

Asked & Answered with TLABC Member

ROBYN L. WISHART



NAME: Robyn L. Wishart

LAW FIRM & LOCATION: Wishart Brain & Spine Law, Vancouver

TLABC MEMBER SINCE: 2008

POST-SECONDARY DEGREE(S) AND INSTITUTION(S):

University of Winnipeg Manitoba B.A. 1990 - 1992

University of British Columbia B.A. 1993- 1995

University of Cardiff Wales LLB 1996 - 1997

University of Victoria LLB 1998-2000

University of Alberta LLB 2000- 2001

YEAR OF CALL IN BC: 2002

AREAS OF PRACTICE: Personal Injury Law with a focus on brain and spinal cord injuries. Jury Trial Consultant

(1) the Verdict: What does the word justice mean to you?

Robyn: When I started practicing law, I believed in ‘Lady Justice’ – her blindfold, balance and sword seemed the perfect metaphor for justice. Over the last 15 years, I have seen ‘Lady Justice’ peek over the blindfold and stick her thumb on the scale, but the principles of impartiality, equality and power still define my conception of justice.

(2) What were the key reasons you chose to embark upon a career in the legal profession?

If you asked 10 plaintiffs’ personal injury lawyers this question, my guess is that eight would tell you: “to help people.” Altruism was not my motivation. My motivation to become a lawyer hit me when I was four years old. My father had a red brick library in the basement. I would hide under his desk and lay out all of his science books on the floor (in the 70s people owned books). Surrounded by his books and hiding under the desk, I felt safe and strong. I most certainly did not appreciate what a lawyer did at the age of four, but the feeling of the power of words on a page excited me.

(3) With regard to the legal professional, what is just as important to you now as it was 15 years ago at the start of your career in law?

I learned at the start of my career to face my fears about the legal profession. I was genuinely afraid of the practice of law when I started. I was afraid to make mistakes, afraid to fail, and in many ways afraid to succeed. Maybe it was my massive student loan, or the realization that my law degree made me overqualified to work retail, that forced me to consciously choose to run towards my fear and not away from it.

Today my fears are different. I fear all emails with the subject line: “REASONS FOR JUDGMENT,” trust accounting, and my annual colonoscopy (not necessarily in this order). What has kept me in the legal profession is my mental strength. I acknowledge my fears and turn to face them even when it makes more sense to run. I am comfortable with the fact that this job is full of uncertainties. I do not try to pretend that I can control all of the moving parts.

(4) Being selected to represent an individual on a personal legal matter is a tremendous responsibility. Before accepting a client or case, what advice would you impart to new lawyers with respect to meeting a potential client for the first time?

My advice to a new lawyer is this: More likely than not, your potential client is as scared of the law and lawyers as you are (you both will hear more horror stories than fairy tales). Explain in “simple terms” what it means to “hire a lawyer.” If you bill by the hour, don't charge your new client for the time you spend talking about yourself. Be genuine. Do not shift shape into a character on *The Good Wife*. Do not make promises you cannot keep (under promising and over-delivering is just as bad). A lawyer is a voice and an educator, not a judge. Judges sit up a little higher than us for a reason. Figure out how to get on the same level as your new client, but never assume that the direction you need to go is down.

(5) In which way does your approach to work today differ from your approach during your first five years in the practice of law? Alternatively, describe the core elements that have always been and will continue to be key aspects of your work.

The core elements of my legal practice were taught to me by the great lawyers who worked at: Alexander Holburn Beaudin and Lang (AHBL); Dolden Wallace Folick (DWF); and Slater Vecchio (SV).

AHBL taught me to take personal responsibility for my actions as a lawyer. Law is a profession. Be professional. AHBL had an open-door policy but you never walked into the office of a senior lawyer without first having tried to figure out a way to solve the problem.

DWF taught me to remember that a good defence did not mean to act without compassion. I understood that my job as a defence lawyer was to fairly value the claim, not try to cheat the injured. Janis McAfee, Brian Rhodes, Steve Wallace, Eric Dolden and Lorne Folick taught me as much about life as the law. It was very difficult to leave such a talented group of trial lawyers.

SV taught me about the business of law and to embrace my creativity. Mastering an organizational system to control paper flow is a critical element in moving complex claims forward. However, the reams of paper can only take you so far. Truly great advocates like Mike Slater know how to sift through the stacks of

facts littered in the paper to find a ‘path to victory.’ Mike Slater taught me that the way to win a case was first to make the judge or jury want to come your way and then show them how to get there. That is not as simple as it sounds.

(6) What are among the most challenging aspects of the cases you take on regularly?

Half of my practice is devoted to invisible brain injuries. Brain injury cases are challenging for two reasons. First, the person with a brain injury typically looks ‘normal.’ Second, most people with brain injuries fear that they will be ostracized for being mentally ill. Mental illness is a universally taboo subject. Many people with brain injuries isolate themselves for fear of being exposed. The problem when a person with a brain injury isolates themselves is that the collateral witnesses dry up. No one can tell you how your client’s life has changed because he or she is hiding it from their friends and family. A normal looking client with no one to talk about the injury with is a challenging legal claim.

