

*Loving Law*  
*vs.*  
*Secular Law*

a call for a spiritual reform  
of family law and the legal  
profession

by

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Commoners Publishing  
Ottawa, Canada  
2007

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Commoners' Publishing  
631 Tubman Cr.  
Ottawa, Canada K1V 8L6  
(613) 523-2444  
fax: (613) 260-0401  
commoners@rogers.com  
www.commonerspublishing.com

## Library and Archives Canada Cataloguing in Publication

Fanaian, Lagha, 1937-

Loving law vs. secular law : a call for reform of family law and the legal profession / Lagha Fanaian.

ISBN 978-0-88970-123-6

1. Domestic relations--Canada. 2. Religion and law--Canada. 3. Practice of law--Moral and ethical aspects--Canada. 4. Legal ethics--Canada.  
I. Title.

BL65.L33F35 2007

201<sup>7</sup>.7

C2007-903710-0

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# *Foreword*

**W**e are gradually losing the real family institution; the school where we learn what makes us human, what makes our life exciting and purposeful. A proactive legal system which makes profound education on family mandatory, to protect this institution, is the solution. Our soulless and reactive law is the underlying cause of many other social crises; but institution of the family is becoming its prime victim.

Our law and legal system follows adversarial market capitalism, as opposed to human family values. Consequently, it creates disunity, alienation and hostility, as opposed to unity and love, especially in the family. Man's spirituality, his 'higher self' and uniqueness is ignored by our soulless law and legal system.

By analyzing some fifty actual court cases, with the personal details disguised, this book illustrates what is missing in our legal system in general, and in family law in particular. The book proposes a proactive system for protecting family, to replace the soulless and reactive one we have now. The pilot project offered in this book gives a workable solution. It focuses on the family as an institution, but the principles herein can apply to other areas of law as well.

The reading of this book is recommended to all those who seek inner joy and excitement in their life. In particular it is recommended to all those who are intending to marry, are married, are experiencing problems in their married life, or who are divorcing. Most particularly, this book is recommended to family law practitioners, judges and politicians concerned about the family law system.

## *One: Finding a way around obstacles*

*“Family life is too intimate to be preserved by the spirit of justice. It can be sustained by a spirit of love which goes beyond justice.” —Reinhold Niebuhr*

### *What is the problem in Family Law?*

When I was young, in the rugged mountains near my hometown, I observed how a tiny stream of spring water, which had been persistently eroding the rocks over years, had found its way around all the huge boulders which had blocked its way. ‘Well, it is simply the function of the second law of thermodynamics’, you may say. But I learned about another law there, a lesson, i.e., nothing can block your right way if you work patiently and persistently.

Some fifty years later, I applied this lesson in my family law practice in Ottawa, Canada. I could eventually reverse a vicious cycle of malice and ill-feeling between my client Nancy, and her separated spouse Nel. It was reversed to a benevolent cycle. The intense fighting eventually changed to ‘exchanging favours’, which defused the tension between them completely. It couldn’t have happened without persistent try and re-try, over a year.

Nel and Nancy<sup>1</sup> were bracing for a costly court trial and long litigation against each other, over family properties, spousal support and many other issues. Their lawyers (I and Kim) had to exchange written materials, experts’ evidence, prepare for cross examination of witnesses, filing exhibits, court transcripts and so

on. These legal procedures could not discharge their anger and deep ill-feeling. In fact, these seemed to cause more ill-feeling and animosity. But these were not needed, because we could resolve the problems by the spirit of the law, as opposed to the soulless body of the law. The non-adversarial process I initiated to resolve their issues eventually worked, as it wakened their dormant consciences, their belief in an everlasting law, the spirit of the law, that connects all of us, i.e. love. (The full story of this case is detailed in Chapter 6.) This spiritual or loving law is what this book is all about.

### *What is lost in a spiritually-starved society*

#### ALARMING FIGURES OF FAMILY BREAKDOWN

There is one divorce for every two marriages, in the United States and Canada.<sup>2</sup> Study after study shows that parents' divorcing seriously harms the children, sometimes more seriously than one parent's death.<sup>3</sup> The harm to the children as a result of the broken family is not only psychological and financial. Children being cared for by only one parent have shown more frequent physical ailments. Speech defects and headaches are among many other health problems observed among these children.<sup>4</sup>

The number of households made of non-married people in US is now higher than households made of married couples.<sup>5</sup> Almost 40 percent of all the children born in US in 2005 were born out of the wedlock<sup>6</sup>, often living with only one parent, more likely the mother. The percentage of the same cohort in Canada had been 30%, for a little older period, but it shows that this percentage had doubled within ten years (1984-1994).<sup>7</sup> Increasing numbers of the children are becoming fatherless. Study shows that fatherlessness is tightly correlated with juvenile crime, school dropouts, teen pregnancy and drug abuse.<sup>8</sup> A study in Denmark shows that the less stable and less traditional the child's home is, the more likely is that the child will turn to homosexuality as an adult.<sup>9</sup> More of these saddening facts and figures will come in chapter 4 (alarming facts...). Parenting is also losing its effectiveness. Increasing number of children are left to paid caregivers, or left with TV, internet, video games and movies, having less time

to learn basic human values from their parents.

In short, the family institution is being attacked from all sides. Increasing rates of divorce, separation, fewer marriages, more common law relationships without commitments, infidelity, etc, show family distress. Our society is losing the home, the love cell for raising healthy children. This is a loss that our civilization and social order cannot afford.

This book points at the underlying cause of family crisis, i.e. a missing spirituality and real, or unconditional love, in general, and understanding the very purpose and function of the family institution, in particular. In fact, the family crisis is the ultimate result of “missing spirituality” in a much wider scope, in our laws and legal system and in our politics. Family appears as the prime victim of this ‘spirit hungry’ society. Marriage is increasingly seen as a commercial contract, a social contract for convenience of the parties involved, and nothing more. This book seeks a solution by reforming our law and legal systems applicable to family in particular. In the light of numerous actual court cases reported here, we find that there could be a workable solution to the family crisis.

### *What has spirituality to do with the law?*

What is spirituality?<sup>10</sup> A few words about spirituality here would help us knowing better its relation with the law as we discuss here. The spirituality we are talking about here, is a way of seeing the life and the world, a paradigm, a view of life which is not limited to our narrow sensual vision. From this paradigm, we view life much more than what is perceived by our physical senses and material objects. By this vision, we see ourselves greater than our body and our biological being. We perceive our connection to a greater whole. We find in ourselves our connection to the source of all power, all knowledge and the virtues. We see ourselves in others outside our biological self. We perceive unity in diversity. We realize that our life is much more than biological being, more than producing and consuming worldly goods, we perceive loving as the very core element of life and universe ; we see love as the “raison d’être” of everything. And

this understanding itself makes our life purposeful and our living enthusiastic.

This very understanding also leads us to perceive the spirit of law, which is the law of loving, which is ultimately unity and relatedness, as opposed to separateness and disunity, which we get from today's secular<sup>11</sup> law. Talking about the law of loving may appear more sentimental than real, but it is real. It is the understanding of law by our conscious mind as opposed to our unconscious mind which sees only the forms and not the spirit. At a level of consciousness the human race is reaching now, the law which divides and separates should become obsolete, undesirable, and a matter of the past.

By having spiritual view of life and the world, we can see beyond our immediate and circumstantial interests, we perceive everlasting and eternal interests and joys. I mean the Joy of being connected to others and being able to care for others; Joy of being a person trusted by all, joy of being honest, being graceful, being a caring person for our family, neighbours and others. These are what make our life purposeful, and gives us reason for living. The law can not be isolated from this spiritual understanding, rather, it can, and must act like signposts, leading us further to that understanding, and to our spiritual growth.

*Cry for soul:* As we will see in a separate chapter in this book, the secular law and legal system we have now, is losing the spirit of the law, it is losing its most intrinsic component. It is converting the law to a soulless tool. The body of the law is all about our rights and responsibilities in our daily life, whether contractual or statutory. The soul or spirit of the law is all about our human values, our care, love, respect and truthfulness and connectedness to others. It is about morality, ethics and civility. In our current secular legal system, these virtues and values have become alienated from the law which is becoming nothing but a soulless body.

This losing the soul and spirituality is not limited to the realm of law. Our social institutions, politics and economics are having the same fate. Emptiness, aimlessness and boredom has become the result. Real joy and enthusiasm is vanishing since there is

nothing to be excited and joyful about, there is no purpose, no meaning in life. After all, producing to consume can not make the life purposeful, meaningful and exciting. Consequently, hunger for spirituality has never been so serious than now. It is not only the law which needs its spirit, but individuals and the social institutions.<sup>12</sup>

In short, spirituality is all about our spiritual connection to each other, it is about love. Since both law and spirituality are dealing with our relations to each other, they cannot be unrelated. It is the co-relation of these two, law and spirituality, which enriches and completes both. Law would be trusted, believed and supported by the help of spirituality (conscience and faith of people) on one hand, and spirituality should be promoted by law, on the other. This co-relation will further enhance the spiritual growth of individuals as well as the society as a whole, on one hand, and enhance respect to the law and legal system on the other. Our too-much-secularized legal system has lost this co-relation and works too much to undermine this co-relation in the family.

### PEACE MAKING VS. FIGHT MAKING

As a result of depleting law from spirituality (by too much secularization of law), the law is becoming more often fight maker than peace maker, especially in the area of family law. As we will see in numerous cases in this book, the law, as it is practiced now, is quite often the destroyer of family relations. In its most grim form, the secular law and adversarial legal system has caused parents, children and siblings suing each other in the court of law. As we will see in this book and through the real cases, in family context, suing is not the solution, but the problem.

*New master:* As a result of losing its real spirit, our secularized legal system is becoming increasingly the slave of a new master, i.e., market capitalism. This master loves profit, not truth. In fact, this new master is the enemy of the spirit of the law, which is unity and love. It is the law's enemy because it promotes a harsh and brutal fight for profit. This new master threatens to commodify the legal profession, court trials and administration of justice<sup>13</sup>. It has already caused massive corporate corruption<sup>14</sup>,

widespread mismanagement and fraud in the public sector<sup>15</sup> and widespread victimization in the family court system. Spirituality, (love and faith) and human virtues (trust, honesty, personal integrity and so on ) are not loved by this new master, only skill and 'know how' to make profit. As it is illustrated in numerous actual family court cases in this book, the family is the most serious victim of this new master which is increasingly subverting our legal system.

**Leading, not following:** There is something inside every one of us, telling us that we are definitely more than simply a smarter animal. We are spiritual beings with spiritual needs, needs to transcend, to love and grow spiritually. Our laws and legal system could be the signposts or vehicles that could promote us to realize our real place. Our secular legal system we have now is the follower not leader; it is the follower of market capitalism, and consumerism. It promotes nothing but self-interest, competition to make more or to consume more. It is not elevating but dehumanizing us.<sup>16</sup> Our current law and legal system follows our sense of immediate (but, quite often harmful at the end) gratification, our immediate materialistic desires, at the expense of our everlasting joy and inner satisfaction.<sup>17</sup>

#### LAW & LOVE ARE INSEPARABLE

A hard look at law and human relations, specially in the area of family law, reveals the inseparability of law and love; one does not make much sense without the other. Law and love have some elements in common. Law is not entirely about having civil rights and freedoms; it is also about responsibility and duty. The same for love; it is care and grace, but it is also control and discipline. A confinement or restriction ordered by a judge can also be seen as love, if comes from a justice system which is in harmony with spirituality and love, and intends to heal, not punish. There is an urgent need for reconnecting law with love.<sup>18</sup> There is a practical way to start doing this, at least in family law, as I have proposed in the last chapter of this book.

**Paradox:** The relation of law with love may also appear paradoxical. We say that love is the soul of the law, but it may also be seen as the opposite of law. Law gets nourished and fed by

accuracy, absolute certainty and absolute rationality. In the eyes of law, things are either right or wrong, within the law or over the line, legal or illegal. If the act of A causes damage to B, A must compensate B. There is no justification for unrecoverable loss. Compared to the law, love could be quite irrational, unjustifiable, and even crazy, or insane. It may not look for equality and fairness, but grace and forgiveness. It does not punish, but cares to heal.

But in a more profound look, we see the harmony between them. If the law is not agreeable with our inner voice, or conscience and emotion, it will be resisted, no matter how democratically it has been legislated. The tendency to evade the law remains as long as the law is not loved. It is the harmony and interaction of both law and love which makes our social system humane, and the law observed without relying solely on enforcement measures.

***Tyranny of evidence:*** As a result of the legal system being isolated from spirituality, our justice, our judicial system is relying solely on objective evidence accepted under rigid statutes, rules of the court and judicial procedures concerning evidence. We will see in Chapter 3 how this insufficient (and sometimes misleading) objective evidence which is the only thing used for judging, leads to injustice. We will see through the examples, based on actual cases, in this book, how the adversarial system, relying solely on objective evidence (which is often tampered with, or fabricated, especially in family law), disrupts family relations. Quite often, it leads to fights between the spouses to destroy each other by all means, using objective evidence.

***The flaws in objectivity:*** The interconnection of all human interactions, conducts and misconducts of all of us in ordinary life can not be underestimated. The objectivity in the practice of law does underestimate this vital factor. The judge, or the lawyer, is taught to single out the facts which either support or oppose certain claims or accusation, and ignore other facts. In practice, they isolate the case from all emotional, cultural, social and spiritual factors which are not directly supporting or disproving the case. Anything that is not objectified would be

left out of their judgment and decisions. In our current judicial procedure, there is nothing but reasoning and objectivity. Heart, love, enthusiasm for spiritual unity and desire for civility, all are objectified or rejected. This overuse of objectivity in the search for justice quite often backfires, and results in injustice, (as we will see in our following chapters). Viewing law and spirituality as complementary would remove this flaw of objectivity and is a step to resolving the problem.

### *Real Justice is proactive, not reactive*

“What am I going to do now? Stealing?” My client Ben told me, coming without appointment to my law office. He was released from jail for his latest conviction. Ben had multiple criminal charges and convictions. His driver’s license was suspended. He wanted me to get his license back, complaining that he can’t continue working without it. I had seen him a few times, wandering aimlessly in the streets. The “Justice” done to Ben had reduced him to a bum.

Ben needed help urgently or could lose everything. I decided to change his life by evoking his conscience, which not only restored Ben’s life, but made him a dedicated father. (Please read the details in Chapter 2). By punishing Ben and “protecting” the public, the (secular) legal system had only reacted to Ben’s offences. It responded to an attack, to a wrong action by punishing him without making any attempt to find the root of the problem and remove the cause, to heal Ben who definitely needed treatment.

A reactive legal system, which is only the guardian of the status quo, is no longer the ideal legal system. We need a proactive legal system. We are no longer in the era of fortifying our houses to live securely, or making new criminal code offenses with harsher punishment to keep society safe and secure. We are in the era of finding, with great interest and passion, why should we need shielded, and fortified houses, and how we can explore the very underlying causes of crime or injustice, to eliminate them, not cover them up. In this book we have some real cases, and some proposed solutions.

***Healer not killer:*** One early morning Jina called me to say: “I do not like your brief response in hand written notes at the bottom of my five page letter to you, that you faxed back to me.” Her long letter was all about how she would proceed in court and the allegations that she would bring up against my client. Jina was the lawyer of my client’s wife.

Jina loved “pen battle”; She is not alone. Thousands of pages are written every day by litigants, lawyers of the parties to court battles, simply to crush their opponents, not by bomb or bullet, but pen. In fact, the rules of the courts and our legal system encourage them to make a fight, but a gentle fight, a civilized one. It says ‘kill, but gently’. In the law of jungle, might had the right. In our days, might is the knowledge of court rules, knowledge of law loopholes, and connections. What difference does it make? With the rules of a gentle fight we are saying that we like fighting with each other on this planet, like a game, but in order to perpetuate the game, we can’t kill, because then the game would be over! We need to fight gently by following certain rules, so that we can continue fighting!

