

Interview with Greg Evans[•]

BRYAN P. SCHWARTZ &
JODI PLENERT

Jodi Plenert (JP): Well, first off, hi Greg! Nice to meet you.

Greg Evans (GE): Nice to meet you, Jodi.

JP: To start, I was hoping you could give a brief overview of your practice at Evans Family Law, just to kind of set the stage.

GE: Sure. So, my practice is a non-court-based family law practice. I focus primarily collaborative family law. I do mediation, arbitration, and some parenting coordination. My personal view is court is a very, very bad place for virtually all families. So, I focus primarily on how do we get people through the transition in their lives that they are experiencing in a way that doesn't bleed out on the kids?

Historically, with the court model, you typically don't get what you want from a judge by telling the judge what a wonderful person your ex is. So, our entire model is set up as a model that emphasizes the other person's deficit. It's about, "I'm better than her because she's terrible." When I talk to clients in initial interviews, I tell them that once you catalogue all the mistakes of your marriage, all the

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- Interview conducted by Bryan P. Schwartz and Jodi Plenart. Greg Evans, K.C. has practiced family law exclusively since 1998. In March 2012, Greg formed the Evans Family Law Corporation, a collaborative family law practice offering an alternative to tradition litigation-based separation and divorce. Greg is a founding member of Collaborative Practice Manitoba, and has served as its Chair, a member of its Management Committee, and as a committee member. Greg taught the Clinical Family Law course from 2006 to 2019 at Robson Hall and continues to be a frequent speaker. He is also frequent presenter at legal forums like the Law Society of Manitoba and the Manitoba Bar Association, focusing on collaborative family law and related issues.

transgressions, all the slights, once that's on paper and it's filed in court, you cross a bridge that's very difficult for people to turn back. I've been married for a long time – 41 years this year – and any time in my marriage, my wife could have sworn an affidavit that I would not be seeing my children ever because the fact is that our specific truths are seen through our specific lens. Once you get lawyers involved, in particular, lawyers who believe that in order to be successful you have to negotiate from a position of power, that results in either the exercise of power over an individual or manufacturing power (typically by a reframing of the evidence). In our firm, we try to avoid viewing conflict in this fashion but instead focus on the fact that we are dealing with a family in transition. The couple is transitioning from an intimate relationship to one of becoming co-parents. All transitions are hard, and we hope to provide support and legal knowledge to help the parties make good decisions. It's about how do we get people to transition from being a married intimate couple to co-parents in a non-intimate relationship in as healthy a fashion as possible.

We also take a systems approach. If you're familiar at all with counseling, the processes we use would be more akin to a family-systems approach where we say that you have to take a look at the dynamics of the family and meet them whether they are. The law is a piece of it, but the law is not all of it. One of the things I like to talk about to my clients is the idea that there's no truth in the law. There's no rainbow, there's no chimes, it's just a community standard when people can't agree. We know that because family law is different across Canada and it's certainly different across North America. So, for me, the emotions of family, a lot of the stuff that most people go, “I don't want to do family, it's all emotion,” that's the stuff that I'm interested in. Those are the drivers for people in their negotiations and their discussions.

Bryan P. Schwartz (BPS): I'm just curious, do people come looking for you as counsel because they know you do this kind of practice or do you have people who think that they're coming for the traditional showdown at O.K. Corral Practice and then you have to talk them down and say, “Well, you can go to a lawyer who does that, but this is my kind of practice.” How much do people self-select you and how much do you have to educate them?

GE: So, I would say probably 90% of my clients come to me because of the work I do and it's mostly by referral from other people, often by other lawyers or other professionals. They come to me because they know I'm not court-oriented. The other 10% may come to me with no idea whatsoever about how I practise, but they got my name from someone who got my name. I will be really candid with somebody who's out for their chunk of flesh. I'll just refer them to somebody who works in that particular fashion. That's just not the work I do now. I did that work. I worked as a junior under a senior lawyer and this person was an old-school, you operate from a position of power, family lawyer. So, I know how to practise that way – that was probably the first five years of my practice. I recognized the price of winning at all costs was often paid the children. One of my associates has in his circle of friends post-this-lawyer-divorce kids and they're messed up.

We're interested in healthy families here. You can part ways as a romantic couple and still have kids who are healthy, but you need some help at the front end and that's usually in the form of counselors – we call them family professionals – helping people to sort through their baggage. I think probably the simplest way for me to explain how I practice law is my job is to say my job isn't to get the biggest piece of the pie for my client, my job is to help my client and his or her partner identify the pie and then divide it in a way that makes sense for their family. It's far removed from fearlessly advocating. It's about what makes sense for this family because, in family law more than any other places in law, you can win battles and lose wars.

BPS: Greg, I'm just curious. I do a lot of stuff thinking about what we do as a law school. Now, a lot, it seems to me, of that professional formation is post law school. We take things and give cases, but really, the worldview that people take, I think, is generally much more heavily influenced by the professional environment in which people start, rather than the more abstract stuff we do at law school. Is that correct? What should we be doing at law school to sensitize people in the family area to these different models of practice? Are we doing some of that? Are we showing people the options?

GE: I think Professor Schulz has done a good job of introducing alternative dispute resolution to students. I taught clinical family for 17 years at the Faculty. I think the new generation of students are just getting more information about alternative dispute – people don't like calling alternative dispute resolution, the people that are doing it prefer calling it just dispute resolution. People in the States call them "peacemakers" and I won't go that far, it makes me a little squeamish, because even some of my files that are outside of court are anything but peaceful.

You no longer teach Family Law as a required course at the Faculty, which probably says everything about the Faculty's perspective on family law. A large number of the students will be doing family law when they are finished. For the most part, the substantive portion of Family Law and the clinical portion of Family Law has all been done by practitioners, which I think is pretty healthy. When I came out of law school, I could do kick-ass appellate litigation. I didn't get before the Court of Appeal until I was at least 10 years out. I keep saying, Bryan, that the perfect course in law school would be: you pick up the phone, somebody's upset with you, you don't know who it is, it's clear you promised them something, but you don't know what it is! Go! [laughs]

BPS: [laughs]

JP: [laughs] What would that course be called?

GE: Uh... Family Law! [laughs]

Everyone: [laughs]

BPS: If you watch law on TV, there's no preparation, there's no such thing as billing, there's never discussing what you can and can't do for a client. I wish practice were that way, with no preparation, you walk in, do a two-minute summary, get your zinger in, bada-bing, bada-boom, done. It's so far from the actual reality of practice, not even close. By the way, while they're not teaching Family Law, they're not teaching a lot of Corp courses now.

GE: And I will completely, well not fall on my sword, but my perspective is specifically from a family law perspective and seeing what's needed out there.

BPS: Well, even if you're not teaching Family Law as a core subject, how can you do corporate or small business arrangements if you don't know the family law implications? So, if you're not a family lawyer, you've at least got to know enough family law to know that there are family law issues and refer it to somebody. But, you don't know what you don't know, and that concerns me. Same thing with Tax, I think you should have to take it because if you're a family lawyer and you don't know what the tax implications are when you structure things this way or that way, what are you doing? The Faculty's gone the other way, which isn't my idea. I think you should have certain building blocks that you need to at least recognize and identify, to know whether it's in your practice or whether you need to get help.

GE: The problem historically, Bryan, has been also that in the old bar admissions course, there was still substantive law being taught, as well as process. Now we've gone to an andragogy of core skills as opposed to core knowledge and core process. So, when you've got a law school that's getting away from substantive law and a bar-admissions program or CPLED program that is also going to core skills – none of which I can argue with – but then there are issues with substantive law and process. So, it can be a bit of a challenge. It's interesting because Jodi, you asked me what I spent the last 10 years focussing on, and you've touched on this, Bryan, my knowledge of corporate law is much greater now than it was 15 years ago. My knowledge of tax law... as a family lawyer you have to know corporate law, you have to know aspects of tax law, you have to know people skills. So, the hard skills often thought of with lawyers are cross-examination skills and drafting skills and skills of that nature. In my world, hard skills are communication, talking someone down from a tree, understanding mental health and how it has an impact on the process, and understanding child development.

About 15 years ago, Dr. Joan Kelly¹ came to the city and did some talks about the classic, alternating-weekend care and control in a primary-care arrangement. There was no child development data involved in the development of that arrangement. There was no marriage of the humanities and law and coming up with parenting plans for kids. In fact, the study that created the alternating weekends was in California and it was using their Legal Aid system where absentee fathers were in the majority as opposed to the opposite. So, the idea now is that we have to be aware of the social sciences to shape how we practise family law. Something I've spent a lot of time on is simply learning how people react in conflict: the psychological basis, the biological basis for conflict response, all of that stuff. 25 years ago, if you had asked me, "Will this be important in your practice?" I would have laughed.

