb rejection and humiliation and to continue to function in an optimistic manner”.

Of the alienating parent, the Court had the following observations and some great judicial rhetoric:

“Defendant has deliberately poisoned the minds of his children against the mother that they formerly loved and needed. In the Court's opinion, a father who would act in this way represents a grave and persistent danger to the mental and emotional health of his children”.

“Hatred is not an emotion that comes naturally to a child. It has to be taught. The person who has taught the children to hate is their father. They would be better off if he were to be removed totally as an influence upon their development until they are able to withstand and reject his negative attitudes”.

As a result, Justice Gomery reversed primary residence and placed the younger two children with the targeted mother, while the older two children were deemed to be beyond the capability of being saved.

Interestingly, Justice Gomery alluded to one of the key criteria that would later be developed in Canadian jurisprudence when determining whether a placement with the targeted parent (and at least a temporary timeout for the favoured parent) can be justified: *“the determining factor, in the Court's opinion, is the simple fact that the Plaintiff is clearly a better and more loving parent than the Defendant. The children have a chance to love both of their parents if they are in the Plaintiff's custody. No such possibility exists if they remain with the Defendant”*.

Justice Gomery's decision in this case was model for effective interventions in the years to come. For reasons that I have spoken about at various conferences, Canadian law developed quickly thereafter. After a slow start in *Hart v. Hart* (see above) the British Columbia's Court of Appeal in 2007 stated in a frequently-cited case, that it is an error in law (i.e. no deference given to the Trial Judge on appeal) for a Court to make a finding of PA as the principle factor in a dysfunctional family system, but then fail to act decisively because of the concern of children's short to medium-term adjustment. The BCCA held that focus must be on the evidence-based concerns for the children's future mental health. Canadian law is the most advanced in responses to PA of any system I have studied. It would not be until 2020 that we would see an almost identical decision come from the Court of Appeal for England and Wales.

Justice Gomery's Decision was upheld on Appeal. Of interest to those who have been involved in this work for quite some time, is the fact that (PSM) the mother, Pamela Stuart Mills, moved to Texas where Pamela, and her new husband Robert Hoch, started a charitable foundation to help families in crisis. The Foundation, in the early 2000's, established The Rachel House, one of the first and most prominent residential reconciliation intervention programs. Reconciliation services, going far beyond the formal residential program, extended for many years, with assistance to many families, legal and mental health professionals and other organizations and agencies.

Justice Gomery's decision, and the family law reforms he advised on, have benefitted several generations of children and countless families in crisis. His analysis and judicial rhetoric from 1991 were far ahead of his peers and the decision remains a must-read more than 30 years later.