The “law and justice in the light of love” rules out the fight as an option. It does not look for more subtle way of killing, but healing. In Chapter 3, through the real cases we will see how justice could be a healer.

***The glory of justice:*** Our justice system says “let’s try who is right and who is wrong, to punish the offender or wrongdoer.” There is no glory in this justice. The justice in the light of love requires more, as we will see in chapter 3 of this book. Justice in the light of love goes beyond the surface, beyond the objective evidence, and penetrates in the heart and soul of the offender or wrongdoer, to find the cause and to heal. It does not eliminate or isolate the offender or wrongdoer but enlighten him or her.

Justice in the light of love provides opportunity for a troubled person to regain his dignity and more. By injecting love, it makes him conscious and enlightened, even more enlightened than all those who never had any trouble with law in their lifetime. Justice in the light of love can do even more than restoring the status of offender and victim. It captures the incident of injustice as an op-

portunity to make a dedicated man out of the offender, dedicated to his community and society at large. It gives the opportunity, not only to the offender, but all those who are closely watching the exercise of justice, to awake their dormant conscience. (Some examples are given in chapter 3 of this book.)

### REAL JUSTICE IS CARING NOT CONDONING

"She is back with another shoplifting charge", Derek whispered in my ear, in the courtroom. He was talking about his wife, Tam, who had been my client for a previous shoplifting charge. In fact, it was her third one. The police had let her go for the first incident, which was for petty shoplifting. The judge discharged Tam for the second incident, based on my submission. Then she was back to court for a third one. Was this a justice in the light of love to let her go in the first incident? Of course not. Our justice system had been apathetic to Tam. She should not have been back to court if she was treated with real justice, i.e., love. She was not cared for, but her wrong action was tolerated and condoned. Love is not condoning. Justice in the light of love looks at the wrongdoer with open eyes, to care and find the underlying cause of the offence, as opposed to closed eyes, (as the blindfolded symbolic angel of justice).

Tam was not explored, not cared for. Her wounds were masked, not healed. So, the wound reopened. This is the consequence of the goal of our current justice system, which is still mostly retribution. Once again, we need to focus on the spirit of law, i.e., unity, relatedness, and love. Having that understanding of law, means having a justice system that heals, not kills.

There are growing number of lawyers, judges and writers who call for restorative justice, justice which aims at restoring the wrongdoer's relation with the society and with the victim, and compensate the victim. But what I am talking about in this book and through my practical cases, is more than restorative justice, it is a justice that wakes up the wrongdoers, captures the opportunity of the incident to explore and enlighten them, to have them flourish<sup>19</sup>. Our examples of real cases, as comes in Chapter 3 here, illustrate how this works.

## *Love is healing, not a lullaby*

“It is unfortunate that you should lose the custody of your children...” Said the presiding judge to my client Lucille as she was escorted back to jail from the courtroom, weeping. She lost all three of her children to government wardship. She was a bad mother. The judge’s words were nothing new to Lucille. It was one of tens of lectures, words of counseling and advice she had been hearing in her five years of troublesome motherhood. All those counseling and lectures sounded like a lullaby to her. They did not change Lucille a bit. Lucille needed a ‘wake up’, not a lullaby. A “special” care and love could do the job of healing Lucille, not stereotyped, pre-arranged, preplanned, mass-produced advice and lectures. (See the full story in Chapter 5) The key to success in our justice system is the measures which can wake up offenders’ conscience. In Chapter 5 we will see how this ‘wake up’ can be exercised.

Recidivism is a major problem, not just in a particular country but almost everywhere. All corrective measures known to the authorities, such as psychiatric therapy and counseling are being more or less exercised with inmates and offenders before their release. The results, as we realize by recidivism rates, have been disappointing. They do not go far enough, they do not wake up offender’s conscience. Although they appear to be tailored for the specific case and person, they are still stereotyped as we see in forthcoming actual cases. The real care and love never fails in waking up the offenders’ conscience, as we see in Chapter 5.

The message that heals: Tim had been placed in a “halfway house” after he was released from jail, which gave him a chance to do what he loved -- woodwork. But he got a new criminal charge of breaching the order, by stepping out of the halfway house. I met him for his new criminal charge, which was almost certainly going to put him behind bars again. He was emotionally unstable, crying, out of control, missing his young children. He appeared to me a truly miserable guy, both mentally and socially. With a new charge of breaching the order, he could fall into much deeper mental misery. I decided to put some pro bono time for Tim, something more than just representing him as his defense

counsel. I found that being separated from his family, three very young children, had taken everything from him, including the basic sense of self-preservation. Self-destructive action was the reason for his new breach of order in leaving the halfway house. I worked hard to get his ex-wife's consent to give him access to his children. Then I found a contractor to pay him for his woodwork. Things gradually started to work for Tim, to become himself again. He was getting real care and attention this time, not simply blame and words of stereotyped counseling.

Within a period of three months, he gradually changed from a miserable and depressed man to a super-active young fellow, who could do everything but cause further legal problems. He got the message by the genuine care he received. Tim has called me numerous times in the past five years since that incident, not for asking legal help, but to tell me about his achievements in his social life. A single act of real care could do to Tim what thousands of words of counseling and advice couldn't.

### *The Adversarial "solution" is the problem*

"Tina was crazy for her dad's jeep. That is why she did this to me." This was what my client Maria told me, highly emotional and disturbed. Maria and her separated husband were involved in a court battle over division of the family properties after their separation. In order to help her dad's case, (and get the promised jeep), Tina, 18, who was living with her dad, secretly removed some documents from her mother's home. Her dad's lawyer wanted these documents to use in court against Maria. This action intensified the fight. Maria became so agitated that she was no longer herself. She passed away two years later, leaving Tina with the memory that she caused or hastened the death of her mother. This could torment her for the rest of her life. (See the details in chapter 6).

This happened as a result of our current adversarial legal system. Our legal system encourages parties to a conflict to use all sorts of evidence against each other, to win at all costs. Under this system, the heaviest toll is paid by both spouses involved in the dispute, who, in real sense, both would be losers at the end.

### “DO YOU PLAY HARD BALL?”

“Do you play hard ball?” Norm asked me one day in his telephone call. In his own words, he wanted to crush Amy, his separated wife, who was not giving up her claims for custody of their four young children. Norm had made his decision to ‘crush his wife’, and my effort to defuse the tension without ‘crushing’ the wife did not satisfy him. Eventually, we both agreed that he should retain another lawyer. Three years later, I met him in a party. He was still involved in the battle, admitting that he had used almost half of his assets to pay for legal costs, yet his drive for showing his power and playing hard ball had not diminished. The social worker who had to meet with Norm’s children, had horrible stories to tell about the terrible impact of the fight on the children. Parties’ show of power had, not only consumed their assets, but also their children. (Please see more about this case in Chapter 6.) There should be no room for “show of power” and playing hardball in family courts. Family disputes are not commercial disputes. We will see more in this book about why the adversarial system must be abolished in resolving family issues.

*A practical solution:* There are some urgent steps to be taken to save families (specially children) from the tyranny of the adversarial system in family law. The last chapter of this book is allocated to my proposed ‘Family Protection Plan’, (FPP). The plan proposed in this book is workable. It is a fact that our legal system suffers from being totally aloof from spirituality in general. But the harm of this system in the area of family law is too harsh to be tolerated any longer. The FPP calls for profound education about the meaning of the family institution, and exploration rather than judgment. It calls for collaboration of lawyers, as opposed to litigation, to search for a fair agreement satisfactory to both parties, when cohabitation is no longer feasible and advisable.

## Two: *The missing soul of law*

*“The purpose of human law is to lead men to virtue, not suddenly but gradually.” — St. Thomas Aquinas*

### THE BODY OF THE LAW

One cold December day, Gab called my office saying, “In my absence, Cathy has loaded up in a truck all the household items, everything, even my bed, and moved out.” Gab and Cathy’s marriage had run into serious trouble only a few months after their wedding. Here is why:

Shortly before their wedding, Gab had asked me to make a prenuptial agreement for him and Cathy. He had some real estate properties which he wanted to keep out of family property. He admitted that he had not disclosed to Cathy everything about his assets and his real intention for a prenuptial agreement. I explained to Gab that I can draw an agreement which provides for a complete separation regime of properties, where the spouses will keep their property for their own as if they never married. I also warned Gab that offering such an agreement to Cathy is itself a red flag, a seed of disunity which may lead to an early divorce. I had to tell him that, although a prenuptial agreement would be a binding agreement in his relation with Cathy, a real union of him and his new wife are viable and durable only if it is based on unconditional mutual trust.

The agreement was made and Gab gave it to his wife to take to her lawyer for advice and execution. After some negotiation over minor issues, Cathy had signed the agreement at her lawyer’s office, but had been shocked after she had noticed Gab’s

intention of keeping his assets separate from hers.

Immediately after wedding, the agreement gave birth to some serious disagreements. It was no wonder to me. In fact, by this prenuptial, what really Gab was saying to Cathy was 'I love you Cathy, but I love my money more!' Gab's prenuptial not only killed the relationship and the marriage, but led to a long battle in the court over many household items, money and business. The duration of litigation in court was three times longer than their brief legal union.

Relying on legal union in the absence of love, led to alienation of this couple, who were otherwise nice to each other; they were from the same ethnic, cultural and religious background.

The words of law devoid of its soul are not a relationship maker. Gab, as we saw above, failed to make a durable relation by a contract, which had no soul but only words; the soul of law is mutual trust, openness and honesty. Gab's prenuptial had no soul.

Toola's prenuptial agreement, as opposed to that of Gab, had both body and soul. Toola, coming from Greece as a post graduate student, demanded a similar service from me. She wanted a prenuptial agreement to marry Harold, a law student from the US. I prepared the draft of the agreement. She insisted that I meet Harold who was coming to meet her in Ottawa. I told her that he should contact his own lawyer. She again insisted, saying that it was also Harold's wish to see me.

Based on my experience of Gab's case, I let them know all about the down side of such a prenuptial. They appeared to pay no serious attention to the terms of the agreement, but to each other. Both appeared intelligent, and above all, deeply in love! "Let her have this agreement", Harold said. "...She simply wants to make sure I am serious in this marriage. I will do anything to assure her." Toola nodded, yet she preferred to have the agreement completed. Toola explained to me that it is her family back in Greece and her tradition that require some assurance from the husband that he does not walk away and break the marriage contract. Otherwise, she had no doubt about Harold's love and loyalty. I told Harold to take the agreement to his lawyer and

sign if he wants to, after his lawyer's advice. "It is ok. I sign it now, I will also sign again at my attorney's office, just to satisfy Toola." Harold said.

Two years later, I happened to see Toola and Harold in a store with their little girl. "Harold and I are sponsoring my parents from Greece" Toola said. Well, obviously there had been real 'love' and not only soulless words of 'law' or a contract of cohabitation between them.

The contracts, the law governing the relations in both of above cases were of the same nature, but one with and the other without linkage to love, to the soul of law. By seeing the soul of law, and not just its letter, we find spirituality, love and law in harmony. The law devoid of its soul could be misused or misinterpreted, sometimes absurdly<sup>20</sup>.

### MISUSE OF THE LAW: TOOLS OF CIVILITY USED FOR HOSTILITY

Mina came to me to help her getting divorce from her husband, Mike, who had been out of the country for a long time. She disclosed to me that Mike had been travelling back and forth to Mexico. She had found from some mails that accidentally fell into her hand, that Mike had received some money from a Mexican woman in exchange of bringing her to Canada as his wife. She revealed that Mike had been doing this business secretly for sometimes. He had apparently been successful in misusing a Canadian immigration law that allows Canadians to sponsor a non-Canadian spouse. It is not too difficult to find loopholes, to abuse, to misuse and misinterpret the law. The system, in this particular case, the immigration authorities in charge, will normally check the wording of the law, to make sure all the required documents, (marriage certificate, IDs, financial requirements, etc.) are provided, while the soul of the law might be completely missed. The spirit of law, in this particular case is the reunion of real spouses, not the enrichment of human smugglers and law abusers.

This problem of misusing the law is not limited to immigration law, as above example. It is not limited to any particular area of law. It is caused by the particular 'secular mind set' which does

not see the soul of the law. A good example is the way the rules of procedures of the courts are seen by many lawyers with this mind set. These rules are made to make litigation, the judicial procedure very 'civil', they are rules of civility. But in practice, they have been notoriously misused. Those litigants who want to sabotage and frustrate the genuine claims of their opponents, find the rules and their misinterpretation of the rules a good excuse to block their opponents' way. The rules which are the tools for civility are being used as the tools for hostility, just because the soul of the law is missed. Study shows that incivility among the lawyers in their law practice is rising.<sup>21</sup> It is not because the lawyers are becoming more unethical or immoral. Rather, it is the adversary nature of our legal system that indirectly promotes incivility, and runs contrary to the spirit of law. We will see more about the adversarial system in the following chapters.

#### THE LIMITS OF OBJECTIVE EVIDENCE:

One early morning, I was called to appear in the courthouse for my client Joe. His wife Lin told me that the night before he had been handcuffed on front of his 5 years old daughter, Jes, and escorted to the police station.

"He refused to let me in his study room to talk to him. I had to talk to him...", said Lin. "...he pushed me against the door and moved me back to the kitchen". Then she called the police. He was charged for domestic assault. Lin begged me to help getting her husband back to her. "I don't want to lose him. He is my everything" she said with a desperate voice.

The outcome of this incident was too sad. Jo decided to abandon his wife. I had known Jo long before this incident. He was adamant in his decisions, otherwise, he appeared to be a very pleasant family man.

We were in court house some three months later for the final disposition of the matter. "I have lost interest in this marriage", Jo told me on front of his crying wife and little Jes outside the courtroom, right after the judge convicted him. It was a serious emotional moment for this family. The wife was the one who got depressed most by the conviction, seeing that Jo was leaving her for good.

In my submission just before reading his decision, I told the judge that conviction and criminal record could be a blow to this family union. I said that Jo simply wanted his wife not to disturb him in his work, and lost his temper. It had been just a flash of anger. So much was done against Jo, I argued, arresting him, handcuffing, removing him from his home, were enough consequences for a quick and impulsive reaction to his wife's interruption.

The judge basically agreed with me. I could see in his face the trouble he appeared to have in convicting him. But there was evidence of assault and Jo's admission before him. The fact that our system exclusively relies on objective evidence and cut and dried rules, left no choice for the judge. Furthermore, the docket of the courtroom was a long one. The time allocated to this "guilty plea" case was very limited. The judge had to move to the next waiting case; he couldn't be more thoughtful about this case.

***Truth in its entirety:*** Jo admitted that he had pushed back Lin. He removed her from his study room by force. There was undeniable evidence that assault had been committed, and conviction had to follow. Relying solely exclusively on objective evidence, (which is what we are doing now), must be blamed for missing the spirit of the law, missing the truth in its entirety. It is much easier to judge by what we see and hear, without going beyond the objects, looking at numerous other spiritual, social, emotional and moral factors which are also part of our life, part of the whole truth, (as in above case). The bleeding heart of five year old Jes was also the part of the picture, that the judge ignored absolutely. The court goes by the wording of Criminal Code, i.e. the definition of assault and the objective evidence. Result: separating Lin from his loved ones, leaving Jes with her broken heart, missing the spirit of the law, going against the ultimate purpose of the law, which is unity, love and relatedness.