BPS: I have a broad question that runs into another question and I'm asking it because it just seems to me like such a big, practical, real-world question for all of us in practice. People come looking for justice. So, you've got somebody with an unfaithful spouse, they're working two jobs, the spouse is spending money and frolicking with another person. They discover it, and we are hardwired to have this justice expectation. If you think you have been insulted, undermined, or demeaned, there has to be some kind of action to make the world right again. In the family-law context, I agree with you, it doesn't help in terms of having healthy families. I'm very interested in what sort of perspective, what sort of language can you get from people who actually are right, they have been done a terrible injustice, but you've got to move them off of that onto problem solving and moving forward. That seems like an extremely hard thing to do. Obviously, you're good at it, so, could you just give us some insight into that?

GE: So, the key in those types of relationships is, almost every parent is anxious about the impact of their separation on their

¹ Dr. Joan B Kelly, Ph D, is an author, therapist, mediator, parenting coordinator, and clinical child psychologist and researcher who has studied the impact of divorce on children since 1968. She was Founder and Executive Director of Northern California Mediation Center, founding member and President of the Board of Directors of the Academy of Family Mediators, and received numerous awards and accolades throughout her career. She has recently retired.

children. So, probably the easiest way, Bryan, is to reframe it as, “You don’t have to do it for him, but you have to do it for your kids because they’re complete innocents in this.” I’ll give you an example. We just did a collaborative file where during the negotiations the husband announced he was having a relationship with my client’s confidante; her best friend. Normally, those are the hardest files, when there’s infidelity and the infidelity is with someone that is close to the person who is being cheated on. But, because in a collaboration we have mental-health professionals working with us, they’re able to do work that we as lawyers are not trained to do, necessarily. I know enough about their language and their world now that I can lead them into that direction. Fortunately for this couple, they don’t have kids, so they don’t need to have an ongoing relationship.

What happens when you have children – and most of the families we work with have children involved – is you really need to change the focus on what do you want your children’s lives to look like. I had a file where the daughter had planned two weddings because she couldn’t invite both parents to the same wedding. So, when people are in and they’re mad and they’re going through thoroughly natural and core emotions, I say, “The legal system is not going to help you with that part of this. You need to get help here.” Then I talk about, “What he does is outside your control, but what the two of you do to your kids is entirely within your control.” Then I reframe it as, “You want to give a gift to your children? Then do these things. That is the one thing you can do in this process that you have absolute control over.” I’m shameless with that. I’m old enough now – I’ve got enough *gravitas* – that I can just tell my clients, “Stop doing that. That’s bad for your children and that doesn’t make sense.” But you have to build a relationship of trust before you can say things like that.

BPS: I just want to follow up on that, if I could, Greg. The idea of “what I can control and what I can’t” is packed with philosophical and mental well-being going back to the time of the Stoics and there is a profound wisdom to it, but the clients are coming to you, sometimes, with the view that, my control is “I operate the levers of the legal system to get my fair share of my material property or get an acknowledgement that I have been treated badly.” So, you’re telling them what’s in your control and they come to you, some of

them, with these magical beliefs that the legal system will somehow produce a consonance between justice and the legal outcome. How do you address that element? They come to you because they want you to empower them to achieve justice. How do you speak to them about that?

GE: So, I'll shortcut this, but I just make them understand that there is no justice in the courthouse, that it's not a just system. You know, I think we've got sixteen judges in the family division in the Court of Queen's Bench [now King's Bench]. On a good day, I know what four will do consistently. On a bad day, I don't know what twelve are going to do. I don't have the option of choosing or judge shopping. I think it probably comes down to this: if access to justice means access to court, you get a different response than if access to justice is access to information about the law, information about rights, information about what you can and can't do, and then the ability to work within those concepts.

My concept of access to justice is the idea that I know enough about this system to tell you, "That's a loser," because you can win in this battle, but end up losing the war. I can also tell you what it's going to cost, right? I'm presuming, Jodi, that you know the court process. When you have cross examinations and affidavits, examinations for discoveries, document discovery, all that sort of stuff, were not talking thousands of dollars, we are talking tens of thousands of dollars, right? Often, when people say they are fighting about *this*, it's actually *that* that they are fighting about: it's a hurt, it's a slight, they weren't acknowledged during their relationship, whatever the issue was. If you can identify the hurt that is motivating the client, whether positively or negatively, then we have a much better chance of working through the white noise and getting at what is truly important for the client and how we can generate resolution options that hopefully allow for healing.

Any client who comes and says, "It's the principle of the thing," I just say, "Every time you say 'principle,' I'm going to run," because the 'principle of the thing' isn't about raising a family or about healthy families, that's usually about revenge fantasies that they've seen on TV. I'm very clear that no judge is going to stand up on their desk and point to your husband and say, "You sir are a cretin, and you don't deserve anything!" It just doesn't work that way. We

really battle – and you made a comment about this earlier, Bryan – with the portrayal of the court system on television. The thing you miss when you're talking about your scenario, Bryan, is you have the five best lawyers in a room talking about one case and then in the afternoon I go and argue some tax case, because I specialize in all areas of law [laughs]. I would say a lot of the times my clients are terrified by court because it is completely out of their control.

So, you also get the opposite, where people will compromise their rights because they are just so terrified of going to court. Back when marijuana was illegal – still haven't got my head around that, I've got all these weed shops in my neighbourhood – people would worry about that: "Oh, the judge is going to find out I smoked some pot and I'm going to have my kids taken away from me." Then there are the urban myths, like twelve-year-olds get to decide where they want to live or if you leave the house, you abandon your rights to the house. I don't know where these myths come from. There are just these weird things and people come in very confidently and say, "I know my twelve-year-old gets to decide where he lives," and I say, "Yeah, no." Unlike other areas of law, family law is very personal. I know way more about mental illness now than I did before I started practicing family law.

BPS: One more follow-up question, Greg. A client wants to come in and fight to the Supreme Court of Canada, and when you tell them, "This is expensive," or "You're right, but you're not going to win," the client thinks, "This person doesn't believe in me and my cause, I'll go to a lawyer who believes in me." Whereas, of course, the lawyer doing their job best is the one that is candidly trying to tell them, "No, you don't want to spend \$200,000. Your best course of action is to focus on the kid and extricate yourself from the situation the best you can." That dynamic I'm describing, is that real?

GE: Oh, yeah. I will say it doesn't happen as much for me because they're coming to me for a certain product, right? But, I think the work you do at the beginning of the file... I don't even talk about the law in the first meeting with a client. I don't even mention anything related to child support or spousal support. Family lawyers, when I tell them that or when I'm training other family lawyers, they find that mind boggling. I say, "Well, how can I talk

about the law? I've only got one side of the story!" But I don't lose clients. They leave the meeting and they come back, and I haven't mentioned anything about the *Family Property Act*² and how it operates on their assets. In my dynamic, people want to feel heard. They have stories and their stories may be ones of hurt, their stories may be ones of disappointment, or whatever.

My job in the first meeting is to build trust, then I'm able to show that it doesn't have to be the way you see it on TV. It always surprises me when clients go, "You mean, I don't have to go to court?" "No! You don't!"

So, there are going to be clients that need to go to court. We've talked about this amongst some of my peers and colleagues, we missed the boat in family law when we got away from the solicitor-barrister system. If I do solicitor work and all I need to do is focus on settlement, then if we aren't able to settle, I pass it on to somebody else. Then, you've actually got cleaner representation because the barrister doesn't have that year of trying to negotiate a settlement and coming that close, then having it fail because some jackass decided at the last minute to do something which takes you into litigation. So, now you've got a personal animus you've developed, which doesn't help the client.

I remember, I was dealing with a client – he thought of himself as a hippie, I would think of him as a capitalist hippie – and I would say it's one of my not-so-proud moments in court. I generally don't like to get combative in court, but, quite frankly, the other lawyer just pissed me off. So, we were going at it, and I felt terrible about the appearance. I walked out and the client said, "That was awesome! That was completely awesome!" One of the reasons why it upset me was because we were going into court on what was settled, trite law. I knew the judge was going to be upset with the other lawyer, and my prediction came true, and it cost my client \$10,000 to get to a result because the lawyer simply had not educated herself. This was trite law. That frustrates me more than a client screaming at me on the phone, because a lot of my clients have mental-health issues. How can you get mad at somebody who is mentally ill who is screaming at you on the phone? But when

² *Family Property Act*, The, CCSM, c F25

you've got a lawyer who hasn't gotten up to speed with the law – who is a dabbler – that really annoys me. I don't know if that answers your question, Bryan.

BPS: It does. Thank you very much.

JP: So, part of this interview is about the pandemic and how it has affected your practice and the movement of family law online. So, I was wondering if you could talk a bit about how much of your practice was online prior to the pandemic and what it looked like.

