



Best Practices in Family Law by Jodi Wyman

All lawyers are bound by a Code of Conduct, which are rules and guidelines to set out ethical behavior, legal responsibilities and a standard of service lawyers should provide.

It can often be a difficult balancing act – trying to help the client with what they want, be honest and dignified in court matters, be civil to other lawyers, maintain personal integrity and not bring the administration of justice into disrepute.

In some areas of law the balancing act is more difficult than others. In the family law realm, the biggest problem is usually trying to manage the extreme emotions of both clients and the lawyers. Separations and divorces, custody fights, battles over limited funds, forcing a sale of family property, arguing over precious heirlooms – they are highly charged situations for anyone.

Every good lawyer in family law wants to try to keep the emotions under control while

helping their client through this difficult time. As well, lawyers and the legal system cannot ignore the reality that children become the innocent victims of heated battles between parents. With this in mind, a task force in British Columbia has recently suggested some best practice guidelines for family law lawyers. Their report was presented to the Law Society of British Columbia.

The guidelines suggest that lawyers should conduct themselves in a manner that is constructive, respectful and seeks to minimize conflict. They should encourage their clients to do likewise.

Lawyers have to be careful not to over-identify with their clients, or to get influenced by the emotions of the case. A lawyer has to stay objective to do a good job for their client, not just be an expensive cheerleader.

The guidelines suggest that lawyers avoid actions that have the sole purpose of bullying, delaying or hindering the opposing party, and should

avoid inflammatory language in written communications.

Lawyers should caution clients that many things involved in the end of a relationship, such as infidelity, are not relevant to most family law issues. Spending a lot of time focusing on those issues does not help the case or the client.

Clients should be aware, at all times, of the risks and costs of any proposed steps in the case, long and short term consequences of those steps, including consequences to the children.

The guidelines even go so far as to recommend lawyers advise their clients they must put their children's best interests before their own, and by not doing so, they may impact their children's well-being and their own case.

Lastly, the guidelines recommend that lawyers encourage clients to consider all available resources for resolving the dispute, in or out of court. More and more, the legal system is developing alternatives to family issues

going to court – mediation, collaborative practice, First Choice, judicially-assisted dispute resolution etc – and clients need to be aware of their options.

Most of the recommendations by the task force may seem like common sense, but it is a very real challenge to not get caught up in the emotion of family law. Sometimes in the heat of representing a client, common sense and good judgment can be compromised, and the children's best interests are forgotten. Some guidelines like these are a good reminder.