By looking only for tangible evidence, detectable by our physical senses, we only see the surface. If we pay attention to our intuition, or inner voice, our conscience, we will see far beyond what material evidence can show us. We will see the truth

in its entirety, much clearer and complete than what our eyes see and our ears hear. In our current legal system, the immense spiritual being of man, his 'higher self, intuition, connectedness to the main source of knowledge and virtue, and our potential for greater consciousness, all are ignored in the process of justice. For the legal system, it is only the objective evidence that matters.

We are sacrificing the truth for workability and practicality (and even sometimes profitability), by limiting our search for truth to objective evidence. Consequently, truth of a case is one thing and the outcome of the court trial of a case is quite another. A corporation may win a case of tax evasion by notorious corporate lawyers and objective evidence, while the real truth about tax evasion in that case remains unsolved.

The message we get from our conscience and intuition in an incident like above case of Jo and Lin could be quite different from what we get from the letters and wordings of the criminal code, and objective evidence. This narrow and tunnel vision given by objective evidence quite often misleads us. It is because not all we have in our human relations are detectable by our physical senses and by objects. They can not be verified, measured and judged by the same tools, reasoning and arguments that we use for science. They can be detected and verified by our insight, our wisdom, our conscience and intuition.

***Judges and lawyers face a serious dilemma:*** i.e., should the judge rule strictly according to the secular law (relying solely on objective evidence) at the risk of becoming an 'amoral computer', when he or she knows that the ruling is immoral or inhumane? Should a lawyer defend the client while turning a blind eye to the immoral and unethical consequences that might result from such a defence?

*Eye vs. Cane; Seer vs. blind:* In our discussion about finding the truth in human relations, Rumi's analogy gives us a much clearer picture. In his analogy given in his book some 700 years ago, using solely logic and external evidence for searching the truth is like a blind man using a cane to find his way, (i.e. blind for not having insight, intuition and inspiration). 'How can a cane make a blind a seer?' he asks. It is with the [the help of]

insight and internal evidence, as opposed to external evidence alone, that we can see the whole truth. In his magnificent poem, Rumi further writes that when the blind man is not led by the real seer, but by his cane, [not only he loses the sight of the truth], he would use the cane as a weapon to fight, (which is exactly what happens in our adversarial court system today). So, the cane which is used contrary to its purpose does not lead, but rather misleads; it does not heal, but kills the blind man.

Rumi advises that, since the cane, (the legal and logical arguments ) is used to fight, better to break it to pieces and throw them away. Isolating the “object” or objectifying the issues in search for truth and investigating them in isolation from spiritual insight, wisdom, intuition, hunches and conscience, can give misleading results. It casts doubt over our whole findings and makes us diffident and insecure about our outcome, as if we are standing on shaky and unstable ground. But when we see (as opposed to fumbling by the cane) the truth in its entirety, we are as firm and stable as a mountain. And that is when we use our spiritual insight, as opposed to the cane, (the external evidence only) like the blind man, as in Rumi’s analogy.<sup>22</sup>

### SPIRITUAL LAW: A SIGNPOST FOR LOVING WORLD

One morning, Chin came to my office, seriously agitated, seeking my advice for an urgent matter. He had to meet the police detective. The night before he had been beaten up by Ron, his 18 year old son.

After his arrival to Canada as an immigrant, Chin, formerly a dentist, faced a serious problem in finding a job. He couldn’t obtain a license to practice his profession here. Eventually, Chin got a bright idea for make a living: ‘buy and sell used household items!’ He needed no license, no investment and no experience for this business. He thought of his son Ron as his helper in running the business.

Unlike his father, Ron had adjusted quite well with his new neighbourhood. He was delighted of having access to so many entertainments that he never had back in his native land. He had no time left for helping his dad. Chin’s continuous pressure on Ron to go helping him backfired, it made Ron angry and upset.

This tension between father and son got to its peak when Chin criticized Ron for his new relationship with his girlfriend on front of both of them.

And then that late night, Chin came home extremely tired, depressed and frustrated. He saw Ron watching video with his girlfriend. He blamed Ron again for his 'buy & sell' failure. Shortly after, Ron, being humiliated on front of his girlfriend, entered his dad's bedroom, punched his head, kicked him several times. Then police was called. It was a nightmare for Chin.

Our legal system's response to Ron's action was section 266 of Criminal Code of Canada, 'assault'. But the incident was far more serious than an assault by one person against another. Yet the legal system's reaction to this incident was only to convict Ron.

A desired law and legal system would operate as a vehicle for leading us to our cultural and spiritual growth. This system would take much greater responsibility in responding to Ron's case than simply convicting him. It would consider this incident as a social disease that must be healed before spreading. A proactive law and legal system could reverse the situation, enhancing love and unity in families that are having similar problems.

Ron could have been changed to a good young man, not by a reactive legal system, (which only convicted him) but a proactive one. He could have been a family saver, a youth who could make glory for himself and family in such a difficult time by doing more for his father and family than expected. He could act like 'Yen' in the following case.

"I need to come to you for an affidavit for my father" Yen called me to say one early morning. I knew her father who was separated some years ago from his wife. I knew her father was unemployed. I also knew that Yen and her younger brother were raised mainly by their mother.

Yen made an affidavit to assure her father's landlord that she would be fully responsible for her dad's rent. She came the next year to repeat the same affidavit, and again, for the third year. "Your dad definitely appreciates this, wouldn't he?" I told Yen. "I suppose, but it doesn't matter, neither his (lack of) care for me in

past. I love helping him. It is my best wish to help him more.”

Yen then told me that, if she could, she would not even let her father know that she was paying his rent, so that he does not feel bad about it.

By convicting Ron for assault and handing over to him a criminal record, we can not make Yen out of Ron, for sure. To the contrary, we may quite likely make him a real criminal. But a proactive law, a legal system based on spirituality and love, can make Ron as good as Yen, perhaps better.

### THE POWER OF PROMOTION & ENCOURAGEMENT

Who made Vienna the city of music? Franz Schubert, Lucio Vivaldi, Franz Joseph Hayden, Wolfgang Mozart and Ludwig Van Beethoven all flourished in Vienna, within a 100 year period (around 1720 to 1820). This spring of music was unprecedented and has never been repeated. The world civilization got a unique gift by this (one time) spring of music. This was precisely because composers were admired, praised and promoted by the emperor as well as public. That high level of spiritual support for music and honouring composers never existed before and never was given again, and we never had great composers comparable to those from the Vienna's spring of music.

Philosophy never flourished again as it did around certain period of time in Athens, This was the period that philosophers were praised and honoured. They were the brains of the society. They had the leaders and emperors under their influence. Alexander the Great was but a humble student of Aristotle. This golden period for philosophy was a short one and ended as soon as the attention, promotion and support for philosophy vanished. After that, the world never experienced such an array of philosophers with the same high level of insight as Socrates, Aristotle and Plato.

In the Persian language, you will find the collection of some of the richest poetry ever produced on this planet. Those who are familiar with the poetry of Hafez, Sadi, Khayyam and Rumi in Persian or its translations, can hardly believe how man's mind can create such a great work. This was again as a result of great appreciation, promotion and encouragement given to poets at

the time. For some rather long period of time, the Persian kings had a love affair with poetry. They had their own court poet (as the Austrian emperors had their court composer). They used to hold special ceremonies attended by the poets reciting their poetry. They used to select the best poets, reward them with great prizes. The flourishing of poetry vanished as the royal support and admiration was gone.

What do we support and promote today? “Take this sofa bed and don’t pay for one full year” sounds a familiar message to everybody. With the type of promotion we have, no wonder we have ten or hundred types of soft drink brands and another hundred types of chips and cookies! Not a word about the things we really need, the things that make us more human.

The law, (a proactive law) can play the same role (as Austrian emperors our Persian kings had for music and poetry), to promote genuine love, honesty, civility and family bonds. Legislation in this direction would not be undemocratic. After all, who would dislike and vote against promoting family integrity and human timeless values?

### LAW AND THE ULTIMATE PURPOSE OF LIFE:

Great Socrates didn’t like the unexamined life. If he was with us today, observing our (secular) laws and legal system, he would perhaps add “a purposeless law and legal system is not worth having”.

You may say the law and legal system has a purpose; it is peace and order. But peace and order is a means to a purpose, not the purpose itself. Otherwise the graveyard, which is in absolute peace and order, should have been our final purpose! The real ultimate goal of life is growing socially and individually, to become more a real human being, as opposed to simply a “smarter being”. Our secular law doesn’t care for real human being, but smarter being -- smarter to make profit and consume. It serves not unity and love, but market capitalism, and competition for making profit.

In fact, the ever-increasing force of market system has dominated everything, all other forces and systems, including law and legal system, our courts, trials, litigations, family court,

advocacy and else. As David Loy writes, market capitalism and consumerism has reduced humanity to a source of labour to be used, along with natural resources, for the insatiable desire of consumption<sup>23</sup>. Those virtues, moral values and spiritual needs are becoming less and less important. The final goal has become profit making and consuming more which, instead of satisfying us and gives us happiness, forces us to consume even more, with no end in sight, no real satisfaction.

The concept of law can not be seen isolated from the final purpose of life, unless we see life as purposeless. Realizing growth as the purpose of life, gives us a clear idea of how the law should be seen. By growth I mean developing our human faculties with respect to our non-material needs, such as altruism, viewing unity of mankind and sense of inter-relatedness of mankind, breaking our egoistic enclave and so on. Keeping order and the status quo can't be the ultimate goal of law and the legal system of human beings. Peace and order is the goal of social systems of termites, ants and bees.

***Civic religion:*** Having a clear ultimate goal for life per se, is a necessity for our spiritual health. We see many fewer suicides, mental disorders, and psychopaths among people who have faith, and firm beliefs in purposeful, non-adversarial religions. The faith in a purposeful life, a life which challenges people to achieve spiritual growth, to be spiritually greater, could be a common and basic ideology, an ideology that we all share, regardless of our cultural, geographical, political or religious background. We all passionately believe in a glory of contributing to each other's social and spiritual achievements to the extent of sacrificing our own interests. We all believe in this glory; we feel the pride in doing this, no matter who we are, religious, theist or atheist. We may call this common belief that we all share, civil religion, which can unite followers of all religions, of all ideologies and schools of thought. We all do get passionate, emotional and proud by sacrifice and loving others. This is the universal law, which needs to be reminded, fostered and nurtured by our man made laws, in all aspects of life.

When the law deals exclusively with our material needs and

serves only the economic and social relations in society, we must ask ourselves in what sense the basic *raison d'être* of such laws is at all different from the instinctual law that regulates a beehive or a community of termites. Our laws must foster and nurture the moral and transcendental nature of human beings which challenges us to go beyond the baser level of just managing contractual and legal relations with others. The human being possesses a faculty that understands, appreciates and gives and takes love for the sake of love. Our current law and legal system seriously undervalues this faculty and does not encourage such love.

We will see in the coming chapters of this book how our family law needs serious and urgent change to become the upholder as opposed to destroyer of family unions, by having purposeful laws, as we discussed above. But it is not only family law that needs change. Insurance law and litigation, commercial law in general, criminal law, civil law in general, all of these areas of law could have a new soul, by having purposeful, loving law.

### LOVE AND GRACE: THE MISSING LINK:

The linkage of law with love and grace which forms part of the teachings of the Abrahamic religions (Judaism, Christianity and Islam) has been practically abandoned in the practice of secular law. In the pre-secular law era, the belief in the Divine Covenant was the bond that connected the individual and society to God. In this pact between God and humanity, the Law was to be joyfully obeyed in a spirit of celebration since it was a way of expressing love and gratitude to the Creator for His guidance. In this view, the individual complied joyfully with the law, even if it was perceived as going against personal interests or seemed difficult to accomplish. A pious individual would observe fasting, for example, in order to gain the inner satisfaction of complying with the Covenant. No law enforcement measures were required since the observance of the law meant that God's love and grace would be vouchsafed to the believer. In a religious context, consequently, the law has "mystical" dimensions which are a cause of rejoicing.<sup>24</sup>

We do well to remind ourselves what the power of this loving relationship could do for the spontaneous and joyful observance

of secular law. This loving dynamic needs to be revived and its power translated into a motivator for the ready observance and enforcement of the law.

***Good manager, poor director:*** Until we realize everlasting, encompassing and universal love as the ultimate goal of all we do, we will have a problem. We will have a serious problem in making our legal system more humane, in stopping crime, even with all those 'would be' corrective measures. What our legal system is currently doing is 'good management' but 'poor direction'. We are making the most modern *legal* superhighways, but in a wrong direction. All the sophisticated rules of court, technical procedures for providing reliable evidence, techniques for discovery of truth, law enforcement measures and correction and reformatory measures, all are at work. But they are not directed to the right destination, which must be unity and love. In fact, they are serving disunity and alienation, all because we have lost the sight of the spirit of law, we have grabbed its soulless body, we have lost direction.

## *Three: Justice in the light of love*

*“Let your thoughts be positive for they will become your words.  
Let your words be positive for they will become your actions.  
Let your actions be positive for they will become your values.  
Let your values be positive for they will become your destiny.”*

— Mahatma Gandhi

### *What does love have to do with justice<sup>25</sup>?*

“Is it true that you locked your wife in the washroom when she got mad at you for being drunk again?” I asked my client Ben. He was charged with assault and confinement of his wife. Ben had multiple charges and convictions previously, and had been arrested for drinking & driving twice in the past. He was caught driving while his licence was suspended. He had no job, no source of income, and no prospect of finding a job. His future was terribly bleak. He was short of everything, except criminal charges and convictions. He was ordered not to see his wife and children.

The repeated court appearance, bail hearing, numerous arrest and incarceration had eroded Ben’s self-esteem to zero.

As his defence counsel, there was not much I could do to clean up his mess, his long criminal record. “Justice” had been done. But I could see that there was no glory in what the justice system had done to him.

“When are you going to get my driver’s licence back?” Ben said, walking into my office unexpectedly, about two weeks after

his final court appearance.

It was a weird question. He admitted that he did drive while his licence was suspended and was caught drunk, and he got a third conviction just a short while ago. A day before he walked in my office, I had seen him hovering aimlessly nearby the courthouse. Another time, my colleague had seen him at our parking area, sitting on the ground, drinking. I viewed his behaviour as symptoms of a mental crisis.

So, that day when he walked in my office without appointment, instead of showing him the door, I gave him an appointment to see me the following day. I decided to put a little pro bono time on his matter.

"I know you have two young kids and wife, and I know that you are not supposed to see them as ordered by the judge." I told Ben, "...and you have no job, and you can't drive." After some 1½ hours asking questions and listening to his answers, I found a solution for him. Ben told me that he had a brief work experience in welding business some 20 years ago. I had Ross, a good client of mine since some years ago. Ross had a successful welding business. Ross agreed, not only to hire Ben, but to provide him transport to go to work and back, as long as Ben was not allowed to drive.

But Ben wasn't fully relieved from his mental crisis yet. We started working on his reunion with his family by contacting his wife and the family court.

Ben started showing significant improvement. He, who had been ordered at one time not to be with his children, became very actively involved in his children's live. Later, as a sole parent of his children (his wife passed away of stroke), he was admired by everybody in his community for being an extraordinarily good father.

Ben had quite a normal conscience to control himself, to say 'no' to his immediate but unconscious temptation. In those past incidents, he could have controlled himself not to drive while drinking or confining his wife. But for some reason, this conscience had become dormant and drowsy at those times, and gave way to temptation. Why?

There could be more than one reason. But the main one, as I believe, had been lack of love and care. He regained his fully active and alert conscience by a little care, a genuine care he received and that gradually revived his conscience. He is now one of the most careful drivers in town, not so much because of being convicted and punished, but a genuine care.