GE: I'll preface that with: I've been a member of the American Bar Association's Technology Division for about seven years now. So, I've gone to the ABA Tech Show, I think, seven times, which is a weird confluence of lawyer-nerds and computer-nerds all together at one conference. It's a little frightening [laughs]. You will go into a presentation that, in forty minutes, they will teach you how to save three seconds worth of keystrokes that over the course of your life will save you two years. It's kind of funny stuff. So, our firm has always been very interested in being technologically-forward.

The other thing that was happening before the pandemic was that I was renovating my office, but because of COVID it has turned into a couple of years rather than a year. I knew at some point in time my lawyers were going to be working remotely. We had set things up to cloud our entire practice because we were finding that dialing in remotely or connecting remotely made no sense. So, I looked like a genius when COVID hit because we were able to pretty seamlessly move into working remotely. The benefit for me with COVID was all of my other colleagues that I work with all of a sudden had to buy into something that I'd been trying to get them to do for a long time, such as video conferencing. You know, we've done paperless for years. COVID has allowed me now to make use of tools that we've had for a long time that the other lawyers are now able to participate in. So, I come from a vantage point that says knowing how to use technology is one of your core skills as a lawyer. You're not serving your client if you're not making use of technology.

BPS: You just gave me an idea, Greg. Like, note to self. I've been arguing for years that we should have a course at law school called Practice Management.

GE: Yup.

BPS: We don't teach any of these skills at law school, everything is learned on the job or acquired immersively from the first job you go to. I'm thinking maybe one of the courses we necessarily should be teaching at law school is Introduction to Technology for Lawyers: their uses, their abuses, security issues, and so on and so forth. You know there's a joke about lawyers that they're the definition of a graduate student that can't do math.

GE: [laughs]

BPS: Historically, lawyers tend not to be technologically adept. So, even overcoming some of the fear of technology, maybe that's one of the core things that we have to be doing in law school.

GE: Yup.

BPS: And you mentioned people in practice who are way behind, maybe that's 21st century law school, post-COVID, maybe that's one of the reforms we should be looking at?

GE: Absolutely. Go to the U.S. and look at how technology is being used by American lawyers and the way that their law societies are dealing with technology and their requirements in terms of the skill levels you have to have in order to adequately provide service to clients. My entire practice is digitized: all of my emails, all of my letters. I still have paper files only because my clients give me papers. They are immediately scanned in and then at the end of the file we just send the papers back or we shred them. So, from a pre-COVID basis, the idea of generating documents efficiently was something we valued as a firm. We've been using a software system called Doxserá³ that allows us to generate all the documents a client might need from their intake forms.

³ Doxserá is a document assembly & automation software offered through TheFormTool, see <theformtool.com> [perma.cc/A7UB-YJT7].

Jodi, I don't know where you are in your law life.

JP: I am entering my second year this year.

GE: Okay. So, in law firms, generally, everyone works from precedents, right? So, you take an old agreement, you make the changes you need for your new client and invariably you forget to take some name out, or you've got some "he" where there should be a "she." So, a few years ago we bought into a software system that allows us to create agreements from the bottom up. So, we put in the client's information, then we pick the clauses that are appropriate to the client, then all the pronouns are correct, all the names are correct, and we generate our own document. So, I can do a petition for divorce literally in about five minutes. Where, historically, I would have taken an old petition for divorce, I would have changed the names, gone through, and edited the document to include the information from my current client. We now create individual documents for each client and our chances of making mistakes is almost nil.

Our firm does bi-monthly technology sessions. Really, it's about learning the technology we already have. It's hilarious to me when I get cut and paste documents from another firm. So, if you know anything about a Word document, you take an old document and try to make changes and then it's not renumbering or doing weird stuff. We generate gold standard documents; documents where if you go in and you make changes to all the numbers, the formatting is going to be right. So, one of the focuses now with legal tech is to learn to use the software that you have. For example, Chau Tran⁴ and I have been doing Word training for lawyers and people are stunned at how little they know about the program, which is a very big, deep program. Bryan, you spoke on this earlier; any family lawyer that doesn't understand how to use Excel is a walking piece of liability. At the end of the day, you cannot find a calculator in my office because I do everything on Excel, and why wouldn't you?

⁴ Chau Tran was called to the Manitoba Bar in 2012 and is a member of the Canadian Bar Association, American Bar Association, Collaborative Professionals of Canada, and Collaborative Practice Manitoba. She currently offers legal services through Tran Law Corporation.

People think it's magic [laughs] when you're doing live number changes on a family property accounting. You put them in an Excel spreadsheet; you don't type them out because that's where the chances of the errors are happening. So, those are two commonly used and super prevalent pieces of software that people just don't even know how to use them, right? They're basically still using Word as a typewriter. For Excel, I probably only use 5% of it and I'm using 4% more than most of my colleagues. When we do these workshops, we're only doing just tips: "Here's some shortcuts that we've learned" and stuff like that. We get feedback like, "This is mind-blowing!" It's just because the days of one-to-one assistant to lawyer are gone; I typically have three lawyers to one assistant. So, if you're expecting all of your written output to be created by an assistant, you're going to have a hard time working for me because that's just not the way we're set up. Particularly, when you're online – if everything is clouded, you're able to do work from different places and you might not have access to assistants.

BPS: I keep asking questions from the point of view of a legal educator. One way we could get the world up to speed would be to do more at law school. I think we do very little of this in terms of technological training and initial familiarization. If we don't do it here, it sounds like basically the education is taking place at the firm level, like you're bringing your own lawyers up to speed, but there's no collective Law Society or Bar Association. At our law school, education is like "take any 12 crowd errors you want." I hadn't really thought about this until this conversation, but it seems like there should be some sort of collective requirement to get up to speed on some of these basic things, like this technology. Is that something you think the law school should be delivering, or is it best from the firm? Should you be required to brush up on these skills once in a while? I'm sorry to ask you, but if you haven't thought about it yet, who should be doing this?

GE: Everybody. I think the Law Society should be doing it, I think the Bar Association should be doing it, I think the law school should be doing it, and individual firms should be doing it. I think once every two years or so there's a CLE (continuing legal education) that's specifically around technology, and they're generally pretty well attended. We become sort of fanatics of this

ABA technology conference⁵ and I'm not aware of any Canadian legal technology conference that's similar. Although, Clio is the largest case management software program in North America and it's out of Toronto. They have their own conference that they put on. It comes back to this idea that competence – under our rules, right? The comment is – you're not competent if you can't use basic technology because you're not providing services to your client in an efficient fashion.

Back in the day when the clock was running, where you had corporate clients who weren't scrutinizing bills, you'd get senior lawyers typing huge documents, and then billing for the creation of this document. I believe Hyundai, in the U.S. when they're auditioning outside counsel, they have a technology test that they put counsel through and they say, “For this task, anybody over an administrative assistant shouldn't be touching this task. For this task, it shouldn't be anything over a junior lawyer.” They will choose their outside counsel based on how they do all these tests, and that's becoming more common.

Every once in a while, we'll act for somebody who's a privacy expert or an IT security expert and he wants to know what kind of security we have in our system, or what kind of encryption we're using, and for the most part, we're ridiculously lax when it comes to that stuff as lawyers. The best practice stuff we don't even come close to it in terms of what the ABA Tech would consider to be the best practices and we just need tons of education.

BPS: I Just wanted to put in a brief self-serving plug, I published a book a couple months ago on a guide to cyber security for Canadian lawyers.

GE: Awesome!

BPS: You can get it free online at the Asper Chair website or Amazon and get a new copy for I don't know, a \$1.50 or something or download the hard copy if you want. What I was trying to do is,

⁵ “ABA Techshow” is an annual, multi-day conference centered on developments in technology relevant to the practice of law and the legal profession, see <techshow.com> [perma.cc/UK7D-LLQ3].

I realized there wasn't a Canadian equivalent to the American Bar Association guide to cyber for lawyers. So, I was trying to do at least some basic things at least alert people to the issue. My general sense is that it goes with lawyers generally not having a technological background. Lawyers are smart people, but thinking of, well, what's my security, what's my backup, what happens if I get an invasion of stuff – it's just not something that our professional formation and the backgrounds we come from get us to think about. And again, it doesn't always, being an expert on it yourself, it's just knowing what you don't know so you can get a consultant or get a somebody who had to come in and survey your equipment, see what you need to fix, other courses, also training your staff.

I'll cut out shortly because I'm digressing a bit, but part of what people think dealing with security is, "If we just got one more program or one more antivirus device that's good," well, people can get around all that with one phishing email, right? So, the human weakness is the biggest point of vulnerability nowadays, really.

GE: Absolutely, and if your staff can't recognize a wonky email, then it doesn't really matter what you have set up in terms of your security system, right?