It is possible to get around your collateral witnesses drying up, but you need to address it early on in a case. When I represent a brain-injured client, I create a list of friends and co-workers shortly after the intake process. Many brain-injured people will not be willing to give you any names of friends or co-workers after they have started to isolate. If your client has a job that they cannot return to because of their brain injury, go to their place of employment and videotape the work they did, for your medical and vocational experts to view. It is our role as the lawyer to ensure that we clearly show the loss when the client is not able to do it alone.

(7) This edition of the Verdict is themed on mental health. Dealing with serious and catastrophic injuries is an enormous challenge for anyone, a problem that can be exacerbated by ongoing mental health challenges. In your experience, is the profession - and the province, in general - responding to the needs of citizens suffering through mental health challenges? If not, what are among the things you believe should be done for people requiring assistance with respect to mental health, both for those suffering directly and their families?

I believe mental illness is the dirty little secret all around us. It is hard to blame any organization for exacerbating or failing to address mental health challenges when we have been taught, as a society, to hide it. When successful people ‘come out’ with their mental health challenges, dialogues start. People do not want to be judged. People want to feel accepted. Being able to relate to people living with mental health challenges is a big first step to solving the problem.

Many of my clients with depression and anxiety refuse to take medications that will help them with their symptoms. I find this fascinating. If you had diabetes, would you refuse insulin? If you had high blood pressure, would you refuse a beta blocker? Likely not. The stigma of mental health challenges stops people from getting the help that they need, for fear that they will not be able to compete for good jobs, satisfactory health care and



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safe housing. With so much on the line, who is brave enough to step forward?

In my opinion, the Bell Let's Talk Day is saving lives. Canadians need to end the stigma and start a new conversation.

(8) Many of today's legal professionals contend that law school did not prepare them for some of the biggest or most important aspects of managing a law practice. What are some practical everyday things you learned from scratch, after earning your law degree? Alternatively, what advice would you be inclined to give law students and new lawyers?

The best advice I can give law students and new lawyers is to just show up. Go to continuing education programs and the Battle of the Bar Bands. If you really want to succeed in the law, you need to take advantage of every opportunity to learn. If you know that a lawyer in your office is trial prepping over the weekend, go into the office to see what you can do to help. Join the CBA, TLABC, and/or the American Association for Justice. Get out of your office and circulate with other people who are practicing law.

(9) Aided by your experience to date and the benefit of hindsight, what do you regard as some of the most significant ways in which things have changed for lawyers and their clients?

Three years ago, I was approached by an insurance provider to consider purchasing a new product called "After the Event Insurance." The insurance product provides disbursement insurance to my clients in the event that they are asked to pay the costs and disbursements of a failed lawsuit.

I asked to read the insurance policy not the advertising pamphlet. I could not believe my eyes. Disbursement insurance protects a client from: the costs of investigating a claim and shutting it down; the costs associated with accepting a late formal offer; and, best of all, the cost consequence of a judgment not exceeding a formal offer to settle.

I jumped at the chance to protect my clients with this policy of insurance. The insurance benefits me, but - more to the point - it benefits my clients. With the protection of disbursement insurance, I no longer have to tell a client about the risks of trial in the face of a formal offer. I have also used disbursement insurance to successfully block two applications for security for costs.

Access to justice is the most pressing justice issue today. In my opinion, protecting a litigant from the financial pressure of a lawsuit is something that I have a professional responsibility to provide.

(10) Whether far back in world history or in modern times, who are some of the lawyers and laypeople that come to mind when you think of people you admire, and what do you find most admirable about them?

Ten years ago, Mike Slater and Tony Vecchio sent me to Atlanta, Georgia to learn how to tell a better trial story, from a man named David Ball, an American actor and author who had written a book

about how lawyers should craft opening statements.

Mike Slater asked me to bring the "rockfall case" to Atlanta and use the seminar to work with David Ball on developing the trial story. The rockfall case was a claim against the Ministry of Transportation and Highways for failing to identify and remove a large boulder that fell from an outcropping of rocks onto a passing car. The boulder crushed and killed the driver of the car, leaving his young daughter unharmed in the seat next to him.

At the seminar, I was out of my element. I had never been around American lawyers before and most of them had never met a Canadian. My conception of an American lawyer was: pushy. And their conception of a Canadian lawyer was: wussy. For obvious reasons, the case I brought was attracting a lot of attention.

The seminar was divided into two parts. The first part of the seminar was lecture format. The second part of the seminar involved workshops. The lectures were not the typical CLE. All of the presenters spoke without notes and avoided anything resembling a podium. The workshops were judged by faculty members in a manner that was not unlike The Gong Show or America's Got Talent.