Justice in the absence of love had made a bum out of Ben. Justice in the light of love restored him to himself, a great citizen, and a great father.

What makes us proud? I look back to the outcome of many family cases I have had in the family courts. I ask myself, what really I, court, judge and the legal system have accomplished that we all can be proud of? What is the glory in the administration of justice?

Let's remind ourselves of what Rumi said: Let the beauty you love, be what you do.<sup>26</sup> Was a conviction or a restraining order against Ben something the justice system could be proud of as an accomplishment? I believe each unfortunate criminal occurrence gives our justice system an opportunity to be duly captured. It gives an opportunity not only to restore the situation, but to make the offender a devoted citizen, fully committed to his/her community, a good example for all to follow. Ben went through an ordeal and came out as real Ben, not the one who was enslaved by his evil temptations. A justice system in the light of love can do the same to other offenders like Ben.

### NO GLORY IN RETRIBUTIVE JUSTICE, BUT IN LOVE & CARE:

It is not only the victim of a criminal offence who needs healing. The offender is in fact more in need of help. The current law and justice is retributive, and nothing more. In its best performance, it tries to punish the offender and compensate the loss or heal the injury of the victim. In the word of Fania Davis, our justice system is "...inflicting more harm to pay for the original harm". He also says "...justice should repair not replicate harm."<sup>27</sup>

The law and justice in the light of love and spirituality aims at man's soul to explore and find the right way to remove the

problem at its root. We could become more than what we are by receiving real care and love. This is exactly why some offenders who are treated and healed by love and care, would become more than a normal citizen, (like Ben, in above case), some of them become heroes, by sacrificing, by dedicating themselves for others. They do heroic services for their community and neighbours. This can realize in ‘justice in the light of love’, or humanized justice. But retributive justice may turn them to a parasite of the community at most, if not more dangerous offender.

Love and care is the key in this humanized justice. Love, as a therapy to heal the wound, rectifies the error and rehabilitate both the offender and the victim.

Real love is in fact overlapping with justice. Love says ‘love your neighbour like yourself, (neighbour = whoever you encounter). This translates into equality and justice. It might appear as utopian and unrealistic. But the real examples we have in this book would tell us that it works; we can have a humanized justice that focuses on healing by love and care.

#### LOVE IS THE OPPOSITE OF CONDONING:

“I have to see you today. It is urgent”, said Julie who sounded as if she was in serious trouble. I knew Julie for a previous incident of shoplifting of a small item, that she pleaded guilty for. In that case, the judge gave her only a short probation, even though she already had a shoplifting record.

“What is up this time Julie?” I asked her as she walked in my office. She was silent for a moment. She gradually disclosed what happened again: that police had charged her for a new shoplifting incident. So, Julie had learned nothing from the previous charges and conviction. It wasn’t only because she took advantage of the justice system’s leniency. It was because she was denied real care.

Justice in the light of love is not leniency, or condoning, not even close to it. It is all about care, care to heal, genuine love to a person who cries for help by his/her wrong action. This care may be in a form of painful therapy and discipline, but it is still love, real love. The minute that Julie gives in to her temptation to possess an attractive skirt without paying for it, she is crying

for help. By letting her go free, we simply ignore her cry for care. We let her down, we leave her to her own fate.

I had to give a long lecture to Julie, because I noticed that she had not realized the seriousness of her problem. I had the fear that, for her, the 'business was as usual' after all those previous shoplifting incidents. I had the fear that she would do it again, no matter what the outcome of this time's court proceedings would be, jail sentence or extensive counselling.<sup>28</sup> Julie's internal immunity system against temptation for theft was totally shattered. She needed care, very serious care. This care could mean hardship for her, as medical care may sometimes require painful treatments. This care could cause her more pain and hardship than punishment such as incarceration, but would follow with healing, not further misery and not recidivism, as quite likely may be in similar cases.

I remember a very soft hearted judge many years ago when I was an articling law student. One morning, within less than 20 minutes, he gave absolute discharge to three persons who pleaded guilty for their shoplifting charges. He said he granted discharge to the first one and he would not deny that to other two who had similar cases. He told them that he would give them a chance to correct themselves. With all due respect to that judge, my experience proved me that these nice words do not go far, they would not heal. As in Julie's case above, the theft means that the temptation has broken her internal controls, her conscience, just as a virus breaks the immune system of the human body. Forgiveness alone won't kill this virus, neither punishment, a genuine care, a passionate love does. Love and care means effort, means hard work, means tedious and time consuming work. In a way, love is the opposite of condoning.

In a legal system which spirituality, love and care are at work, neither punishment nor condoning alone would be the answer to injustice or infraction of law. The paradigm of spirituality oriented legal system would be different; it would see man differently. It visualises Julie or Ben, in our above examples, not as criminal offenders, but as individuals who are spiritually desperate and miserable. Both punishment and condoning would make

them even more miserable and desperate spiritually.

Condoning is nothing more than masking a crack, or bandaging a wound without proper healing medication. Punishment is, in its basic form, nothing more than a reminder. None of these responses to an offence or wrong action is real justice, a justice worth having for human-beings. The wound remains bleeding, the crack in the offender's self-control system gets wider. This is because no action is taken to address the need, which is care and love.

### LOVE CAN BE IMPARTIAL BUT NOT INDIFFERENT.

My client Mo was charged for uttering threat to Su, a municipal staff worker. "I could no longer tolerate the way she looked at me, and her insulting attitude", Mo told me in at my office.

Mo had a few phone calls and interactions with Su, asking for her service. Apparently, Su had not been paying good attention to him. She was not empathetic; she, as Mo believed, had been racially motivated. Mo could not bear this and lost his temper. At her desk, in fifth floor of the municipality high-rise, Mo yelled at Su, saying "I would throw you out of the window."

In the court trial, my cross examination of Su and her witnesses revealed nothing, no evidence of Su's misconduct or provocative or discriminatory behaviour. However, she acted nothing more than what a machine does to an applicant, with preprogrammed answers. Su admitted that Mo was very polite, pleasant and friendly and calm at the beginning and through the most part of the interaction.

Mo was known to me as my client since years ago. We developed friendly relations, visiting each other's family at our home. He has always been very warm and affectionate in his social contacts. In his life, being indifferent and cold to others has no place. It couldn't make sense to Mo, that you have human contact with another person but remain cold and indifferent, unless you hate or disrespect that person for some reasons. That is why he found Su's cold reaction unfriendly, even hostile. He took Su's cold response to his warm and friendly greeting an insult to him.

Did Su intend to disrespect, ignore, hate or insult Mo? Pos-

sibly not. But she acted as if she did. Throughout his few phone calls and personal interaction with Su, Mo found Su inhuman, not paying attention, not showing care, but simply responding like a voice machine. She showed no empathy, no effort to understand Mo's urgent need, at the time that Mo desperately needed help.

Su believed she was just doing her job, as the rules of her job description required her to do. But she was not. Because she was reducing her function from an empathetic real human to an apathetic robot. This led Mo to believe (perhaps wrongly) that she was racially biased, and ignored him or hated him.

The (secular) justice system that handled Mo's case could not understand what Mo had been through, because the issue was not material, but spiritual. And the secular system has no room for non-material issues, and non-material evidence. Care and attention was denied to Mo, but justice system said, "it is not my business, I don't care." It only could see the uttering of threat, i.e., 'throwing Su out of the window', (although it was simply some empty words). Consequently, Mo was found guilty of uttering a threat, and Su was found a dutiful staff, who did her job, who followed the rules of her job description.

**Mo reader vs. rule reader:** There are thousands, perhaps millions like Mo, who have a hard time to tolerate cold and indifferent attitude of others. Their problem is that they are human. They are not, and do not want to give up their warm feelings in genuine human relations for the sake of living in rush rush and run run and jostle and shove others in the crowded cities, to do their business. They get delighted by getting warm response to their warm greeting, and terribly upset and even angry by a cold and apathetic response. In our above-mentioned case, it is Su who should have learned and realized this very human virtue, to pay warm and genuine attention, instead of being just the speaker for the rules of her job. It is Su who should elevate herself from a rule reader to Mo reader. It is Su who should find who is Mo in particular and what he wants, instead of stereotyping and labeling him as a customer, and performing her role pursuant to her job description.

In the course of our daily business, whether as a City clerk like Su or court clerk or court officer, lawyer, judge, sheriff, chief executive officer of a corporation, bank manager or else, and generally in any position of serving public, we become unconsciously the slaves of rules and standard procedures. We no longer serve the public, but the rules. You may say this is needed to treat everybody impartially and equally. But impartiality and equal treatment does not require indifference and apathy. We don't need to be callous, void of human feelings and passionless, to be impartial.

I can't over-emphasize this very critical flaw in our system, mainly the legal system, (although it applies more or less to all administrations). If we remain indifferent, we are less than human. We can be impartial, but not indifferent to others we encounter in one way or another. A spiritual legal system is not indifferent, as a secular systems tends to be.

Showing care and special attention to everyone who comes to our justice system is not against impartiality. It is simply more humane justice to be empathetic to those who are in need, in crisis or in trouble with law. This indifference and apathy in the name of 'impartiality and equality' could be blamed for variety of our social problems, ranging from vandalism to mischief and even terrorism.

### REAL JUSTICE HAS NO LOSER: Heal, not deal

"Is there anything you could do for me to see my son once again?" My client Dave asked me. He was sobbing loudly outside the courtroom, after the judge read his order. The order banned Dave from seeing his son.

"No, I am sorry". I answered. The chance of reversing the order by appeal was close to zero. Just about ½ hour earlier, his son Blen, 13 ½, testified against Dave in the witness stand as a witness for prosecutor, in favour of his mother Shiv. In fact, there was no problem at all between Dave and his son, but between Dave and his wife.

Justice should not have a loser. Dave lost big in this "justice". He was left alone, isolated from his family, as if the legal system was telling him "go to hell". He was left alone with this huge

emotional disaster, only as a result of domestic incidents of commotion and shoving, between Dave and his wife Shiv.

Dave and Shiv were refugees from their homeland because of religious intolerance. Shiv's religion was different from that of Dave. It was she who belonged to a persecuted minority in their home country. Yet it was him who was persecuted harshly because of marrying a woman of a different faith. But they had remained firmly bound to each other, at the cost of losing their extended families, up to that recent incident prior to the court trial. They had raised two lovely children.

They entered Canada, a land that welcomes people from all faith, race and culture. After arrival, one could expect nothing but more solidarity of this family. Yet, they ended up splitting in a most unpleasant way. What went wrong?

No one can tell without knowing exactly what happened between the spouses in all the details. But what is important here to mention is that, bringing the son to testify against the father is not like other testimony. It is a crucial, deadly strike to the most fundamental link between a human-being and his closest person. It could and should have been avoided.

I remember the day that Dave and Shiv celebrated their reunion when they arrived to Canada, about three years before the above-mentioned court incident. Shiv had come to Canada earlier, and Dave joined her here a year after. It was a joyful reunion for kids and parents. About three years later, there was some argument and commotion between Dave and Shiv. Justice system intervened at the cost of complete destruction of the family union and alienation of father from his children. Things could have taking absolutely a different course if it was a "justice, in the light of love". It could restore and even strengthen family relations.

***Family maker vs. family breaker:*** Dave's case made me ponder deeply our secular justice system once again. We rushed in, separating religion and all its attributions, from law and court. Consequently, we left behind all those values associated with the faith, such as the holiness of family union and unconditional love. The secular system is saying: "Yes, you can talk about "love

your neighbour, ...' but only in your church, temple, mosque or synagogue, not in the court of law'. (We will see more about secular law in chapter 4). It simply ignores the holiness of family union, a 'love cell' in the body of our society. No matter what purpose the testimony of a son against his father would serve, it can not justify its devastating consequences, its destructive wave that shakes the very foundation of the holiest union. Justice cannot have precedence over love. It is the other way around, justice must pave the way for love.

*Find the culprit:* The question is, who or what is really behind this so-called dehumanized justice? Secularization itself which appears to be the one to be blamed is a function of another factor, consumerism. Consumerism is not simply a policy or economic system, it is, as David Loy calls it, a religion and its god is market<sup>29</sup>. Our courts and legal system are not saved from the domination of this religion. That is why we find our court trial more like a TV show (as in the case of trial of O.J. Simpson that we referred to earlier), and our witnesses lie under oath in courts and there is fabricated evidence in support of bogus claims (especially in insurance law). In consumerist religion, anything which leads to profit is justified (or should be seen as justified, if necessary, by evidence which is created by money). Our legal system, our dehumanized justice would be human only when man's value is determined by his trustworthiness and not by the god of consumerism, i.e., market.

### EXPLORING, NOT JUDGING

Unfinished story! I was called to the courthouse for my client Jeff who was arrested for the 3rd time within a year. He was charged again for breaching his undertaking not to go to the residence of his ex-wife, Nora..

"This time, I was not even at her home." Jeff told me when I met him at the cell block, handcuffed. "I was only driving in her neighbourhood, when police arrived."

After trial, Jeff was found guilty of assault and a series of breaches of undertaking. He was ordered to go to his probation officer, Al. Al started having some interviews. with Jeff.

"Jeff has not finished with his ex-wife yet," Al told me after

his second interview with Jeff. "...that is why he keeps breaching the undertaking. He wants to tell her those facts that he (as he believes) has not told her yet." Jeff's mind was conditioned in a way that he could not see anything wrong with going back to his ex-wife, to explain all the facts arising from their relations. He still needed to go to her to justify what he did, and why, and prove to her that she was wrong. He could not rest without telling these things to her.

My review of marriage history of Jeff and Nora revealed an important fact; they had always had a love and hate pattern. Good, genuine care and attention to this family could have used this syndrome to build a healthy family relation. Instead, a series of "lifeless" and stereotyped counseling and court confrontations, legal jargon between the prosecutor and defense counsel resulted in intensifying ill-feeling and malice between them, beyond repair.

In cases like that of Jeff, (or Dave and Shiv, as we had earlier) what purpose would judgment and conviction serve? Court judgment in most disputes, and in particular, domestic disputes, is not a solution. In fact, it creates new problems. Mutual trust and communication between Shiv and Dave or Jeff and Nora, had been damaged, and needed repair, not judgment. Restoring mutual trust by healthy and direct communication heals the wounds, the ailing relations. It is not done by convictions and criminal records. Then Dave and Shiv would be both winners, rather than bringing their son to testify against each other, and spreading the disease of ill-feeling even further to the children and entire family, making all of them losers.

What does a final judgment absolutely devoid of love and spirituality do in a legal system? In civil matters all it does is find a winner and a loser. Result: more animosity, hostility and alienation. In criminal matters, all the administration of justice does is find a breach of the law and penalize the offender. In most cases, the offender becomes more antisocial after serving the jail terms.

Justice in the light of love is disinterested in win and loss. It has one final goal: healing. It may require restriction, hardship

and pain against one party or both. But its aim is not retaliation, punishment, and not even retribution, but healing. And healing, even when dealing with murder, is possible, because no human being is born without conscience and a sense of reason and justice. He or she may temporarily lose it but it can be restored. The purpose of justice should be to restore that balance, that sense of conscience and reason.

## *Four: Secular Law & family relations*

*“The conditions surrounding the family surround the nation. The happenings in the family are the happenings in the life of the nation.”*  
— Bahai’i writings

### *Secular law & Spirituality*

#### MATRIMONIAL “BUSINESS”

Max walked in my office with a new stack of bills, invoices and receipts. “I want you to add these as evidence of what I have paid for family expenses,” he told me. There were all sorts of invoices, receipt of payments, including used air tickets for honeymoon travel, hotel bill, special wedding cake invoice, etc. In a heated fight over equalization of family property, Max and his separated wife Mona had not missed adding a single item to add to their list of claims. Who paid for gasoline? Who paid the telephone bills, the groceries, Max, or Mona? They were everything to each other but a real spouse. They had been married only nine months, then this ugly fight.