BPS: Yeah. So, security and training would all be part of our moving forward professionally to get with technology and to service clients because that's what it's really all about. Everything we're supposed to be doing is making *ourselves* better, so we're serving clients more efficiently and, as you say, Greg, I don't know if the public knows this, but part of our code of ethics is not "just not larceny or steal," it's actually just to serve efficiently and effectively.

GE: Absolutely. So, coming back to the question you were asking earlier, Jodi, I think, like right now, if you go on LinkedIn there's this whole anti-Zoom, diatribe that's going on where "I don't want to have to do Zoom conversation because I don't want to have to shave, what's wrong with just calling" and stuff. I'm anticipating that I'm going to be continuing to do a significant amount of Zoom conversations with clients who A) it's not worth them coming down for a meeting or B) they can't, or they won't, depending on their generation or whatever.

I would much rather have a Zoom conversation than a telephone conversation with my client because I've got way more information. I know there's lots of people who say, you know mediation is really hard to do virtually, you miss a lot of the cues and all that sort of stuff. I get that and I don't say it's better than being live, but it's sometimes just more convenient for our clients. And now as we move forward, I say, "I'm going to send you a Zoom invitation." If they say, "I'd rather you just call," or whatever, that's fine, I'll do it, but I would rather do a Zoom or Teams call; I had a 92-year-old client who was able to learn how to use the computer to navigate a Zoom conversation, and so, I'll shame my 35-year-old clients who say, "I don't really know how to use Zoom." I say, "Look, if a 92-year-old can figure it out, I think you can."

What I will probably do consistently moving forward is, rather than sitting in my client's lap, going through a document, it's so much easier to share a screen on Zoom and to walk through documents. And quite frankly, the computer training in our office – we used to do it where we'd all bring our laptops into a boardroom and we'd work off of a projected screen – is way easier to do it if we just set up a Zoom call, notwithstanding that we're all in the office. So, there are a number of things from COVID that have really been helpful. The relaxed rules with respect to video witnessing is something I would really like to see continue. So, if you've got a client in Ashern, which is about four hours away by car, has the option of not driving to my office and signing documents virtually. I know who my client is, I can witness their signature on video. It's only because of the *Emergency Measures Act*⁶ that we have these relaxed rules in terms of witnessing. It's also allowed me to have clients in Europe sign documents. Historically, either you sent the documents over by mail, or express whatever, they have to sign it there in front of a notary who sometimes understands what is required of them. You have to make sure the notary knows exactly where to sign and all of that sort of stuff. Then they send it back. The timeline is incredible. You send digital documents there; they have a different size paper as they don't use 8.5 x 11, it isn't their standard paper.⁷ Then you get documents back that are widowed

⁶ CCSM, c E80.

⁷ A4 paper is standard in Europe. It is slightly smaller (both in length and width) than 8.5" by 11" paper in North America.

and stuff. So, the idea of being able to do stuff electronically, witnessing electronically or either through video or electronically itself, that I'm really hoping will continue. That's been, I think, really helpful and also helpful for clients with mobility issues, clients with all of those types of things, and so that is something that I'm hoping will continue post-COVID. We'll see.

BPS: I just wanted to throw in my two cents worth about some of the issues, benefits, disadvantages with technology. Some of this speculative and I would be interested in just your clinical response from your own experience. The idea that you have to... there's different contexts where we think it's better to be in person, one of them is interviewing witnesses. In my view, there is scientific literature to back that up. I mean, I've been an adjudicator, I've been a lawyer, it is a myth that we get a tremendous amount of information about credibility by watching how much a person worms or sweats, or twitches, that's just – the science doesn't back that up. So, to me, it's just – to insist that somehow a person being examined and cross examined on Zoom, you're losing significant information with respect to credibility... Now there's other dimensions of this thing, like establishing trust. My guess is that the visual contact actually is an additional element, that if you're trying to talk to somebody, their agitation is gone, there's probably an extra dimension of having the visual and the subtle cues, like smiles (Was that an ironic smile? Was it a sympathetic smile), probably does add something, but I don't know how much you lose doing that on Zoom versus in person.

And the third thing I would care to speculate upon is, I actually think Zoom has some advantage over in person in terms of managing emotion. I haven't heard anybody talk about this yet, but when people are getting really mad, throwing tantrums, and so on and so forth, my very preliminary sense is it's kind of easy to get past that, to calm down, if it's done through Zoom. But if we approximate physically in a room, there's some additional biological dynamic going on, like they're really close, like you're actually a physical threat, but if you're on Zoom and you're mad at me and yelling at me, I don't quite emotionally feel as jeopardized as I might if we were in a room. And maybe for some difficult conversations, actually Zoom is the best of both worlds, because you got the visual information, you got the visual clues, but you don't

also have that sense of potentially threatening physical proximity. All this is speculative. I haven't seen anybody writing or talked about it yet.

GE: And it's interesting, Bryan, because I work in group meetings almost exclusively, other than the one-on-one meetings with clients. What I know is my colleagues who I work with regularly who are technophobes will do the Zoom, "You're missing information," and all of that sort of stuff, right? I would tend to agree with you. I think there are some advantages to doing stuff through video. Meetings are more efficient, I think when people are losing it they're able to see themselves lose it on Zoom, which is in a way like having a mirror in front of you unless you've turned off your video, which I think actually helps to keep misbehaviour in check in a different way. It's interesting to me because I've read a couple of articles that men are less prone to be averse to Zoom than women because of cultural issues around self-image.

I keep asking that question when my colleagues are saying, "I can't wait till we're back to in-person meetings," and for me, I think when you're in a bigger group setting, I think the difficulty is trying to attune – if you've got six people on the screen, trying to attune to everybody – and that seems to be a challenge for some of the people I work with. So, my one-on-one meetings I don't think there's a falloff in terms of my ability to create a trust relationship with my client, and the other piece is that you're able to use multimedia in a way. I have, over the course of COVID, created a bunch of PowerPoint presentations dealing with substantive laws and how it relates to my client. So, I'm able to say, "Well, look here, let's just do an overview of the law," and it's like short, snappy sort of thing where because I am cognizant of the fact that the talking head syndrome, right, you know people just... I suspect you've taught on Zoom; I've taught on Zoom. We know when people are answering emails and not actually paying attention to you, it's pretty obvious. So, I would agree with you Bryan. I think there are some real advantages to video technology working in certain settings.

Often, with respect to the people who I work with closely, my analysis has been is they're not adept at the technology. So, if you need to go to a breakout room, go to a breakout, it is astonishing

to me after 18 months that people use Zoom every day and don't know how to set up a breakout room and...

[Bryan Schwartz raises hand]

...well, but you're not doing this for money, right? Well, maybe you are, but it is in the work that I do, we break, we use breakout rooms. We go to other rooms sometimes.

BPS: Yeah, people who are doing classroom. This is where I use Zoom, I don't use it professionally, I use it for teaching.

GE: Right.

BPS: A lot of my colleagues break up with the class in the breakout rooms. You'd think I know how to do the technology myself, yet I don't. I gotta admit, I'm still a little intimidated. I'm always afraid to press the wrong button, will we not be able to get back, even share screen is a little nerve-racking for me. Like you can't see me anymore, you can only see the screen, can you see my screen? And when you're doing a class, you've got 20 or 30 people who watch you make a fool of yourself just through the technology.

GE: Yeah, I've been there, done that. Yep!

[everyone laughs]

GE: Yeah, one of the hilarious things about the American Bar Association technology conference is they have more technology glitches during that conference than any conference I attend. [Bryan Schwartz and Jodi Plenert laugh]. It's hilarious, right?

So, the other thing that just annoys me when the other lawyer chooses not to learn the technology, which would make the process more efficient for our clients, and that comes back to our ethical obligations or standard of performance or standard of competency issues. Every one of my lawyers has a desktop scanner, so we've got a scanner on our desk, if I'm writing hand notes, it goes into the scanner. I shred the notes and then I've got a digital copy because I might be working from home, I might be working from the cottage. I'm going to need those notes elsewhere. So, really from a business

model, I suspect some of the old school lawyers would think I'm an idiot because I spend a significant amount on technology, but I think from a standard of service it's just what we need to be doing.

JP: I'm really interested in the access to justice side of using technology and how that is really more convenient and more efficient for clients, but before this interview I was reading that there's a CBA task force that they've developed about issues of justice arising because of COVID, and they underlined that there's just such unequal access to technology in terms of clients and so different abilities of software, hardware, internet speed, their skills.⁸ So, what do you think needs to happen in order to accommodate people like that? That maybe they don't have access to these types of things, but this is going to become maybe the predominant way that we're going to practice law. So how do we overcome those obstacles?

GE: One of the things I have to be clear on is that my clients are not low-income clients, and it's just a function of being old. As you get older, your clients get more affluent, and with the type of practice you have. So, I'm acutely aware of the fact – Charlotte, my wife, is a professor of education in the Faculty of Education. She does a lot of teaching of First Nations teachers, and people have to travel in order to be able to get online. So, that's most definitely an issue, so you're always going to have parallel systems or ways of figuring out how to get people access to online services in a way that makes sense.

