



BY KENNETH A. PRICE
BARRISTER & SOLICITOR

EDITORIAL

Ken Price has practiced in a variety of areas for almost forty years. For thirty of those he has practiced tort law. He is a past president of this organization, and is a founding member of TLABC. He has worked for years providing counsel to several social and legal agencies, and has been a regular contributor to TLABC and CLE legal education programs. He has also worked to keep lawyers vigilant in their duty to represent citizens against oppression by the state.

Having spent most of my life as a civil litigator, I have fielded my share of questions from clients who wonder what (if anything), a lawyer does in exchange for the vast wealth he or she must surely be accumulating from simply “talking” for a living. I know that all lawyers from time to time have been challenged by a client who simply cannot equate the bill he has received from a lawyer with his own perception that the lawyer “hasn’t done anything.” This is particularly so when the bill rendered involves services which consist of advice only, without the generation of some tangible document or court order. Talk is cheap, he thinks, and besides, all the armchair quarterbacks he has already taken “advice” from in the pub have not even asked him to buy them a beer for their two-cents worth of talking. So why should the lawyer suddenly want money for it?

Every day people pay money for goods and services. No one expects to take a car to the repair shop or phone a plumber without a bill being churned out in the end. But that mechanic or plumber actually did something real and obvious for his money, and the customer can in most cases see the objective results of what he has paid for. Even other professions like architecture or medicine have real rather than abstract proof of what they have done to earn their money. After all, the customer can see the plans drawn or the stitches sewn, and has no trouble equating these works to the provision of a service.

Lawyers themselves often struggle with the concept of charging for talking. This is why we are the only professionals who routinely give free consultations and office visits to people who show up out of the blue or phone during lunch hour assuming that we will simply regard their intrusions as a social call. Even the consultations provided by lawyers for a token sum under the lawyer referral program reinforce the public’s view that a lawyer’s time is not equivalent to a money value. You cannot have a plumber come to your house and offer you half an hour of service for a fraction of what it is worth, but you assume you should be able to get it from a lawyer. After all, the lawyer is not

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The Verdict

SPRING 2018
Issue 156

theverdictmagazine.ca

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The purpose of *the Verdict* is to provide information and opinion that is timely, practical, and relevant. The editor welcomes your submissions. Statements and opinions expressed are not necessarily those of TLABC.

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the Verdict is published quarterly by

TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA
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Estimated readership: 6000
Registered with the National Library of Canada. ISSN No. 1185-8931
Publications Mail Agreement No. 40027828

Return undeliverable Canadian addresses to:

the Verdict, Circulation Department
1111 – 1100 Melville St.
Vancouver BC V6E 4A6
email: verdict@tlabc.org



FROM PAGE 4, EDITORIAL

really doing anything except talk, right?

Over the decades, many disciplines once regarded as trades have morphed into what we now regard as professions. In fact, no less than the plumber or the mechanic, the lawyer should be regarded as a tradesman, even today. Tradesmen use tools and apply them to physical objects. They can touch and feel the subjects of their labour.

Lawyers are the same. Despite public perceptions to the contrary, we lawyers are simply using different tools in a different way. But, tools they are, nevertheless. The lawyer earns his keep knowing what tool to take from his toolbox no less than the carpenter or the surgeon. He provides a practical and dedicated understanding of the precise tool to choose. As with the other trades, time, experience and practice help the lawyer journeyman evolve into a professional tradesman who has separated himself from the novice or the amateur. Talk may be an abstract tool to some, but it is every bit as real as the hammer or the bone saw.

But what of the adequacy of our tools? Some are tried and true, and although the law itself evolves slowly, the right fix for the right problem is mostly close at hand to the skilled lawyer. Again, this skill is real in result, not abstract. Powerful words in a judgment wield the force of a sledge hammer and the product of the lawyer's skills or failures is every bit as tangible as the newly framed house or the scars from open-heart surgery.

But a tradesman is only as good as his tools. Alarming, there is a large and growing void in the lawyer's toolbox today. The world in which lawyers work has become so complex over the past decade that there is a dangerous deficiency in the most potent tool a lawyer has, the identification of a remedy. It used to be that the most complicated part of pursuing a legal remedy was being certain to elect the right one before pursuing it. More and more, lawyers are being confronted with the reality that, even for already identified legal issues, there is no apparent remedy to elect. The lawyer's toolbox is becoming bereft of one of its most required tools.

For example, governments cannot keep up with legislation to govern the use and misuse of social media and the internet. Information and documents are increasingly hard to pin down and discover. Government agencies have many duplicate repositories of data and other information, making remedies for wrongs much more difficult to effectuate. Customers of large commercial enterprises such as banks or phone companies are thwarted in their efforts to remedy problems by the increasing complexities in such basic tasks as establishing communication with a real person, much less a real person with authority. Even choosing parties and jurisdictions can be an overwhelming task. Obfuscation provided by the world wide web and the cloud are often good *prima facie* smokescreens to help a sophisticated defendant to thwart a just claim against him.

I recently had a case of stolen identity so complex that even the best lawyers in town could not help with obtaining a remedy. My client had his identity usurped by a man with the same name who had a lengthy criminal record and committed periodic fraud

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- Mark Ferguson Davie, Davie & Associates

FROM PAGE 6, EDITORIAL

against my client by forging bank cheques, welfare applications and job applications. Every encounter with police led to my client being taken to jail for outstanding warrants. My client had no criminal record, but over the past ten years has spent multiple stints in police lockup. Every effort to correct the problem failed. The Vancouver Police provided a comfort letter to the client, but when he was stopped by Burnaby RCMP, they would not recognize it, and took him to jail. It turns out that the police agencies in Canada have at least nine databases in which my client may have been included. How do you plow through such hoary thickets to get relief for a client who is, in reality, the victim of "the system"? Forget the nine databases. What about the NSA, Echelon, and the growing number of meta-data miners taking information into "the cloud"? Where else is my poor client's misinformation being deposited? How do we find it all? How do we fix a destroyed life? We can take to the bank the fact that police agencies never completely accomplish the erasure of wrong and damaging information even when they are honestly trying to do it. It grows more and more apparent that the honest parties are confused, while the devious or paranoid ones control the source and the storage of the subject matter.

Information on all of us is amassed at a dizzying rate by entities mostly unknown to us. Data is dispensed, disseminated and sold to meta-data collators. The amount of data collected by these entities is reportedly expected to increase by 100 million times by 2025. When such information is not complete or correct, to whom do we turn to get relief from the tortious or criminal effects on our lives?

No wonder our toolboxes are quickly becoming obsolete and ineffective at providing us with the tools we need to practice our trade. I fear the day when the best advice a lawyer can give his client is, "forget about it, there is nothing we can do." The alarm bells ring loud with the warning that justice is becoming too expensive for the average citizen to access. Cost is one issue. But what happens when, notwithstanding the growing costs of litigation, the real barrier to justice becomes the total breakdown in the ability to obtain a just remedy, regardless of the cost of the process?

It may not be that far-fetched to imagine a day in the not-too-distant future when it will become impossible for the lawyers to provide the tools necessary to make the new-age wrongdoers accountable. It may well be that governments, their many duplicitous departments and agencies, and the ethereal way in which companies conduct their for-profit business of data collection and combine to effectively put the world of legal remedies out of reach of a lawyer's toolbox.

Before long, we may be
looking wistfully at the days when
the only thing we couldn't beat
was City Hall.