I could not blame Max for his way of seeing law and marriage. He was my client and expected my help for his claims. But I also did not blame his attitude. that has been the way everybody around him were seeing our secular law, specially secular family law. It was not surprising he couldn’t see differently. The mindset of secular family law and family court, is more or less like that

of Max, and tends to sweep up clients into this way of thinking. They see marriage as a contract like any business contract. The soul was lost in Max's marriage, leaving its body void of love, compassion, generosity and sacrifice. Seeing marriage as any other business contract was not the invention of Max and Mona, but the outcome of secular law and secular legal system, over so many years.

What had taken the full attention of Max was not Mona, but monitoring 'who pays for what' and 'who uses what' at home, even at a wedding party! and honeymoon! Mona wasn't seeing marriage any better than Max.

***Vicious contest:*** What had been going on since Max and Mona's wedding was a contest to see who can be smarter, who can be sneakier, to save more, to hide better her/his private savings. This vicious contest had started as early as the date they ordered for wedding cake, and was continuing all the way up until they separated and even after. In fact, as we were approaching our court date for Max, the stack of invoices and receipts were getting fatter and fatter. Shouldn't it be a contest for who can surprise the other with a greater gift? Or who can dedicate herself / himself more for the common cause of the family?

Upon my request to avoid confrontation in the court and stop being adversaries, we had a few meetings with Mona's lawyer to find a friendly solution. But Mona had been advised by her parents not to negotiate. The damage to the family union was already done, beyond repair, and had spread to the extended families of both parties.

The problem is in the root of secular legal system, or secular mind set, and not in procedures and not even in any particular law. It suppresses man's ideals for glorious achievements beyond immediate material attractions and interests. It suppresses man's passion for transcending materialism. It smothers his dignity. It completely ignores one major need of all of us, i.e., spiritual growth.

The secular law and legal system is disinterested in spirituality and those higher human values without which the society finds itself moving toward a dead end. As Alexander Solzhenitsyn said

at the beginning of his speech at Harvard University:

“Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralysing man’s noblest impulse.”<sup>30</sup>

### UNDERSTANDING SECULAR LAW

The more widely accepted meaning of secular is “non-religious” or “non-sectarian.” The latter meaning, “non-sectarian,” is perhaps more agreeable to most law-makers and judges. The concept of being “non-religious” may flow from the belief that secularization does not lie in the realm of faith, but in the realm of facts, which, as we will see later in this chapter, is wrong. Faith is inseparable from law.

What is quite often (and wrongly) understood is that the word “secular” is the antonym of religion. If we accept this understanding as being true, we implicitly deny any benefits that come from religion, benefits such as the practice of moral and spiritual virtues and faith in God. The view of secularization that excludes religion may be counter-productive, not only for the protection of religious freedom itself, but also because of the legitimate concern that such an approach will discourage the cultivation of such civic virtues as honesty, reliability, trustworthiness, sacrifice, love and compassion and virtually all other foundational value norms found in the great world’s religions.

The real issue is not the separation of religion from the State or the exclusion of religious authorities from our law-making apparatus. The problem lies in a pervasive secular mind set, i.e. excluding metaphysics (in the classical sense of explaining or studying being or reality), morality and spirituality from the realm of law.<sup>31</sup>

Spirituality, not religion: It is spirituality that is missing, not religion, in its traditional context. By spirituality I mean the natural evolving of man’s consciousness. This evolving is happening at the present time at a global level and has been going on for thousands of years. Loving others, finding ourselves spiritually related to each other and to the universe are the ultimate outcomes of this spiritual evolvment. Secular law is miserably unsuitable for our spiritual evolution, since it promotes duality

and adversarial confrontation.

The problem is not the separation of law from religion. It is the misconception that spirituality has no place in the realm of law. All the actual cases I have referred to in this chapter and other chapters of this book are plainly telling us how serious a misconception this is.

In a secular system that is devoid of faith, morality and spirituality, the legal system rewards those who use technical loopholes in the laws for their own selfish interests, a practice that may qualify as immoral and unethical. This moral malpractice implicitly discourages the cultivation of virtue and the appearance of the Good Samaritans and honest citizens who would otherwise arise among us.

## THE OATH CRISIS

***Oath crisis:*** Among the victims of secularization process are the fundamental notions of ‘faith’ and ‘trust’ which are central to an understanding and practice of both law and justice. Without the observance of faith and trust, the whole foundation of the law is shaken. Indications already exist that many witnesses in court do not believe in the integrity of their oath enough to tell the truth.

The evidence given by witnesses under oath is the very backbone of the administration of justice. Judges may incarcerate someone for life based on the evidence given under oath. Family court judges may, and often do, limit or end a parents contact with their children based on such evidence. Yet the secular law and the administration of justice have no scientific tools, no real power to strengthen this backbone which is showing serious signs of degeneration. Swearing an oath to tell the truth is simply beyond the realm of logic, reason and science. It is a matter of faith and trust.

***Story teller:*** “What would you suggest to be my most suitable story in the Refugee Board?” Rom told me in his first (and last) meeting with me. He was a refugee claimant in Canada. Rom decided to change his lawyer after our first interview, and I was relieved. He was expecting me, as his lawyer, to tell him what he should say under oath in the Refugee Board hearing about

his fear of persecution in his country, to be accepted as a refugee in Canada. He was surprised when I told him “You should tell what exactly happened, and I would help you getting the protection of Canada’s Immigration and Refugee Protection Act, if you qualify”. He said he had friends who had been accepted as refugees and, they were not the authors of their own refugee stories. (Apparently some so-called immigration consultants had given this impression to refugee claimants.) His expectation was that a lawyer should tell him what story he should repeat for his refugee case to get accepted. When he was leaving, I read his way of looking at me as implying “what type of a lawyer are you, if you can’t tell me my refugee story?”

Rom was not the only client that I lost for the same reason. Soon, I became known as a hopeless lawyer to other refugee claimants who were seeking legal help for their case.

The testimony under oath, whether in court of law or administrative board, refugee board or labour board, or landlord tenant tribunals, is becoming simply a joke. The administration of justice is currently experiencing a crisis in the credibility of testimony given in the courts. How reliable is the evidence given by witnesses under oath, whether in criminal or civil matters? Serious doubts have been cast over the credibility of the witnesses’ promise to tell the truth under oath or by affirmation. Doubt about the credibility of the statements of witnesses becomes a serious matter simply because a strong belief in the moral commitment to tell the truth is no longer viewed as being necessary for legal deliberations. Another serious concern is that the present generation who have been raised in a secular society feel less and less constrained by moral commitments. What can be done to have witnesses keep their oath to tell the truth?<sup>32</sup>

### SECULAR LAW LEADS TO SHOW TRIALS

For the same reasons, because of a narrow approach to secularization, the administration of justice may lead to a show trial in the literal sense of the word, instead of the meting out of real justice. No library visit is required to inform us about the outcome of the well-known murder trial of O.J. Simpson to realize how U.S. justice can be a “Justice show,”<sup>33</sup> with a record high

viewer audience. On the surface, these types of trials appear to be civilized and highly professional, entertaining and orderly. But when a harder look is taken, the sad reality emerges. The result of the “show trial” approach to justice has been that individual law-abiding citizens are steadily losing faith and trust in the legal system. This reaction in turn translates into law enforcement problems, perjury, and the meaningless swearing in of witnesses. The final result is the eventual total breakdown of trust in the law courts. For, if lawyers lie, how can the court system expect clients to tell the truth?

In a New Brunswick family court a judge told father Steve Osborne that he was awarding sole custody to Steve’s ex-wife although she told lies in court, but according to the judge, they were “small lies”. Steve, who ended up picketing the courts protesting these comments (“Lies OK here”) and being charged with criminal libel, went on to lead the family law protest group Fathers 4 Justice in Canada. But if judges condone lying, and most judges will admit in private how much lying goes on in family courts, how can we expect family law clients to respect and obey family court rulings?

*Faith, integral part of law:* The law dictates what is right and wrong. This very fact makes “faith” an integral part of law. Law, justice and core beliefs, or the faith tradition held by a people, are very much correlated concepts. Law must agree with a people’s belief and value system in order to be respected, without having recourse to an external force. The widespread looting that occurred in New York, in July 1977 following a massive power failure, demonstrates the negative effects that a lack of faith in justice will produce. No amount of law enforcement was able to stop those individuals who, under cover of darkness, felt free to break the law. Similar looting occurred in the racial rioting in Rodney King’s case in Los Angeles in 1992 and in hurricane Katrina’s flooding of New Orleans in 2005, once again confirming that no law enforcement can fill up the vacuum of individual’s conscience and faith..

## FAMILY, VICTIM OF THE SECULAR APPROACH

An emotional back stab: One early September morning, Rob

came to my office, very depressed, with a bundle of court documents served to him by his wife's lawyer. I knew young Rob and his wealthy parents very well. He and his bride appeared a great match for each other. But now, Barb, Rob's wife, has nothing to say to Rob but blaming him for all misfortunes. Barb's claims in her court application appeared outrageous to Rob. He said they were living just as two lovers, and shared everything and treated each other as one soul in two bodies. How could only a brief argument between them lead to this court action and all these claims? What suddenly blew away all that loving relations? We discovered the answer after learning about Barb's lawyer, and her influence on Barb.

A brief argument had become a turning point in relations between Barb and Rob, just because it was used by a third person (the lawyer) who had an exclusively secular mind set. "Well, Barb, Rob is wealthy, if you separate, you get more than if you live with him...." This type of statements, or similar and more harmful ones, had nurtured the seed of suspicion and mistrust, leading to a vicious circle. This could have been prevented but not in a secular family law system as we see in this case.

We proposed mediation to the wife, and we were quite confident of its success. The parties had been raised in a small religious community where almost everybody knew Rob and Barb. Some had very close friendship with both of them. But Barb's lawyer insisted on court rules and court procedure, and refused mediation.

In the courtroom, I asked the judge to use his authority, calling on Barb and her lawyer to agree with mediation. But judge, sympathizing with my cause, yet failed to do that since he had to go by the secular rules of our secular system. "I have no power to force Barb to go to mediation.", the judge told me. A family could have been saved, the mud slinging and shelling each other could have stopped by going to mediation. But secular family law system has no such agenda of preventing domestic fight and promoting loving relations.

To the contrary, it implicitly helps and facilitates fights, claims, counterclaims, restraining orders, garnishment, exclusive

possession of matrimonial home, and so on, as long as one party, even one of the lawyers, wishes so. Is it inevitable that greed or insecurity of one party or a materialistic, adversarial lawyer should destroy love and marriage? I believe not. But we must recognize that the adversarial legal system throws a large shadow, and that many cases are exacerbated in the shadow of adversarial law. At the same time, education, care, mediation and collaboration are discouraged by the system's bias towards conflict.

Essentially, if one side wants out, or to corner the family's assets, or get sole custody or wants to fight, the system enforces that right to fight over the right of the non-adversarial partner to try to save the family, to share parenting of the children, or to mediate a solution.

Barb's court application took a much harsher course after my client Rob got into a revenge mood. The escalation of retaliation and counter attack dragged on, while legal bills soaring. Parties spent thousands of dollars and months of litigation to deal with their claims, something that could have been resolved amicably at its early stage by a one hour mediation.

Here is the heart of the problem; secular law in principle, sees marriage as a commercial contract. In a commercial contract that leads to a dispute and court action, the worst thing that may happen to you is a judgment against you, paying certain amount of money and walk away from the trouble. There may be some financial loss, but that is all. In marriage, the scars of being sued and maligned by one you trusted, you mingled with spiritually and physically, is similar to a back stab to your soul, which likely never completely heals. The secular legal system does not recognize the emotional damage inherent in its adversarial processes. Spiritual needs and emotional pains are not in the vocabulary of secular legal system.

Rob and Barb would never be able to forget what they did to each other. This would be a memory which neither one of them would be happy to remember. There was no real winners in this grim game, except perhaps the lawyers, financially. Rob and Barb were losers, both in the short and long run. I would argue that any lawyer who engages in this kind of exploitative

legal attack and counter-attack does great damage to his or her soul. No human can do this at work and then go home to family and act as a loving member. The skills and training for success in adversarial law are precisely the opposite of those for success in the family.

#### FAMILY BREAKDOWN AND ITS CONSEQUENCES

The following facts are clear evidence that the family institution is in serious trouble, and as result of that, the growing number of adolescents are losing their mental health. The problem will remain and get worse, unless our secular law and legal system changes to become the protector and promoter of the family.

In 2005, out of 4.1 million babies born in the United States, 37 percent were from unmarried couples.<sup>34</sup> The number of unmarried cohabiting couples in US has soared from 200,000 in 1970 to 1.7 million in 2005.<sup>35</sup> In Canada, the number of the children born out of the wedlock is also on the rise. In this country, within 10 years (1985-1995), the percentage of the children born to unmarried mother had gone up from 16% to almost 30%.<sup>36</sup>

Another saddening fact is that, every year, younger and younger children are raised by a lone parent. Statistic Canada shows that, in 1991-92, the number of the children who lived in lone-parent homes by the age of 2, had been 56% more than the same in 1983-84.<sup>37</sup> That means every year, younger and younger children are experiencing the family breakdown.

In practice, lone parent overwhelmingly means children being raised without their fathers. Nearly 4 of every 10 children in US are being raised without their fathers. 60 percent of the rapists and 75 percent of adolescent charged with murder were raised without their fathers. Children who are being raised by one parent (usually mother) are more likely to fail in school and require more psychiatric treatment, or commit suicide as adolescents.<sup>38</sup> The children from unmarried, separated and divorced parents are at higher risk of suicidal behaviour.<sup>39</sup>

In 1950, three-quarters of American households were married couples. In 2005, only 49.7 percent of US 111 million households were made of married couples. So, married couples are in

minority for the first time in US.<sup>40</sup> Marriage is on decline. The 'no fault' divorce laws enacted all over US and Canada, made the divorce easier and more attractive than ever before. The "do it yourself" divorce package available on the Internet makes it even more convenient by eliminating the need for a lawyer to act for divorce. Although it has become a quick relief of spouses from abusive marriages, no fault divorce has in general weakened the family institution. It has given the impression to the public that marriage is not an important matter.

Many people believe that the domestic violence laws both in Canada and US which encourages the wives to abuse the "abuse" word in domestic law and plunder family assets are also to be blamed for family breakdown.

*Divorce is on the rise.* In the 1960s, the divorce rate was about 5% in the US. In 2001, the annual divorce rate was 4.1 per thousand population in the US. The marriage rate was 8.2 per thousand in that same year. In Canada, the rate is about the same. Canada Statistics gives 70,828 as number of divorce and 145,048 as number of marriage in the year 2003.<sup>41</sup> So, there is roughly one divorce for every two marriages both in Canada and US. In US, 43% of marriages end up in separation or divorce within 15 years of the marriage. In Canada the divorce rate for first marriages is about 42% and the divorce rate for second marriages is about 60%.

## FAMILY BREAKDOWN AROUND THE WORLD

The family breakdown and decline of marriage is not just the problem of white North Americans. The percentage of broken family and single female-headed families percentage is much higher among African-Americans. 45% of the children in black homes live with their mother only. The comparable figure for Hispanics is 22% and for whites 13.7%.<sup>42</sup> US Census Bureau shows that almost 70% of the black women in US are not living with a spouse. And as the Middletown Journal in Ohio, US writes, "Experts say blacks are most likely to divorce and least likely to marry."<sup>43</sup>

It is interesting to know that it is not only the Western part of the world that experiences the rise of divorce. In the year

2006, in the port city of Jeddah, in the traditional and religious country of Saudi Arabia, divorce figures have shown a 60 percent rise over the last two years.<sup>44</sup> Generally, the report from Saudi Arabia shows that the divorce in that country is on the rise.<sup>45</sup> This could be as a result of Western style of life spreading all over the world. It indicates the devaluation of the family. It shows a lack of understanding of the spiritual concept, the value and role of the family in bringing forth younger generations.