I've been part of that family law modernization committee. I sat on the Allan Fineblit⁹ committee that made the recommendations for the changes to family law and one of the consistent complaints has been that going online is not the answer. That's not helpful. So, you have to determine different ways for people to get access to the online service, whether it's going to a place where they can go online themselves, or whether they're going to someone who can go online

⁸ See "No Turning Back: CBA Task Force Report on Justice Issues Arising from COVID-19" (Ottawa: Canadian Bar Association, February 2021).

⁹ Allan Fineblit, K.C. is a lawyer and the former Chief Executive Officer of the Law Society of Manitoba, who is now the Chair of Legal Aid Manitoba.

for them, or however that works. So, yeah, simply going online is not the answer.

JP: Yeah, it needs to be convenient and efficient for everyone and not just, you know, a certain elite few.

GE: It does at that.

BPS: Yeah, if I could kind of clarify. I mean it could be different views. I just want to clarify what the suggestion is, is it that online is not the way to go because some people can't access it, or is the problem that, or the challenge that, online is the way to go and then we have to facilitate and provide navigators and locations so that the people on the wrong side of the digital divide can access.

GE: The latter. Yeah, it is the idea of making services accessible to people. Online is cheap, it's fast, it's effective, and it's convenient, right? So, you don't have to call between certain hours. I phoned some government department that said their hours were 8:30 to 4:30. I phoned them at 3:00 and, "We're closed for the day." So yeah, you're going like, "Okay."

[Everyone laughs]

GE: Interestingly, before the family modernization thing was happening, in our firm, we had teamed with some business innovation people at Red River¹⁰ because we wanted to create an online service for people to do uncontested divorces. We thought that there's a whole group of people that, they could be served with minimal lawyer involvement, but we ended up having to abandon the project – we got quite deep into it with the family modernization – because they came out with their website with much more resources, and they were going to provide it for free and we would have to do it as a fee-for-service thing. But the point is that we need to get Internet into communities that don't have Internet. There needs to be a commitment to Internet service throughout the province and that's going to require a whole lot of cooperation between different levels of government.

¹⁰ Red River College Polytechnic, formerly Red River College, is an applied learning and research college in Winnipeg, Manitoba.

BPS: I mean, you can imagine there was a world where we provided public libraries to everybody. Whether their purpose remains is questionable, but you can imagine that the next equivalent will be places where, if you can't do your taxes online, you can go to somebody who helps you do that. There's a bunch of navigators there, kind of the next generation of librarians, to help you access the information. That's a real access issue, that there's some systemic discrimination in terms of income levels and educational levels, and not doing that. So that's my view why technology is going to make life better from the point of view of better access to justice, faster, avoiding disputes in the first place, informing people before you get to the litigation stage. But people who tend to make a proposal, tend to be people who are in favour of it, right? They're – techno people are – the ones who formulate it as, "Wouldn't it be great if we could do everything," and they may not realize that there's half a world, even in today's society, that don't have the skills, don't have the capital to actually have the machines and so on.

So, my view is we have to bring everybody forward. Can't necessarily work together to give everybody a home computer because they might still not know how to use it, so we have to find things like navigators' assistance, locations where people can come in with the help necessary to access the system.

GE: Access to information and access to justice are two concepts in my mind, and they're interrelated and so we don't have access to justice from a technological perspective because our courts aren't set up for e-filing, we're not set up in ways to... they're trying to create a hub through the family-law modernization project, but that's really about information and then consolidating information about where to get services and information like that. So, things that I think of, where you have the perfect interplay between technology and law, are things like, there was a project and I might have the university wrong, but it was in New Orleans when in order to get FIFA funding – FIFA is that the emergency funding or is that the soccer? Bryan, you'd know.

BPS: FIFA¹¹ is the soccer organization.

GE: Yeah, so what was the federal funding for their housing? It was something I can't remember what the acronym was. So, when Katrina¹² happened, lots of people –

BPS: Oh, did you mean FEMA?¹³

GE: Yeah! And when Katrina happened, a lot of families lived in homes for generations and had no title for their homes and then New Orleans being – basing themselves on the French bureaucracy – really heavily bureaucratic, so some law students and some computer science students, I think it was Tulane University,¹⁴ got together and they built an app that you could use on your iPhone that would allow people to efficiently get title to their properties, because the process otherwise was super complicated. That, for me, is an extraordinary example of technology and law and access to justice. When individuals can do something on their phone that they would have had to hire a lawyer for in the past, that's improving access to justice. The other thing is there's a number of tasks that we do as lawyers that, quite frankly, don't need to be done by lawyers, and I call that the low-hanging fruit in our business and sometimes we charge astonishing prices for this low-hanging fruit, and I think that's an access to justice issue.

I have looked at websites and seen people, family-law firms who indicate that more access to justice is really important to us, and I look at what they charge for an uncontested divorce, and at my hourly rate I could type the divorce myself and still make money on it. And so, I'm often confused. From the Court of King's Bench

¹¹ La Fédération internationale de football association (FIFA) [translation: The International Federation of Association Football] is the international governing body for much of soccer.

¹² Hurricane Katrina was a Category 5 storm that devastated New Orleans, Louisiana, and its surrounding area in 2005.

¹³ The United States Federal Emergency Management Agency is part of the federal Department of Homeland Security in the United States. It is designed co-ordinate the federal government response to emergency events, often natural disasters.

¹⁴ Tulane University is a private educational institution in New Orleans, Louisiana.

perspective, access to justice is getting people to trial faster. That hasn't necessarily worked well for families because, all of a sudden, you're on a treadmill that you can't get off. There used to be a value for people having stuff set for two years before or three years before they actually got into court and allowing them the time for sorting out some of the issues. So, probably one of the most poorly-defined terms that we use randomly is the access to justice term, and you really need to understand what the person is defining as justice, and like I said earlier, if you think going to court, having a judge decide for you, is justice. That's not my concept of justice. That's problematic in terms of just the terminology.

BPS: Alongside this – some interviews – we're doing and publishing a paper on a model of justice in Manitoba; fast, accessible and so on and so forth, and I borrowed a British paradigm of what justice is, and what I really like about it is it recognizes the steps before you get through confrontations, and what access to justice is, "Okay, we got a dispute, how do we settle it?" Well, hey everybody, why do we have to dispute it in the first place? Well, maybe if people knew what their rights were there would be no controversy in the first place, or maybe if people knew that they had had initially some difference of opinion before that becomes conflictual. So, we find ways where they can sit down, work it out without it turning into a conflict. Access to justice seems to be, in the law school corridor, about how do you get to court faster, rather than avoiding disputes and containing disputes. That model has to be rethought and repackaged so that opportunities have probably been missed if you're in conflict in the first place. Information and containment might have prevented you from ever getting there yet. Am I wrong, Jodi? Is that access to justice as we teach in law schools – basically how to get the court faster, right?

JP: That's definitely one aspect. I haven't actually taken the Access to Justice course yet, so I'm not quite sure what they teach in that course, but absolutely getting to court, they definitely highlight efficiency, and when we were judge shadowing it was all about getting clients in, getting through, you know, cases being more efficient, absolutely you're right.

BPS: Yeah, at a courtroom, when you're judge shadowing, you were watching the conflictual end of it.

JP: Yes.

BPS: My latest question, why are all these people in court in the first place? Was it really necessary to have a jam-packed system, people piled outside the courtroom under incredible stress waiting for their turns, not knowing they're going to be heard today?

JP: Well, we don't do any shadowing of mediations or arbitrations, or I don't know if we do it, but I haven't. The priority is on the legal system, the court system.

BPS: Yeah, and what lawyers could do as legal educators for their clients, is explain that we don't have people fighting about a landlord-tenant dispute, it is that the person needs their stuff back. Where is the site you go to, or navigate it to help you, explain to you how many days or how many times we get stuff back. If we were better at the information and education end, that system might not seem so complex, so I think it's pretty similar to Greg who says that the justice system shouldn't be seen as focused primarily on "how do you resolve a conflict" at least, and much more on knowing rights and containing disputes before they get to the conflictual stage. But I'm not sure our law school is oriented in that way, or our justice system frankly is orientated that way.

GE: And I do more mediation now or much more arbitration, mediation-arbitration, now because of the changes to the rules in the courthouse. And I don't know Bryan if this is your experience as well when you're doing adjudications, but when you have the parties before you without lawyers and you have them with lawyers, they're two completely different scenarios and it's interesting for me, because when you've got people without artifice, who haven't been taught to not say something or to spin it this way or something like that, I worry that you get to the truth faster than when you layer lawyers on the process.