The night before presenting the rockfall opening statement, I met Paul Scoptur from Milwaukee, Wisconsin. Paul and I talked about everything from my fear of getting 'gonged' by the American talent judges to the meaning of life. At the end of our conversation, I had changed. That night instead of typing out my opening statement, I dreamed about the movie I would make



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Allison Russell,
Legal Counsel, Rana Law, Vancouver, BC
(first digital trial in Victoria, BC - West Moberly case)

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and where I should start the story. First up the next morning, I stood and delivered my opening from the heart, without notes.

I admire lawyers like Paul Scoptur, Mike Slater and Tony Vecchio for their encouragement and generosity in promoting education as the way to becoming a skilled advocate.

(11) If you could have been counsel on any case in world history – in any field of law - which case would it have been, and what is it that draws you to it? Additionally, which lawyer or lawyers in history do you think you would have enjoyed most working against or alongside?

There is no other case that means more to me than the lawsuit I started against the CFL in 2014. Win, lose or draw, we are making an impact on the future lives of hundreds of thousands of children playing contact sports. Because of brave men like Arland Bruce and Rod Woodward, people are talking about the impact of repetitive brain trauma and the mental health issues that surround this disease. While we may be losing the war in the courtroom, families are making different choices for their children. This is our success.

I have counselled hundreds of players and family members over the last four years. We have lost three players to the effects of repetitive brain trauma (RBT) since the lawsuit started. In a tearful moment after Rod Woodward passed away, his wife Kay Woodward proudly told me that Rod won. Being a typical lawyer, I said: “Kay, this is a long way from over.” Kay smiled at me and said: “I got Rod’s name back. When people Google Rod Woodward, they will see he was a football player living with CTE (chronic traumatic encephalopathy). Rod was a good man.”

CTE is not like cancer. People with CTE are not always easy to love. Families living with this disease need to know this is real and that the person they love is sick. If we break down the stigma of the mental health challenges facing retired professional athletes with CTE, we may be able to find a cure.

There is no other lawyer I have enjoyed working alongside with more than Mark Kazimirski. Mark has been a champion for me with this lawsuit and has helped me work with lawyers like David Jones, Reidar Mogerma and Jonathan Foreman, who have the talent to take this claim to the next level.

I believe this moment of time in my professional life is what I have worked so hard to be able to achieve.

(12) Featuring law as a central theme or as a compelling backdrop to a story, which book or film is at the top of your list of favourites?

At the top of my list of favourite books is *Sleights of Mind: What the Neuroscience of Magic Reveals*. *Sleights of Mind* was written by neuroscientists Stephen L. Macknik and Susana Martinez-Conde, with science writer Sandra Blakeslee. The premise of the book is that magic is nothing more than the manipulation of your everyday assumptions about the world.

Using the principles of misdirection, the authors explain how a visual system can be primed to systematically ignore competing information creating a targeted goal. Once the brain is primed to

pay attention to certain cues, it consciously and subconsciously disregards anything that does not fit the targeted goal. Many magic tricks work because you are primed or expected to see one thing when something else appears: Magic.

The same principles that magicians use can be employed in a litigation strategy. Consider this rhetorical question: Why must an animal feed shop not sell expired food? The answer: So animals do not get sick. With one question, do you know what this case is about? When you set the targeted goal early, you reduce the risks that your audience will miss your targeted goal.

(13) Which mantra, quotation or expression do you find particularly inspirational, one that is powerful enough to guide you through the toughest of days?

“Don’t be afraid to give up the good to go for the great” - John D. Rockefeller

(14) Robyn L. Wishart - if all of your arguments were made and your law books were closed forever, where would you be living and what would life be like for you? Alternatively, describe an ideal non-work day in which you are living life exclusively on your terms.

When it is time to close the doors of my law firm, you will find me bodysurfing at Little Beach in Maui.

(15) At this stage of your career – with the sum and strength of your 15 years of experience as a lawyer, what can legal professional you say for certain about law?

The practice of law is a constant weeding-out process. At every turn, there is a gatekeeper controlling your next move. In the past, I have made the mistake of internalizing the gatekeeper. I always wanted to prove my worth as a lawyer before demanding it. Now that I own my own business, I see why this was a mistake.

(16) Today, with the benefit of your life experiences to date, what can you – Robyn L. Wishart – say for certain about life?

I know for certain that I am not going to live forever. I have faced health challenges that have made me reflect about the value of time. I am often warned by many people that on my deathbed I am not going to wish that I had worked more. But, the practice of law is more than a job to me. Without the law, I would never have: seen the statute of David in Florence, Italy; legitimately earned a strand of beads in New Orleans; lectured in the Pound Auditorium at Harvard Law School; or sipped a pisco sour in the lounge at the Carlyle Hotel in New York. These are the greatest moments of my life.

(17) Robyn to Robyn – Asked & Answered

Robyn’s question to herself (asked): **When is enough enough?**

Robyn’s reply (answered):

Enough is enough when my passion for the law stops. Each day I practice law, I am excited by the opportunities I have to grow as a person and as a professional. When my practice turns into a job, I will hit the beach. ✓