**Poor parenting:** Apart from the family breakdown problem, there is the growing concern about parents failing to do real parenting. Fewer mothers are sacrificing careers and dedicating their time to raising their children. Higher numbers of children are raised by babysitters and daycare workers, thus experiencing less parental love. They are raised in their parents' absence. How could you expect a permanent bond between parents and children to be made by a series of child "caregivers" who get paid for their services, like any worker? These "care-givers" change every year or so, as kids move from day care to kindergarten, to schools, to other replaceable workers.<sup>46</sup> Only parents are long term and irreplaceable, and thus, are the only true caregivers.

**New anti-family force:** there is a new force that separate further children from their parents, even when parents are living with their children. It is the technology, which is getting cheaper and easier to access, every day. Quiet often, children spend more time with their TV, DVD, VCR, or cell phone than they do with their parents. There is rarely something in TV or video to promote family bound. To the contrary, it is often something unethical, immoral and antisocial. There is a contest going on among video game makers and TV program producers to produce more entertaining programs, those with action and violent scenes. Children are addicted by these technologies to seek more and more action. Anything with less action is labelled as 'boring'. No one can deny the harmful effects of these entertaining programs which have taken the role of parenting. The time given to those video games and violent TV programs are the times that used to be for family gathering, family discussion, learning about love, morality and human values.

***Healing the ailing system:*** Fred was my youngest client. He was only 17 and he already had become a father. “Cathy has taken the baby from me. She is not a qualified mother.” Fred said. In fact, my investigation revealed that Cathy, also 17, did not have the baby with her either. The baby was taken by the Children’s Aid Society (CAS), the private organization in Ontario mandated and funded by the government to investigate and act on such matters.

I contacted CAS agent Ms. Smith to find out how I can help Fred to have or at least visit his child. She informed me that there was no way to find who had been the child’s father unless by DNA test. She said that Fred was not the only man who had been associating with Cathy. My further interview with Fred revealed that his real intention of having the child was to be entitled to the government Child Allowance, as the sole parent. Fred, himself a child, knew little about the responsibility he was asking to have for the child, i.e., being a sole parent. But he knew very well the power of the money he would receive from the government if he got the child.

In the secular system alienated from all human virtues, spirituality and love, Fred’s issue was simply a legal issue. It had to be resolved by establishing his fatherhood by DNA test, and then dealing with his entitlement, as he was claiming, mainly, child allowance. But to a legal system conscious and responsive to love and family, spirituality and human virtues, the issue could be terribly serious, much more than Fred’s fatherhood test, and his monetary entitlement. Under what type of parents would that newborn baby be protected and what could these parents teach the baby and how would they, themselves children, raise their child? Could we, members of the same society as Fred and Cathy remain indifferent and disinterested after knowing Fred’s case? Every one of us will be feeling the pain, the sadness of this way of parenthood. No human being with God-given conscience could watch indifferently to how his race is falling back to a pre-historic life. By the way, intervention of CAS and providing paid foster parents for Fred & Cathy’s baby, is far from a real solution. It is not healing, but masking the wound.

Fred's real problem was not a fatherhood test or child allowance entitlement. His problem was his wrong paradigm of life in general, and of family in particular. He was seeking relief under the secular law. He was knocking at the wrong door. His dilemma, i.e., missing the real meaning of family and parenthood, is what should concern all of us. Our secular system does not reflect this human concern we all share. It simply reacts repulsively to problems similar to that of Fred, i.e., tranquilizes the pain. It does not heal the wound. It does not move proactively to make Fred and Cathy aware of their immense spiritual capacity, especially at their age, to grow. It does not move to utilize their untapped potential to become two loving parents, taking full responsibility to raise their child. Child Allowance, and foster parent allowance, if not given and received as part of a loving and healing spirituality, is simply a secular bandaid over an infected and painful wound.

We need not only to heal this particular wound of premature parenthood, but to heal our secular system. The proposed plan in the last chapter of this book could be a pilot project to start this healing, a first in bringing loving and healing to family law. We need to heal urgently our ailing legal system by making it conscious of our spiritual needs, of our ultimate purpose of life, of our need for unconditional love. The secular legal system is not responsive to our society which is becoming increasingly conscious of the need for unconditional love and spirituality.

*We are meant to transcend reason... to love.* We are meant to transcend, to grow far beyond what is conceivable by science and by human reason. The secular law has little to contribute to this spiritual growth and our need for transcendence. Spiritual growth requires effort and discipline; it is a painstaking work which runs counter to the sensual and superficial pleasure-loving propensity of human beings which is part of our animal nature. Only a legal system that supports ennobling moral values and spiritual growth is capable of encouraging a human being to make these difficult, but much-needed efforts. This is particularly true in our modern era in which religious institutions have practically lost their grip as a social and spiritual force.

*What is missing is not handed-down religion:* In this discussion, it is essential to take a fresh look at our understanding of the phenomenon of religion. In the largest sense, religion is a world view, a way of understanding the world. But what often comes to mind by the word ‘religion’, especially in its relation to the law, is a package of beliefs that individuals or societies have inherited from their parents. More often than not, these beliefs remain unexamined and unquestioned and are simply handed down to the next generation. As Dr. Scott Peck writes, this type of religion may strike us as being simply a collection of “inherently irrational ideas that serve to enchain people’s minds and oppress their instincts toward mental growth.”<sup>47</sup> But it is not this essentially negative view of religion that is missing from the secular world. It is a belief in the ultimate purpose of life.<sup>48</sup> This is what must have a linkage with law, not a sealed-off, unexamined package made of rigid ideas, called religion.

*In summary:* The problems that have been created by too much secularization of the law can be addressed and resolved without going back to a pre-secular era of religious fundamentalism. Modern democratic societies have liberated law and politics from dogmatism, religious intolerance, superstition, religious discrimination, theocratic forms of government, sectarian conflicts and oppressive religious decrees. This liberalization process would seem to be irreversible. However, the secularization process in western civilization has also weakened, inhibited or neglected spirituality in general, that is, spiritual growth and the human dignity that, inter alia, distinguishes us from other forms of life on this planet.

The courts and other civil authorities who act on behalf of the secular society and within the administration of justice, have largely taken the position that promoting spirituality, human virtues, morality and loving and caring for others is the business of the family and religious and charitable institutions who are free to promote such values. But the practical result from such an approach has been ‘the ‘rule of the stronger’ (la loi du plus fort).

The “rule of the stronger” is the natural outcome of a secular

adversarial system. We must ask ourselves, in such a climate, whether or not we have really advanced since the time of pre-literate societies when men ruled by 'the law of the jungle.' By ignoring the positive effects of both moral teaching and spirituality, we have done nothing but to have replaced the "law of jungle" with "the rule of the stronger," --and the two are practically synonymous. We have merely substituted sticks and stones (physical brute force) with pens and computers (financial brute force). We have changed the means but seek the same end. The administration of true justice has suffered badly as a consequence.

For the same reasons, the administration of justice does not enjoy the full confidence of the public. The elements of faith and trust are sadly lacking because the adversarial legal system has now been tainted by blatant "bottom line" interests. The "winner" is too often the party who can simply afford the expensive legal fees caused by long, drawn-out legal battles. Indeed, delay and exhausting the other side's financial resources so that they cannot afford to go to trial, is common in family courts and civil cases, especially if the other side's case is just.

The family law system provides perverse incentives against fairness, trust and co-operative parenting. In the vast majority of cases, the system wins by making parents fight so that one parent loses custody, and the other "wins" sole custody, but loses a parenting partner. The children doubly lose, by losing a parent and losing their faith in family as a co-operative, non-adversarial "love cell". (We will see more about 'Adversarial system' in Chapter six, "Family Courts: The Unholy Battle".

## *Five: Reaching hearts & souls*

*“Love is patient, love is kind. It does not envy, it does not boast, it is not proud, it is not self-seeking, it is not easily angered, it keeps no record of wrong. Love does not delight in evil but rejoices in truth. It always protects, always trusts, always hopes, always perseveres. Love never ends.” — The Apostle Paul*

### *Secular corrective measures: a lullaby*

Lucille, a single parent of her three children, had a drinking problem, and because of that, her younger child had been taken away from her by Children’s Aid Society (CAS). I acted for Lucille and got involved in a legal confrontation with CAS and eventually we got Lucille’s child back to her.

Three years later, Lucille got into a problem with CAS again. This time she ended up losing all three of her children to government wardship, plus a criminal record for three counts of criminal negligence.

Lucille had a serious character disorder. She also was too easily manipulated by drug dealers, sex offenders and women abusers. She had fallen into prostitution. It appeared impossible to help her restore her seriously damaged credibility as a mother.

A series of correctional and remedial measures were at work for Lucille, as demanded by CAS and ordered by the court, but all failed miserably. Why? They were lifeless, passive actions, and didn’t touch the heart and soul of Lucille, didn’t wake up her

dormant conscience, her human dignity.

There is a huge difference between genuine care and affection arising from pure love in helping and correcting someone like Lucille, on one hand, and reciting a series of counseling speeches or stereotyped instructions or training, on the other.

Lucille's problem was serious. Her spiritual immune system which should have guarded her against temptations had been compromised. She had become powerless to resist seduction, excessive alcohol use, drug addiction and unhealthy sexual relations. She was scheduled for numerous detoxifying, motherhood, and drug addiction programs ordered by the court. She attended many but missed many other appointments, making varied excuses for her failures to attend.

*The Lullaby Syndrome:* The typical problem of useless corrective treatments in Lucille's case is a syndrome I call "lullaby". Lucille had found all those corrective measures, preventive programs and counseling as an effective lullaby. She learned how to let them wash over her but to leave her lifestyle unaffected. The messages given by corrective measures never reached her — they went up to her eardrums but no farther. Was a bang, a louder tone needed to wake her up? No. The message was loud enough, yet did not wake her up, because no attempt was made to get the message to the real her, to her soul, to "move" her internally.

After realizing that all those corrective measures and counseling that she had gone through had failed, I decided to do a little more than just being her defense lawyer. I learned about her childhood, her parents and the emotional abuse she had experienced in her childhood (which I will explain further). Then, based on my findings, I said a few words to her that appeared to pierce all the way to her heart and soul. It was like a spiritual "big bang". I had talked to the real Lucille, to the very core of Lucille herself, as a unique living being. I could bring this belief to Lucille that the real Lucille is "different" from what the drug dealers, sex abusers, unfit parents and seducing male companions had made of her. I induced the real Lucille to resurface. I helped her to be herself. Her self-confidence started to come back. It was a wake-up call, it was a real big bang, but to her soul, not

her ear. It was no lullaby and did not need to be loud but rather very gentle.

### SPIRITUAL LAW TOUCHES THE HEART

On the surface, the judge saw the old Lucille, who persistently neglected her children and endangered their lives, but did not learn lessons from the resulting legal consequences. But under this surface, deep inside Lucille, there was quite a different story. There was an intensive spiritual drama in the making. Imagine seeing smoke coming out of a small window. If we seal off the window, we see no more smoke, but the danger is that wherever there is smoke, there is usually a fire too. There was something inside Lucille that had caused the problem. Her paradigm, the way she saw her life, had to change. No corrective measurement could succeed unless her paradigm changed. "Lullaby" counseling or penalties and restrictions couldn't change her paradigm. Real love could do the job. By real love I mean genuine care, a committed effort to bring Lucille from the vicious pattern she had fallen into, back to her natural track of spiritual growth. It is the job of humanized justice, justice in the light of love.

The key to dispute resolution, to healing the offender, to restoring peace and even love in domestic tensions is a journey to reach the very soul of the parties involved. It is a painful but rewarding journey. In this journey, the paired parties, whether offender & victim, claimant & defendant or husband & wife, need a process which replaces their antipathy against each other with empathy for each other. Through a process of direct and indirect dialogue, illustration and simulation which reveals how their egos and ill-feelings have created a wall between them, they can gradually come to realize how their actions or omissions have made the other party suffer.

The important point is that this journey slowly but steadily creates in the parties spontaneous feelings of empathy for each other. It is not a process of instilling empathy, but letting them to realize it themselves through several episodes. These episodes may need meetings, group discussions, illustrations and simulations over periods of up to several months, depending on the needs of each case. The outcome not only restores peace and perhaps even

loving relations, but uproots recidivism, obsession, isolation or some mental disorders of the parties involved. The pilot project at the end of this book offers a practical model for this journey in this “spiritual” area of family law.

***Removing the “gunk”:*** Lucille and similar clients of mine had been collecting a thick layer of gunk over their natural human consciences. They needed a spiritual clean up, not simply washing the surface. Over time, since their childhoods, the abuse, (often emotional abuse as we will see), hostile environments and influence of mentally-disturbed associates have created a wrong paradigm of the world for them. It needs real effort, hard work to correct their paradigm to scrap this thick gunk from their conscience. A proactive legal system does not look only to find the culprit, but to complete the job. It removes the gunk, baring the soul of the offender or wrongdoer. Incarceration, probation, restrictions, curfews and even counseling and educating usually do not scrape off this coat of gunk on the spirit.

***Emotional abuse:*** My review of Lucille’s childhood revealed terrible emotional abuse. Emotional abuse is much more subtle and insidious than physical abuse. **It is a common cause of violence, especially domestic violence. In our current justice system we often overlook the abuse which causes violence.** This abuse could be the result of being betrayed by the very individuals whom we normally trust most (e.g. parents or spouses). When Lucille was still in her early teens she was blamed, insulted and hated by her mother who accused her of sleeping with the mother’s boyfriend. Her mother threw bottles, sleepers, shoes, or whatever she could grab, at Lucille. Later on, when Lucille had her first baby, her mother’s assaults continued. At one time, the broken glass of a bottle thrown at Lucille by her mom hit her baby’s face, causing cuts and bruises.

**Emotional abuse can be sometimes much subtler, like a way someone looks at us, calls our name, or avoids seeing us or avoids hearing us when we expect to be seen or heard. A series of these types of emotional abuse could be devastating when it continues during early childhood. This can twist and our paradigm of life, terribly far from reality. This wrong paradigm may remain forever,**

if no effective help is given. People like Lucille see the world as a place full of vicious thieves, each trying to rob the other. How could she see it otherwise when she got robbed by the someone in this world she should have trusted for love, her mother? With this paradigm, there is no wonder that Lucille paid pitiful attention to dozens of lectures, counseling and parenting programs. Love had been denied her, especially at an age when she was seriously in need, and she would have been fine only by getting love back, by getting the love she missed, not a lullaby of advice, lecture, or punishment.

### PRAGMATIC, MATERIALISTIC ROLE-PLAYING

It was not because of the poor performance of social workers, counselors or correction officers that Lucille, in our above case, was not healed. Deep in our competitive, adversarial system we find the root of the problem. Government and the public sector is not free from the domination of adversariality. The Lucilles are commoditized by this system and budgets incentivize the lullabies. Few are willing to risk salary and career to challenge the system. There are positions to be filled and the goal of job seekers is their careers, regardless if it corrects the problems of the Lucilles.