BPS: Well, have you had this experience, Greg, that people have been in litigation for two years, and there's sort of like a lunch break or something, and all of a sudden, these people have been staring back at each other across the table, "Aw, Bob, how's your kid doing?" or "Wasn't your daughter in the Olympics or something?"

and it's like this oddest thing that we sort of like break character and all of a sudden you know it's Bill and Betty and they're chatting to each other, like, relationships they had before, they were going the same place every day, going to work, chatting, talking about the Jets¹⁵ and stuff. And then when the lawyers come back in the room it's like, "Cut – lights, camera, action!" for these death stares again.

GE: And it is. You know, family law specifically, people come in and they ask, like their first meeting, "What should I be doing?" I say, "Well, don't do something to your spouse that you wouldn't appreciate being done to you." Pretty simple. "Oh okay." Yeah, don't max out the credit card and don't close accounts and do all that sort of stuff. "Okay!" And, if you're going to do something, then talk to them about it. It's this notion that – and as a young lawyer, you're going to find this Jodi – that people will imbue all sorts of knowledge and wisdom and power on you, that you will not have deserved, and you will not have earned and there's still that weird thing that we're special, and not the Olympic special, but special, right? And I make it very clear to my clients, I don't know what's best for your life, only you and your partner know what's best for your life. What I find dangerous is when we have lawyers who believe they know better than their clients – and I want to be careful about what I'm saying now because we have certain populations of clients that are vulnerable, and, so, I'm not talking about that.

But I will constantly talk to my clients about the fact that I am not invested in their outcome. So, "I'm going to put this all before you, and you're going to choose what's best for you. I personally don't care what you choose because I don't have any skin in your game," and the number of times I've sat in court with lawyers who say... I still remember once before in court, where a lawyer has his arm showing says, "I'm not going to allow my client to agree to that," and the judge had said, "I'm seeing 4 heads nodding yes and one head nodding no." And I remember thinking, "Wow," and I think that sort of segues to another area that becomes important, which is the commoditization of law. The idea that people are not simply going to take our advice because, well, that's the law and I'm your lawyer, and, like I said earlier, a lot of the stuff that we do is purely

¹⁵ The Winnipeg Jets are a professional hockey team based in Winnipeg. The team is part of the National Hockey League (NHL).

administrative and there's lots of practices, for example, a real estate practice – very little law involved in a real estate practice, unless there's conflict, right?

We have to get used to the fact that that we're going to get challenged on the idea that it is solely within the purview of lawyers and that other people can't be doing that kind of work or can't be doing that, and I know when the *Family Modernization Act*¹⁶ was announced there was a widespread panic in the family bar and disruptions are really important things in industries and we're seeing it all over, we're seeing accountant's firms owning law firms in the US and Britain. We have to adapt to a market that's changing. This idea that's, "Give me a blank check and I'll fill it out for you when it's done," I think that model is going the way of the dodo.¹⁷ It's going to be extinct sooner rather than later. Primarily because your generation is "I'd rather sit at home on my bed and have a video conversation with a glass of wine with my lawyer, than go and pay parking downtown," and all of that sort of stuff.

I will say as an aside, Jodi, I don't believe the younger generation understands technology better. I think the young generation understands social media better.

JP: I would agree with that.

GE: Certainly, from my hires and the computer training we do here, they don't have a leg up when they come in. But I think just generally, ten years ago I would never have met with a husband and wife at the same time for a first meeting, would never have done that because I was worried about conflicts and all of that sort. Now I do that with everybody, eyes wide open, and there's some stuff I put in because I need to understand what process would best fit

¹⁶ *The Family Law Modernization Act*, Bill 9; 4th Sess (2018-2019), 41st Leg, Manitoba, was given Royal Assent on June 3, 2019 (this Act enacted six other acts: *The Family Dispute Resolution (Pilot Project Act)*, CCSM c F14; *The Child Support Service Act*, CCSM, c C96; *The Arbitration Amendment Act (Family Law)*; *The Provincial Court Amendment and Court of Queen's Bench [now King's Bench] Amendment Act*; *The Family Maintenance Amendment Act*; and *The Inter-Jurisdictional Support Orders Amendment Act*).

¹⁷ The dodo bird is a form of wildlife that went extinct in the late 17th century due to human activity.

these people. Is it going to be mediation? Is it going to be collaborative family law? Do they just need negotiation? What is it they need? Is it court? I think the idea people are much more fee-sensitive because costs have gone up significantly. Winnipeg, particularly, is as, you know, a wholesale town, so people are shopping around. There're still people who simply retain you based on the fact that their friends said you're really good.

But I think that we are now going to have to think about selling product in a way that corporate lawyers have been doing for years. So, a "butterfly" transaction¹⁸ is going to cost you X number of dollars and I think we're going to end up seeing that in family law as well, where we do limited-scope retainers. We talk about all that sort of stuff. Flat-fee billing, although it hasn't taken off in in Winnipeg yet; it will, because it will be forced to do that. And those are ways that we're just going to need to adapt, right, in terms of the way that we deliver services, and I personally think we have to think of our clients as consumers, as opposed to clients and that our job is in customer service.

BPS: Now you say that Greg, there's a paradox here. The consumer demand, as you say, will be increasingly, for me, "I want an order of this, you get out of the house," "I want an order that I own the house," "I want an order I could sell the house," you know, little bits and pieces. In the first part of your interview, you were telling us there was a very different model of how you're valuable as a lawyer, which is a wisdom dispenser, right? These people are in a state of profound emotional shock.

GE: Yep.

BPS: Intertwined with unrealistic expectations about what justice is and how it works, and it sounds to me, like – somebody on the outside – that the added value that you're really bringing to this entire process is not the know-how to efficiently spit out a document. Instead, with your years of experience dealing with

¹⁸ A "butterfly" transaction is an umbrella term that covers many different types of corporate re-organizations and some other types of inter-corporate transfers. These transactions are often driven at least in part by tax considerations.

people in these situations, understanding the psychology, understanding how to get people in a room, you turn it more to constructive and a little bit away from vengeance. Those seems to be very, very valuable skill which we ordinarily don't associate with lawyer's skills. The market is going to want very technocratic word-process tapping lawyer skills, whereas in your branches, well actually, the soft skills, the people skills, the insight, the wisdom of having seen a lot of people. People may not appreciate it as a commodity, but actually that is the most valuable skill that you're bringing. So, is this going to be a problem?

GE: So, it's about triaging, Bryan. So, when I bring in a client, a couple, and they're able to put together their own agreement, because they are equally sophisticated, then we're going to say, "This is what we're going to do for you, this is what the cost is going to be, we're going to pump out an agreement, and you both have to go off and get independent legal advice." I get to do a different set of clients, I'm going to say, "Collaborative family law is the way that you need to go," because there's all of these emotional issues intertwined. "Here's what the fees are going to be, here's what the flat fee will be for a collaborative family-law process with this frame of reference." And we talk about scope of reference in terms of determining what the flat fee will be. So, that's kind of what I'm talking about, rather than the classic, "How much is this going to cost?" I won't know till we're into it.

I remember once reading something about how it's traditional in law firms for legal lawyers' fees to go up every year, Jodi, so every year when you're working in a law firm, they'll come by and they'll say, "What's your fee going to be next year?" I read somebody writing about that concept, who wasn't a lawyer saying, "Okay, that's akin to me booking a flight with Air Canada for next year and Air Canada coming back and saying, 'Oh, by the way, that flight now costs this much, and not what it costs last year.'" And so, I think, Bryan, what I'm really talking about is the idea of more certainty for the consumer, and I'm not saying that there isn't going to be some skill involved in trying in determining what those packages are going to cost, right? But it is the people challenging the low-hanging fruit and saying, "Really, is that really what it costs?" and really being more responsive. We've set the rules for a very long time, and we've set the terms of engagement, and we've

set the cost for it for a very long time I think there's going to be push back in a way that's going to require some accommodation.

BPS: So, just to make sure I understand the answers. Some people will be asking for a very tightly defined project, that involves no wisdom or experience. That doesn't mean that the kind of service you provide in collaborative divorce in a commodified world disappears. It's just people, you explain to them that, that is the commodity. The commodity is we just push the button those documents come out, the product we are selling you is guiding you through this more expensive process which has a certain number of less palpable, but nonetheless important, outcomes – like peace, best interests, and so on and so forth. And that's the product I'm selling you.

GE: Absolutely.

BPS: Okay, so those first meetings the first encounters with clients in your area are extremely important, because the client who is coming to you like a “software 2.0” is not in the right place.

GE: That's correct.

BPS: Yeah but of course some clients are still going to want 2.0 here, and that's autonomy. If they're coming in looking for a fight, maybe the other one doesn't, I'm guessing in family law some people actually do want the fight on both sides.