In Canada not long ago, an offender committed murder only a day after being released from jail. The Parole Board had found him safe to return to society. This was after some corrective measures were also tried on him, like counseling and psychological treatment. Unfortunately, this was not an isolated case. Numerous offenders committed lesser degrees of offences after being so-called “corrected” and released from jail. It is one thing to reach the heart of the offender by paying special attention to his particular needs, and awakening his conscience by faith and love. It is entirely another, that the corrective officer discharges his duty, playing his role, reciting some written standard or advice and instructions.

Since the system is too much pragmatic, secular and materialistic, which simply means devoid of love, the corrective measures become lifeless, and loveless. Only the words coming from the heart can sit in the heart of the listener. To speak from the heart

(as opposed to from the lips), needs effort, faith and devotion. In cases like Lucille as stated above, the challenge is to penetrate to the heart and soul, to wake up the conscience, as opposed to following certain rules and discharging the duty imposed by law for correcting the offender.

### YOU MUST SWITCH ON INTERNAL CONTROLS

Pam had a problem even telling me what happened that led to her criminal charge. Finally she revealed that she faced not one, but two cases of shoplifting. She was not sure if the first one, which did not go to trial, was recorded as a plea bargain, that is, as a conviction.

Pam's face, her way of dressing, her words, all told me that she had given up hope, and had nothing to look forward to. She didn't seem to care what she did for a living or what happened next. Her self-esteem was terribly low. I decided to work to find out more about the cause of her low self-esteem, even before starting the legal part of defending her against criminal charges.

Pam, a former office cleaner, had been associating with a circle of unsuitable, unemployed friends. They had developed an unhealthy subculture. They could see nothing positive in cooperating with others or the community at large, but simply complained, gossiped and criticized everything and everybody.

Pam knew that she was in this terrible subculture, that she had lost her pride. But just like an addict, she was habituated to that unhealthiness. I learned more about Pam's character and personality after a few interviews. It seemed to me that she was in a special type of unconsciousness that I call a 'self-imposed coma'. There had been some terrible incidents in her life that she didn't want to think about. So she simply occupied her mind by talking with those unsuitable "friends". I brought to her attention what psychological harm she was doing to herself, with self-destructive actions such as her shoplifting. My impression out of her ordinary character, her principles and her mind-set that she had before her "self-imposed coma".

I realized that, if Pam's matter was to be handled under normal court procedure and criminal law, there would be nothing accomplished except another strike to Pam's self-esteem, pushing

her further into a “self-imposed coma”. In a couple of meetings I had with the prosecutor counsel, Mark, I worked hard to convince him that Pam should be given another chance and she would be out of this habit. Mark had been a classmate from law school, and had great respect for me. He agreed. After hearing a (from me and the prosecutor) joint submission, the judge, agreed to discharge Pam. Then, It was then the best time to rebuild Pam’s self esteem, before she fell again in her “self-imposed coma”.

Some of my *pro bono* counselling did the job. Her progress was amazing! I was observing a steady but continuous flourishing of Pam. Whereas the first day that she walked in my office shortly after her criminal charge, her look, her dress and over all her appearance had been signs of identification as a loser in life, a person neglecting herself. In my last appointment with her, all signs were saying quite the opposite. Pam was flourishing, blooming like a cherry tree after a hard winter. She was waking up, as she was saying “What the hell I was doing to myself? Where I was heading to?” She was no longer in her self-imposed coma.

Now, after some years, I have clients being referred to me by Pam. I received her business cards handed to me by my clients. I was full of emotion when I saw her card, and learned about her position. She is now a very popular and successful mortgage broker, having her own business, company and staff. She is the same Pam who once had given up hope and slipped into criminal activity, and self-imposed spiritual coma.

In the case of Pam, the prosecutor, the judge and I, all acted unconventionally. We did not do reactive practice of law, we did proactive or loving law. We interpreted and used the spirit of the law, for the purpose of waking up Pam, not the letter of the law to judge her. We showed that the law cared for her. We helped by turning on her internal controls. We awakened her conscience and it did the job for her, without external force. Pam became herself once again and started flourishing.

Pam regained her inborn conscience. Among other definitions of conscience, we can say conscience is our inborn knowledge of our responsibilities with respect to our acts in relation to the outside world. Conscience, contrary to our egos, sees us con-

nected to others, to the world, to creation and creator. The innate sense of reasons and right and wrong is the indication of our active conscience. The murderer also has it, as long as he tries to find some excuse for his act. So, there is hope that everybody, including criminals, can be corrected if they have a conscience. Along with conscience, we are also born with a desire to love and be loved, and love's attributes are sacrifice, compassion, humility, affection, honesty, loyalty and kindness. But quite often we need the big spiritual bang, to wake us up and make us ourselves, remind us of who we are.

#### WHEN CARE SAVES TROUBLED FAMILIES:

Sal, 69, was the oldest client that I ever had who involved in family dispute. Sal and his separated wife Lili had four children, three of them already married. I had to help Sal, responding to his wife's claim for divorce and division of family properties. Lili's allegation was that Sal had been manipulating, insulting and mentally abusing her all along in their 35 years of marriage. By the advice and help of her lawyer, Lili had claimed compensation for mental abuse and held almost all family assets in her possession for compensation. Sal instructed me to bring a counter claim against Lili.

Over 2½ years, court hearings, exchange of numerous financial disclosures, revised and amended financial statements, affidavits and transcripts of questioning did not accomplish anything but made them tougher against each other. Now, 72 years old, Sal was too much frustrated and obsessed as a result of his wife's stubborn attitude. It had become even more painful for him after learning that his elder daughter had teamed up with Lili in her claims against Sal.

In the course of court questioning on front of the court reporter, it became clear to me that Sal was at least partially responsible for the way he treated Lili in past. He never treated her as an equal life partner. He had always been controlling her. However, until the court action Lili initiated under the advice of her lawyer, Sal never wished to fight with the mother of his four children, with whom he had lived for 35 years. He loved her. But Lili's claims and especially the hostile attitude of her lawyer,

eventually made Sal to revise his initial soft response and made him outraged. He came back with scores of counterclaims. He was getting increasingly agitated, angry and frustrated.

It was too much stress for Sal at his age.

"Sal, let's not act out of anger and revenge. " I told him early morning of that cold February day, which was a turning point in that old battle. "Let's find what another 'Sal', liberated from ill-feeling, tension and emotion, needs to do in this same situation. Let me tell you what I would see the best for you." Tears were rolling down his face. His eyes were telling me "Please help me." And I did, but not to fight.

"Sal" I said, "By ignoring your inner voice, you only hurt yourself more and more. You have implicitly admitted to me your incorrect conduct with Lili in past. Yet you keep pressing on your claims, paying no attention to Lili's cry for justice. It won't make you miserable to acknowledge her complaints. Quite to the contrary, it will liberate you from your misery from fighting and daily stress." Sal was experiencing a challenge inside himself. He was wondering whether he should trust me and respond to his inner voice, or salute his ego and say "NO".

After some two hours of talk, he agreed with me to make a momentous decision. He agreed with offering to settle everything, which included an official statement of apology and remorse for the way he treated Lili in past. He also agreed generously to gift her a good part of the household items in her possession.

The younger child of Sal's family was about to have his wedding party. There couldn't have been a better news than the settlement of claims between his fighting parents.

Lili and Sal remained divorced, but have no bad feelings anymore against each other. Why could that two hours of talk on that cold February morning do the job that 2 ½ years of litigation and hundreds of pages of court documents failed to do? Because that historic talk reached the real Sal, reached his soul and heart. It pierced the hard shell, i.e., his ego, and reached HIM. All the other noise, claims, counterclaims, examinations and so on, only hit the shell, his ego, and bounced back. Never really reached

HIM. Loving law is what happened here, and while it did not reconcile the marriage, it reconciled two fighting people.

#### TREAT LITIGANTS AS UNIQUE, HUMAN BEINGS:

“I am finished. I have no pride, no dignity, nothing”, Sam told me in a state of shock when I read to him his wife’s affidavit filed in the court record.

Sam was a newcomer in Canada. He knew no one in Canada except his wife, who started a battle in the court against him to get sole custody of the children. In Sam’s paradigm, losing wife and children, the ones he embarked his life on, was simply a social death campaign against him.

Sam was a great guy, but too shy and docile. His heart was full of human emotion. His essential humanity needed to be discovered. But the family court branded him as just another father and husband whose wife was asking for sole custody, relying solely on objective evidence. Sam’s soul, his unique being, his extremely tender heart for his children and his paradigm of family were “irrelevant” because they were not objective evidence.

With hard feelings of being lost without family, Sam became emotionally unstable after his family court hearing, in which he lost custody of his children. He avoided meeting people, often crying out of control. Sam also lost his profession, as he was a practicing architect before this incident. He couldn’t concentrate on his creative job any longer.

The legal system missed a critical fact; that in the whole universe, Sam was the one and only father to his children. He needed to be discovered before being the subject of any court order or judgment.

He was unknown at the outset of the court proceedings and remained unknown and undiscovered up to the end. There was an immense source of love, sacrifice, affection, self-control and generosity inside Sam, but these remained untapped. The court never bothered tapping this invaluable resource of “Sam” to heal the wound and to restore loving family relations. The real Sam could correct this error, if any, much more effectively than any court order. That knowing the person per se could solve the problem in a right way. But the court fails to pay attention to this.

Under the legal system that it operates, the court is normally too much preoccupied with dozens of so-called general policies, local policies, rules of procedures and volumes of files or workloads. Exploring the uniqueness of Sam is not in the court's agenda. (My pilot project called "Family Protection Plan" at the end of this book proposes a solution to this problem.)

A few months after a court order granted custody of the children to Jes, Sam's wife, the children, age 9 and 13, visited to Sam's home. After one weekend visit with their dad, they decided not to leave him. "Sam had nothing but genuine care for the children", said the children's lawyer after doing a thorough investigation following the court order upon the request of Jes. It became clear to everybody that Sam had been taken to court, emotionally hurt, humiliated and stressed by our system's wrong approach to the case. Sam's personality, feeling, emotions, tender heart and too soft reaction to his aggressive wife were absolutely ignored, just because they were not objective, material evidence.

This book is a cry for a real justice, especially in family disputes, a justice that goes beyond judgment on "objective" evidence, a justice that sees the unique souls of the parties, and find the real cause of the problem. The aim, in real justice is to restore loving relations instead of judging and finding a winner and a loser.

## *Six: Family Courts, the unholy battle*

*“The strength of a nation derives from the integrity of the home.” — Confucius*

### THE TYRANNY OF THE ADVERSARIAL SYSTEM

***The splitting jeep:*** “Tina betrayed me, just to win her favorite Jeep”, my client Maria told me angrily, referring to her daughter, 18. Maria had separated from her husband, Phil, and was in the process of dividing family property. Tina was living with her father, Phil.

In order to win more property for her client, Phil’s lawyer encouraged Tina to remove secretly some confidential video tapes from her mother’s residence, to be used as evidence against her in court. In exchange for this, Tina was promised her father’s Jeep, a vehicle she was crazy about. Tina did this and upon the contested divorce and division of property, a major shift to an ugly battle occurred.

Without the adversarial use of this “evidence”, the split could have been done without this malicious fight. Only two years after the court battle, Maria died at the age of 53, stressed beyond her capacity to endure. The sad story of Tina’s action against her mother also caused such a terrible stress to her, and would torment Tina all her life.

Neither Maria nor Phil had initially intended to crush each other for the sake of material goods. But the adversarial court system gradually encouraged them in this crushing fight. Phil’s lawyer, Joan had been working hard to win at any cost, to gain

a greater share of family property for her client. It is one thing to separate from your spouse. It is quite another to decide that material gain justifies emotionally-crushing tactics. The damage, the emotional suffering and long-term psychological devastation of intense adversarial confrontations between the spouses greatly affect both. In Maria's case, an adversarial court resolution ended up with total alienation of husband from wife, daughter from the mother, and son from the father, just for material goods. What a shame!

No one was a real winner in Maria's case, not even Joan, Phil's lawyer, who attempted to win, but won only a smoking battlefield.

Quite often, an adversarial legal system and litigation has been "servicing" the disunity and disintegration of families, alienation of business partners and community members, separation of parents from their children, husbands from wives, and so on. The adversarial legal system is responsible for thousands of lawsuits filed by family members, children, parents and siblings against each others. It has become destroyer number one of the family union.

As soon as Phil, in the above-mentioned case, went to his lawyer for a separation, the legal system, the lawyers' training and legal mechanisms (affidavits, etc) presuppose alienation and a fight. We can not rule out conflict in our relations absolutely, of course. But we can rule out adversarial trials as a solution to disputes, especially domestic disputes. There are alternatives. (See chapter nine for a complete plan.)

**Counter-therapeutic:** The practice of law in family disputes can be therapeutic. By having an intention to heal suffering relations between spouses, the lawyers of both parties can, at least, defuse tension between the spouses, if not fully resolve the dispute. But an adversarial route quite often becomes counter-therapeutic and ruins all possibilities of reconciliation and the potential for a peaceful settlement.

#### TRUTH SEEKER VS. VICTORY SEEKER

The mother of all the problems in human relations is "distancing from the truth". Unfortunately, this "distancing" is going on

in adversarial litigation of our courts and legal system. Litigators play games with truth. In supporting their clients' position, they argue to prove their opponents wrong. They serve their clients, not the truth. They ignore facts that rebut their position. Litigators are victory seekers, not truth seekers. Litigators do not have to live with the relationship damage of a "win" or the bitterness of an unfair loss.

The goal in a healthy, loving legal system must be to find the middle ground truth in order to reconcile two parties. But the goal of litigants is to win. We must not take this huge difference between the two goals lightly. This is not a minor issue; litigation is a fallback to a pre-civilized era.

Many believe that lawyers lie. If this is true, many blame the adversarial nature of our legal system. In heated litigation to win a case, (or avoid losing at least) the temptation to introduce fabricated evidence is at its peak, and so is the temptation to introduce biased witnesses not telling the truth. The adversarial system, more than the lawyer, causes twisting the truth.

The adversarial system is based on the assumption that man only pursues his self-interest, ignoring interests of others. In the family, this assumption is wrong. The new wave of interest people show for the environment, for preservation of natural resources, for unity of mankind, and non-adversarial dispute resolution and others, all show that we are not solely concerned for our personal and immediate interests. In fact, the observed drift to self-interest that we observe in our society is, to some extent, caused by the adversarial legal system.<sup>49</sup>

### DO YOU PLAY HARD BALL?

One early morning, Norm called me at my office, asking "Tell me, do you play hard ball?" He was frustrated after some months of fighting over custody of his four children, all at tender ages. Norm said he was not happy with his lawyer and wanted to bring his file to me, to be tougher to his wife's lawyer.

In our first interview, I told Norm about my way of handling his case, which was not "playing hard ball" to "win". He was not happy with my strategy at the beginning. But at the end of our interview he trusted me and agreed with my way of handling

things. I reached an agreement with his wife's lawyer to have a social worker visit the children and find their views.

The social worker, very well trained for this type of work and quite professional, (but expensive!) came up with some workable solutions. But hatred, animosity and ill-feeling built up over months and months between the parties were too much to surpass. Norm's wife Amy claimed that the social worker was not fair and neutral. Norm was furious. His legal bills, including the cost of the social worker, gave more ammunition to his cause for "playing hardball". He was not happy with the negotiation process I had started with his wife through her lawyer. He wanted what he termed, "a big punch in her face", teaching her a good lesson by a court order taking the custody of the children from her plus all the legal costs. He wanted to spend all his cash savings, and, if required, even his other assets, selling his house and car to pay for legal fees to "crush Amy".