GE: Absolutely, and some people can't come to an agreement. So that comes back to what I said to you before, where if we almost have like a solicitor/barrister, divide where you've got people... I know lawyers who love litigating, and they don't get personally involved, and they just, they enjoy it. And so, I've got places to refer people when my skill set isn't going to help them. Maybe Bryan, I wonder if you'll recognize this. I'm at the point in my life where I know what I do well and what I don't do well, and I know what I enjoy and what I don't enjoy and so doing work that I do well and enjoy is going to ultimately be a better experience for my client. I'm confident enough in my ability to attract work, which is always a problem with lawyers that I know – I don't have to take every file – and when you're junior, you don't always have that liberty or that

freedom to refuse work. I don't have to be everything to everybody anymore and earlier in my career I felt that pressure – don't feel it anymore.

BPS: So, this is again why I think I had this idea for years that one of the services we could do at law school would be what I call a practice management course. It wouldn't just be about how do you manage a practice. It's like setbacks. Do you want to be litigating and working 60 hours a week in high stress and fighting, and the answer might be yes. But there are other options where you might want to be in-house counsel, you might want to do kind of practice that's not very lawyerly, just happen to know some law, but you're involved with developing public policy development or something like that. If we don't give you the framework to think about all these options, where are you going to get it? I mean, people come upon it by experience, and I guess in some cases, though, over the long run, but I think what we should be doing at the law school is giving you this perspective and a lot of different ways to live your life out there while practicing law, we're not preaching one or the other, but here's some options, advantages, disadvantages, practicalities, trade-offs. You know, the idyllic practice may be not making enough money to meet the needs of your family, like that's just reality and something you should think about. I was kind of hoping that someday in law school training that that's one of the areas we'll do: give you a critical, widespread foundation for thinking about your life as a lawyer. What is it you really want to do?

I don't know, Jodi; you can tell me. I don't think we can do a whole lot of that, and I think people kind of fall into place.

JP: No, there really isn't. I feel like, as we've said before, the priority seems to be, you know, focusing on litigation and in the courtroom, and this is what a lawyer does, and then, because that's what you also see in Hollywood or in movies and TV and so everyone coming to law school seems like that's what they want to do. And the reality that's not what the predominant, legal-field professional is doing. So, yeah, it's very interesting. I'm very excited to take alternative resolution and things that are maybe more focused on not litigation and just kind of seeing that world a bit more, because especially in first year, they really focus on litigation and, yeah, it's interesting.

BPS: Well, probably we couldn't teach you this stuff, but I don't think we had a deep think about what it is we do at law school. I think we kind of keep doing what we were always doing, and now, we have started taking a step back and saying well maybe the world is changed. I mean, for years – I have to digress a bit here, forgive me – but for years everybody says, “Well, the world is rapidly changing, and life will be very different in 20 years than it is now.” Well, they told me that when I was in law school at Queen's, and the world wasn't very different 20 years later. But, you know, if you look at 20 years ago versus now, yeah, the world is drastically different.

And I think that will continue to be the case. Artificial intelligence, the substitution of a lot of skills by technology, and the rise of paraprofessionals to take some of the so-called low hanging fruit out of the economic model going forward is happening. We have to equip people to adapt and constantly be able to think in new ways and be able to change the scope of practice and ask questions like: “What do I need to do to equip myself?” “What do I read?” “Where do I go?” “Who do I talk to?” The idea that we can just keep a body of knowledge that's going to carry through the course of a career seems to be very naïve. It's some of the stuff that people might think is nerdy or soft, or navel gazing, but actually may have more enduring value in training a professional, than, you know, one more casebook – and again, it's not because I believe we should be preaching, I still believe education is encouraging people how to think not what to think.

GE: Right.

BPS: Now I don't want to see us preaching to people, “Oh practicing law for money is greedy, is bad” – no. I mean, selling your legal services to help people as an outcome is a perfectly legitimate thing and if that's how you want to live your life, maybe that's perfectly legitimate. You're helping your family, maybe giving some to charity. I'm not here to judge the relative values of them, set taxes versus a high-pressure corporate judge. I think as a law school we should just be getting you to think about what the alternatives are, what the implications are, and any changes you want to make on the way. You may think that it's really cool being a criminal lawyer – action, action, action and helping the most vulnerable – but then

you may realize that the getting paid part is so difficult, you just don't want to do it.

Not dictating choices to people, just exposing people to choices and getting them to kind of open up and think there's a lot of different ways. There's a lot of different ways to do family law, you've made that very clear, Greg, and I'm not here to say you shouldn't be soft and you should be telling, but just have an evidence-based approach, and talking and let people see there's the option.

GE: Yep, and it was very interesting for me, because one of the dyed-in-the-wool family litigators in Winnipeg once asked me, "Could you actually make money doing what you do?" And I said, "Yeah, I do actually pretty well."

[Everyone laughs]

GE: Yeah, it's been interesting for me, Bryan, and because I practice in family law. I think I have gone to one CLE that a faculty member presented at, in 24 years. And I look at Charlotte, who's in Faculty of Education, her involvement in community education is, for lack of better word, she sees that as one-third of her job. And so, I have sensed, as a sessional at U of M, a growing disconnect between the bar and the school. I think there have been attempts to try to bridge that gap. But if I ever hear somebody say, "We don't teach lawyers, we teach the law," I'm going to have an aneurysm, because functionally you teach lawyers.

I am concerned about, and I've seen this first-hand, the lack of jobs there are for new lawyers, and one of the functions of technology, unfortunately, is that it you can do more with less and so it becomes more challenging and the idea, that I think they've bandied around at the Upper Law Society of Ontario, that we no longer have articles is something that scares me.

BPS: I don't think you can count on the articling experience to be the apprenticeship that certainly takes you from basic education to practicing professionally. It's so hit and miss in terms of what kind of experiences you can have.

GE: Absolutely!

BPS: Some schemes could be, it's like a year of operating a photocopier and running to motions court.

GE: Absolutely!

BPS: I think there could be a genuine mentoring experience. What I'd like to see – for whatever my views are worth – is we take it ourselves to do more to produce practice-ready lawyers, which definitely will just teach you technocratic skills. The kind of things we've been talking about, like what is your role with a client, whether different models of practice would better serve the client. This would give you this much deeper sense of professionalism and a much wider range of options and things to think about as you do it, so it's the best of both worlds like that. Critical reflective insight on what it means to be a lawyer on equal footing with practice skills. The problem – I don't know what law school was like exactly when you went, but now – the sociological problem is, some have tried to of turn law school into a Ph.D-social-science kind of institution. Our younger colleagues are very, very smart, they're very bright, they're working really hard to get those doctorates. But the institutional method we spend in the university is, you're basically a researcher, you do some teaching, but you're a researcher. That's how you always writing books and writing critical articles about the law and so on and so forth is the way to get ahead. A lot of us don't have any practical legal experience.

Trying to fix that by just, say, hiring practitioners and do the nuts-and-bolts work, to me, that doesn't work either because yeah, okay, so they're teaching nuts and bolts, but again, if it's not teaching that critical, reflective, philosophical, sociological, practical way of looking at the professional practice, we're missing something too. So yeah, I think we got to bring together the practical and the legal, and I don't think the divide is as sharp as people think. The best academic teaching will be aware of the practical challenges and the best practices will be getting you to ask the kind of questions we've been exploring in this interview, like how to deal with a client who's on a revenge mission.

GE: Yep. Right.

BPS: Not an obvious question, right? You don't just say: "Get with the program dude," but maybe you should get with the program or maybe we can explain it to you, or maybe we can work on it and if it doesn't work then maybe there are explanations of the options for students who either want more practice-focused courses, and different streams who are not really interested in practice, or whatever. These are really interesting, intellectual things that we should be. I mean that's kind of my idea where the law schools should end up. Insourcing a lot of the practice skills and doing them better than they can be done in a routine for-profit experience, that's the provision I've been working through. Too much airtime for me, but that's my thoughts. I think, very edifying. In the perspective that you've been providing us, the questions that you had, Jodi, where are we in the—

JP: Honestly, we've covered most of them, not just in our conversations, which is great. I mean, I have a few more specific ones to your practice in particular Greg.

BPS: I hope we haven't worn you out with all this.

GE: Not at all.

BPS: There's one big question that I wanted to do, it's kind of the exit question, which is – okay, we lived through COVID and there were certain adaptations that had to take place by necessity. So just to put it on the table, the models, one is, "Okay, that was kind of like an emergency thing that's now over, we're just back to business as usual." Another one is, "Okay, now we had a chance by necessity to experiment and accelerate the extent to which we tried new technologies and tried new ways of being. How many of these should we make permanent and what regulatory changes do we need to make so that people at least have the option of using these technologies? Do we have enough space in the regulatory system so if people want to do traffic court by video, they can do it? If people want to do a family trial, they're allowed to do it by consent, by video, and so on. Do we have a lot of regulatory work to do so that we can make more use of technology, or if it's not a question of the regulatory space, it's just a question of lawyerly preference at this point?"

GE: I think there's an administrative component to that too, when you think about the courthouse and you think about the idea that 25 years ago you had to make an application to the court in order to have video witness testimony, right, and it was a big deal, like, it was expensive, it was crazy. What I said earlier is, I'm thinking that from a practice perspective, I am thinking that a lot of the stuff that we ended up doing – Zoom calls, even learning how to work collaboratively on documents and in real time, etc., etc., etc. – I think those will survive from the practice because I'm going to continue to use them, right, and my practice will continue to give people options of appearing on interviews and stuff. I now have options that people know how to use that I didn't have before COVID, even if I wanted... the amount of education I would have had to have done before COVID to get to where we are now. Americans are way ahead of us with their use of technology: I met a woman from Cleveland who never meets with their clients personally, always by video, and this is pre-COVID.

And so, I now have more options available. I'm able to, for example, take clients more easily in areas like Brandon or Thompson or Flin Flon, well, so long as they've got Internet access, so that I think is good. What I talked about earlier in terms of the relax- or, not relaxation, but allowing for different variations of ways to have documents witnessed, to have documents notarized; I am hoping that that becomes not an emergency measures action but a regular part of our understanding that this can be done safely, it can be done efficiently without any real risk. I think the biggest issue with respect to the courthouse is the decision makers because they will always dictate how it's going to be. I have never personally felt, as a member of the family bar, that I have a great deal of input or influence in terms of how the court wants to run its processes, or how the court wants to deliver its functions. I think it comes back to a statement you made earlier Bryan that I agree with completely. We've made it easier for clients to access us through technology, why would we go backwards and make it more difficult? That makes no sense to me whatsoever, and that to me, is an access to justice issue.

BPS: Way, way back and in no particular order.

Thanks for doing this, I find this absolutely fascinating, and I don't think we're going to have to do a lot of editing, you speak in paragraphs, so... [Everyone laughs] Which not everybody does. This – just one question, and it's just a question of intellectual curiosity. In family law, something goes terribly wrong, and you have to do co-parenting for the next 10 years and see maybe three times or more a week the person you think horribly violated your trust and humiliated you and so on and so forth... I can understand maybe getting people to calm down as to get through the process. How do you get people to the point where they can interact on a routine thing like, "I'm 10 minutes late, can you keep the kids another 10 minutes?" Or somehow that's just a routine transaction and all that accumulated hurt, and hate doesn't boil out. Because the reason I ask is, this seems to me an almost unique situation of the need to maintain constant human contact after the fact, where, ordinarily, there would be a separation. Can you give me any insight on how that could be made to work?

GE: And again, you need to have the right people dealing with the client at the right time. So, if my client's needing personal counseling, they should be getting personal counseling, they shouldn't be getting me with cheerleading to get the most they can out of this, you know, blah, blah, blah. It's about having a long view, not a short view. So, when I speak to a client about, well, you can do that, but then how's that going to impact you down the road, right? And I've been through the rodeo so many times that I can see stuff unfold fairly, and I'm not always accurate, but I can usually predict where things will go so...

The idea of understanding people and understanding the source of conflict is important. I attended a presentation by Daniel Shapiro, from the Harvard School of Conflict Resolution. He breaks down conflict into four basic sources of conflict, and "appreciation" in family law is probably one of the most significant ones. People don't feel appreciated on both sides and every once in a while, it is status, but there are other things. The more I can understand about what my client is going through in their thought processes and then be able to deal with it from a perspective of getting them to heal those wounds or those slights, that's where I'm doing this family favour, right? And consciously or subconsciously, throwing logs on fires,

which is what we do in the law, right? "Oh, we've got an advantage here, ah, you've got an advantage. Let's take advantage."

I remember once I was working junior under a lawyer and we found out something really terrible about the opposing party and I thought it was tangentially relevant, and the lawyer who was supervising me said, "That's gold." That's gold. And, really, what it ended up doing is, I think you used the word earlier, it ended up humiliating the other person, right, and we're talking about families here.

I've had a file where I'm working with a family who have adult children and the adult children have polarized in terms of supporting one parent or the other. I don't believe that it makes any difference whether your children are 8, 15, 33, or 40. They're still your children. And the other lawyer and I are concerned about the family dynamics. So, we've got grandparents who aren't seeing grandchildren and all of that. We try to put everything in the long run, and the short game is important in terms of getting people through and making sure that people are in places that are comfortable. But the long game is, if you can get people to buy into the long game, and particularly to buy into the idea that you have the ability to shape your child's experience here, and I mean simply even just talking sometimes to clients about "you're role modeling conflict resolution with your child right now; is this the way you want them to perceive how conflict is resolved between two adults?"

So... [Dog barks] Well, go ahead buddy. I'm sorry, Pandemic Puppy.

So that, often, Bryan, you can say, "Do you want to go to their grad?" "Do you want to go to their wedding?" "Do you want to have to make appointments to see your grandchildren?" Then, often they are able to flip their stuff around.

BPS: Right, so if people can say, "Oh my God, I have to see my despicable ex at high school grad in 10 years. This is making me sick to my stomach right now," and you reframe it as: "Now, do you want to see your kids, and it's not really about your ex. Your ex isn't important anymore. She proved she's not that important to you, but your son is important, and your daughter is important." Let's

just focus on that and God will say, “It’s okay to take care of the issues, the vengeance is mine,” says the Lord, “not the legal system’s, not yours, but Karma, or whatever, will or won’t take it back, just focus on, you want to maintain relationship with your kid,” and kind of, like, that’s just something that happened, focus on the relationship with your kid.

GE: And the idea that most research points to the real damage that’s done – or the research that I’ve looked at – the real damage that’s done to kids out of separation and divorce is the inability to unconditionally love the other parent. If you can’t talk about your relationship with your other parent or, if you can’t acknowledge that you had fun with the other parent, there is real damage happening to the child. It’s like, some of the research on abuse where you can have really horrific abuse, but the impact is lessened if the child is able to process it and has the ability to talk about it clearly and processes with a professional. Conversely, if somebody has what you might not think of as being a particularly bad thing, or on the same scale, the abuse isn’t as egregious, if they’re unable to talk about it, if it’s not acknowledged, if it’s not validated, that can potentially have a larger impact on that person.

It’s the same thing with kids in a divorce. So, our goal is, at the end of the day, to have kids who feel that they can come home and celebrate the time they spent with the other parent without that being shut down. So, when we start talking about those kinds of contexts, very, very rarely will you have parents say no, I don’t want to do what’s best for my kids. I do have a saying though, there’s the one client I’m not really fond of, this client will say, “I’ll do anything for my children, except for anything.”

[Everyone laughs]

GE: But because, if they don’t have kids, they’re going to go off and do their own lives, it’s possible that their paths will cross potentially, but they don’t have to, right? But you’re not divorcing your children and we frame it in, you’re transitioning from an intimate relationship with your partner to a co-parenting relationship and then being the best co-parent you can is the gift that you can give to your kids. Sometimes it works, sometimes it works like a charm. My favorite, Bryan, my favorite piece of feedback from clients is:

“Greg, want to let you know four or five years after the divorce, she's got the keys to my house. We come and go with each other and as we please.”

That is a success story.

I'm going to leave you with one example. My client had a post-traumatic stress disorder. Did something weird enough that mom was really concerned about his ability to care for the kids. Post separation they said it was going to be shared custody. These people, if they would have gone to court, my guy would have been supervised access to their kids. We used the collaborative process, and they spent nine months working with the family professional, so lawyers had nothing to do with them. They came back to the lawyers with a shared parenting of the children. Subsequently, they ended up having a situation where the mother was offered a job in another province. Dad who works up north says, “Eh, whether I fly out of Red Deer or whether I fly to Winnipeg, it's not a big deal. I'll move to Red Deer.” So that is an uncommon story, but he was only capable of that story because the groundwork was done. They had done nine months of work getting to the fears and getting to all of the issues that people were dealing with.

So, when I was coming up, people said, “I like family law, I just don't like any of that emotion stuff.” In my firm, all of my people are subjected to touchy feely, uh, let's get real, type of soft skills. These have become our core skills. We probably focus more time on developing our communication skills than we do keeping up to date with recent case law, although we do keep up with trends in the law.

BPS: Greg, I found it a genuinely interesting enterprise. I think it's really going to exactly the kind of stuff we're trying to do with this project, so we really appreciate it. Jodi, thanks for setting it up.

GE: Sounds good.

BPS: OK, well thank you so much!

GE: You bet.

BPS: Have a good rest of the day and really, we really, really do appreciate it. Thank you.

GE: Yeah, it was fun being part of this. I enjoyed it. Nice meeting you Jodi and nice seeing you again, Bryan.

JP: Awesome, take care.