As this was against my approach, we could not continue working together. The last news I had from Norm, about 1½ years later, was that the fight was still continuing through his new lawyer and several interim court orders were made without ending the prolonged animosity and malicious attitudes of the parties towards each other, over the children. **It is an illusion to think that court orders resolve anything in family law before the hearts of the parties have been touched by a loving, spiritual practice of law.**

The four children, as I heard from the social worker, had long stories to tell about their parents. Loud arguments, abusive language, name-calling and hitting and banging the doors, yelling and shouting, had been going on for months. The children were brought up watching these scenes. This had become the world they came to know, had gotten used to. **Their family was a centre of hating and fighting, instead of loving and caring. Society appeared as a world of hating, fighting and self-interest, a macrocosm of their family.**

**Thousands of children raised under similar circumstances view the world as a "hardball" of mistrust, suspicion, malice, hatred and animosity. Conflict-stricken homes where they had been**

raised registers in their minds as representative of the world. They become adult members of society with this mentality and adversarial paradigm. “Playing hard ball” in the context of a family dispute, translates into “scorched earth” to any opponent in the real world. This retrogrades our civilization to the stone age, despite all our technological achievements. Our adversarial court proceedings seem to promote “hardball” especially in family courts.

***Waking up the monster:*** In the adversarial system, debate and confrontation awakens the parties’ egos, encouraging their worst sides. Parties attempt to defend themselves, to crush the other party, and this feeds on itself in a vicious circle. Unlike an adversarial system, mediation and other alternatives seek solutions without jeopardizing family unity and peaceful relations.

#### FAMILY LAW, A “CLAIM MAKER” MACHINE

In the process of litigation, parties dig in and dig for dirt. If they can’t find dirt, they throw up dust. The more litigation, the more claims and counterclaims emerge, which grow like snowballs rolling down a hill. The adversarial process tends to become a “claim maker” machine. It is an inhumane response to a dispute. A humane response is a “collaborative system”, as opposed to an adversarial system, where more investigation and search brings more avenues to settle by discovering the common grounds between the parties, the areas where they can concord, or at least accept. We will see more about “collaborative law” later in this book.

The supporters of litigation, debate, adversarial court proceedings and trial may argue that it is the best way to examine the facts and discover the truth. But a by-product of this manner of discovery is itself a new problem, which goes against the very purpose of discovery. This by-product is further alienation, hostility and animosity, as in the above case of Maria and Phil.

***Behind the surface:*** On the surface, litigation and adversarial confrontation in court appears as a decent, human and civilized way of dealing with disputes. Parties or their lawyers address each other with great respect and kind words. Behind the surface, there is a hell of brutal attack and counterattack. It is human character

that a punch should be responded by a harder punch, and not a hug. The heat of a hell behind the calm surface gets hotter. Parties' egos completely overcome their human virtues and shut up their consciences. They become but two vicious monsters at each others' throats. At the end, there appears to be a loser and a winner, but in reality, there are usually two losers and no winner. The one who appears as winner has lost peace in his or her life, and gained a potential, and often real, enemy.

No adversarial litigation, no adversarial trial should be allowed in family matters, except in very exceptional cases. We should not be teaching Maria and Phil's children how to fight. There are better lessons for them to learn, as in how to collaborate.

Our era, at the human race's maturity level, should accept nothing which teaches fighting or defies loving relations. We have left behind the era of the "duel". Family is the "love cell", where love is born and should be nourished. Using the adversarial method with families is as primitive as a duel. It is embarrassing to human dignity. Every lawyer, judge and legal system worker is contaminated and complicit in the dirty fighting and exploitation of misery that occurs in family courts. Every politician and government employee is a cog in the abusive machine that the State mandates for the adversarial process that is family courts.

Based on my experience of family law practice, I say, and my collaborative colleagues also say, that the adversary method to deal with family matters must be abandoned completely, with perhaps exceptions for extremely rare cases. We won't miss anything by abandoning it, except the deep wounds we are creating everyday under the current system.

#### THE EXCEPTIONAL CASES:

In the course of my family law practice in the past 14 years, I have had perhaps two to five percent of exceptional family problems which, by their nature, could not be resolved without court intervention. One category of the cases is where one or both parties have a lifetime history of irrational and abnormal behaviour, to a point that they should be under continuous supervision to avoid harming others. Another category is when one party (more likely the husband) has a profound and unchange-

able belief in women's inequality. He would not be susceptible to any kind of counseling, mediation, even caring and loving treatments. In these (rare) cases, there is no point in holding back the other party to wait for an amicable and out of court disposition of the issues.

*Experience of other lawyers:* Other lawyers report that it is more common for women in family court to seek sole custody for themselves, and believe that their gender is superior, at least regarding parenting. Men are more often the ones seeking joint custody. Shared parenting support groups report that men often come in with a sense of inferiority regarding their parenting, but this can be changed with a good education process. Immigrant men (and immigrant women, too) often have stereotyped ideas of men's and women's roles, but at least with men, this can be moderated with an empathic education process, as long as a "blame and shame" approach is avoided.

If someone has a documented and continuing history of irrational and dangerous behaviour, then clearly there should be enough evidence for the criminal law system (or mental health laws) to deal with it.

On the other hand, someone's beliefs of inequality is a judgment call. Should a woman who deeply believes that women are inferior to men be made to go to court? How about a man who believes that women are superior sole care-givers? There is no evidence that people with stereotyped gender beliefs in themselves make bad parents. Who judges? Decisions on sole custody often reflect judges' biases: in favour of the rich, against the poor, in favour of professionals against the blue collar and in favour of women against men.

If the alternative to mediation and collaboration is a court system which will award sole custody to women under virtually all circumstances, or financially reward the most expensive, aggressive, adversarial lawyer, then the party with that advantage will sabotage mediation and collaboration so that the dispute will be tossed into the courts. Mediation and collaboration are done "under the shadow of the law and courts" so that a key to making alternatives work is to change laws so that the presumption is

that each party keeps the same rights to their children that they had during the marriage. The presumption that parents remain equal is essential to any effective alternative to adversarial law.

#### SHAMING CAUSES DOMESTIC VIOLENCE:

*Man's position as a provider ridiculed.* "I could not keep quiet. I could not control my anger." My client Len told me. "... So, I grabbed the TV remote control and threw at my wife, Fez, with all the force I had." He was charged for assault with weapon (a TV remote control).

In his own version of the event, Len admitted that his wife really did nothing to provoke him. So, why did he assault her?

Len had been the sole bread winner of the family, for his wife, and three children, prior to moving to Canada. On their second week of arrival to Canada as new immigrant, Len had found himself losing control of everything in the family. Fez's brother Rich became in charge. Rich had been in this country for years and knew the needs of a newly arrived family. Plus, Len was no longer able to pay for the family's basic needs.

That day, Rich had bought all the groceries, fruits and vegetables, for Len's family without asking Len or even talking to him. Len didn't like this, sadly watching his authority and position as the family provider crumbling. But his wife and children were pleased with the fresh food and thanked Rich. Len saw the collapse of his authority as breadwinner. When Rich left, Len expressed his dissatisfaction to Fez. Fez said, "It is my brother and wants to help us, what is wrong with that?"

Len found his power, his pride and family position crushed by Rich's intervention,. He felt like a useless parasite in the family. Enraged, he grabbed the TV remote and threw it, hurting Fez. *It is hard not to psychologize the throwing of the remote control with Len's feeling of loss of control.*

There was no doubt about Len's assault, his unacceptable reaction and his anger problem. But because of how the court and the law intervened, this incident sent a huge wave of destruction, shattering Len's family. Fez went to court to testify against Len. She and the children had been interviewed and questioned numerous times. It was all about collecting evidence and estab-

lishing a case for the prosecutor. In a few meetings I had with the counsel for the prosecutor general (Crown attorney), I tried to illustrate how and why this incident happened. No person in the entire court proceedings, trial and sentencing took into consideration the underlying cause of this devastating incident. If there had been some help to Len to adjust to his new life in Canada, Len's family would not have had such a devastating fate. Demolishing Len's authority as a traditional husband and father shamed him, even though it was unintentional by the Court. This incident could have been countered by real care and love. Len could have changed and corrected himself by being assured that he would still be loved and respected by his family even if someone else temporarily supplanted him as breadwinner. Or perhaps by teaching Rich to help Len in the background, so that Len retained his self-respect as family provider.

The justice system did its job in the absence of love. It gave Len a serious criminal record right at the beginning of his life in his new country where he had dreamed to flourish and prosper. His children were separated from their beloved father, and his wife now had a bitter memory of seeing his man she lived with for two decades behind bars. What had justice accomplished for the family and the society at large? No correction, no healing and no restoration of family life took place. Len learned a lesson. He learned that the society he had joined was devoid of love and care for him. He further learned that the justice system is as merciless and inhumane as a robot. He learned that this system gives not a damn about the distress he was under when he committed the assault. The system cared not that his heart was bleeding when he was prevented seeing his children. His new country provided him no understanding, no support or services.

Our secular and adversarial system has nothing but misery to offer to thousands of other Lens and Bens in similar unfortunate situations. Needless to say, Len and Ben had done terrible things and must understand that they did wrong. But the point is that they will correct themselves and much more, if we take the loving and caring approach rather than simply punitive.

## A DEEPER LOOK AT SHAME AND ADVERSARIALITY

In the above case, Len did something terrible, but the law did an even more terrible thing. It demolished a “love cell”. It could have made Len a “real” provider for his family, even more than before. His love for his family and children went far beyond his ego’s satisfaction of simply being respected as the sole bread winner. The assault incident could have been an opportunity to capture this love, for “deepening” Len’s love for his wife and children. Instead of tasting the punitive response of the system, he could taste the love of the system which could not only make him remorseful for what he did, but anxious to be a devoted Len, to step beyond his desire for authority, to be devoted to family and society at large.

*The first step to changing the criminal law problem above is to change family law. The adversary method of handling family disputes must be abolished to stop the spread of mistrust, suspicion and hatred into the society as a vicious virus.*

A study made by the Research Data Centre of Statistics Canada supports the idea that the children whose families divorce experience higher level of mental problems and antisocial acts.<sup>50</sup> It would be quite different if the process of separation and divorce took place in a non-adversarial manner. And a non-adversarial process is not only less harmful to the children, it is faster and easier, as I have proposed in chapter 9 in this book.

## A CYCLE OF CONFUSING, NOT DEFUSING

Betty had claimed that her husband Alex threatened to kill her and their children of the marriage. Alex was arrested and released after undertaking not to associate with Betty and not to see the children unless under supervision.

Alex came to me, for legal help, but a little late. He had already breached his undertaking by contacting Betty. “I just wanted to tell her that it was a misunderstanding” said Alex. “I told her I never meant harming anyone”. Betty had called the police again and Alex got a second criminal charge. He got more frustrated and angry.

The tension in their relation intensified yet by another incident. Alex got another criminal charge for harassing the woman

who used to supervise his access to the children at Children's Supervisory Centre. This time, Alex simply gave up his right of access to the children completely, and instructed me to act for his divorce.

Alex was a good baker. During the time that he was not supposed to meet his wife and his children without supervision, he still continued sending his best self-baked cakes to his children. He spent hours to make sure his children got the pastries, by bringing the cakes to my office to be sent to his wife.

At the end of a long court battle, he was ordered to pay monthly child support, which was retroactive two years back, to the date of separation.

"They think they care for my children more than I do," said Alex, who was furious and devastated. "They [the court] see me as a jerk who has no sense of fatherhood." By ordering him to pay for his children, he felt his own pure and natural love for his children was impugned, disrespected and devalued. Fatherly affection was replaced by a social contract of paying money to a government agency. A natural flower was replaced by an artificial one.

Alex was working as a chef. He was so frustrated, agitated and depressed that he lost his job. The more he tried to show his love for his children and wife, the more he got himself into trouble. Our numerous requests for mediation or discussion between him and Betty were refused. The advisers, counsel and social workers for Betty had no interest in mediation, but relied on court intervention.

Once again, I was observing a human tragedy, again the result of an adversarial court system. The two major factors which caused this tragedy were misunderstanding and a vicious **cycle**. First a very simple argument led to a misunderstanding. Alex was anything but a threat to his loved ones. Then, the intervention of police, Children's Aid Society and others totally confused the parties instead of defusing the tension. Finally, every step of restriction and court action against Alex caused further alienation and animosity like a vicious cycle, and added to more misunderstanding and ill-feeling. It went on, damaging human

relations to an irreparable state. To the police, CAS, and courts, Alex was simply an adversary, and not a father.

Mandatory mediation as a prerequisite to any court proceedings might have saved the family, or at least toned down animosity and ill-feeling. Good family counseling, proper communication between the parties, paying attention with care and love to the parties, could have replaced the vicious cycle with a benevolent cycle, defusing the tension and removing misunderstanding.

### WHEN DIVORCED CHILDREN GET ANGRY

Farah used to come to my office for a family matter with her five year old daughter, Shirin. I asked her every time not to bring the child with her but she would temporarily leave her at our reception. Many times I saw Shirin at the door and observed her unusual behaviours. Shirin appeared angry and quite aggressive. I saw her pushing away her mom angrily. Farah told me that Shirin gets mad at her quite often.

After a long court battle over child custody, between Farah and her ex-husband, we had an interim order giving the custody of Shirin to the father and her younger sister to Farah. Then we received some shocking news about Shirin. She had hit her stepmother in the face. At another time, she had opened the door of her stepmother's car before she could stop at her daycare. She wanted to run away, to go back to her mom. A child psychologist found the child was acting "weird and abnormal".

In her short five years of life, all she had observed was fighting. The little girl's brain had recorded all those stories about her parents' court hearings, angry telephone messages and so on. In her vocabulary, home meant fighting, parents were gladiators. Family life meant anger, hatred, threats and sarcastic comments exchanged between her parents. This was her world.

Shirin might have been much better off homeless, than living in her home. **Earlier in this book I cited Lucille, who lost her children to government's wardship because of her problems.** One always wonders why a parent can be so bad a parent, but perhaps Shirin's childhood explains why. Shirin could potentially be another Lucille. As Erin Pizzey points out in her book, "Emotional Terrorist and the Violence Prone" the roots of abuse are often in

an abusive childhood, and Pizzey feels that abuse is rather like an addiction. The legal system, and in particular, our adversarial approach to family disputes should also share the blame.

**One victim and two losers:** “This time, I quit alcohol absolutely,” my client, Tom, said in his second meeting with me. As a result of Tom’s alcohol problem, his wife Emily had moved out of their matrimonial home with 3 year old Lucas, leaving Tom alone. But it was not only Tom who had a problem. Emily had an anger problem. She was rough with Lucas. Tom’s family matter lasted longer with me than any other family case I ever had, some 6 ½ years. Lucas was raised alternatively by mom, dad and foster parents since he was 4, and at the time the matter was “resolved”, he was almost 11 years old.

“He was unmanageable,” Tom told me when I asked why he called Children’s Aid Society (CAS) to pick up Lucas from his home and put him in a foster parent home. “...But we worked hard for over a year to get Lucas into your custody,” I told Tom. “Why would you voluntarily give up custody?” Tom said he had no choice, since Lucas was constantly angry and out of control. With his rough life under constant violence and tension, no wonder he was unmanageable.

Lucas was known to lots of people: CAS social workers, child psychiatrists, CAS lawyers, several foster parents and many others involved in handling problem children, including his school principal and janitor. He had kicked and punched his teacher and at another point he had punched the school janitor.

Lucas’s memory of his parents’ continuous fighting had given him a grim paradigm of life. In his microcosm, love had no place, hatred had.

Things could have been much different, if we had justice in the light of love, instead of justice as the product of adversarial legal system. The point to focus on in Tom’s case should have been the restoration of loving relations and peace in the family, not finding who is the winner of the custody prize. In fact, by ending up with an unmanageable child in that lengthy court litigation, there was left no prize to win. There was only one victim and two losers left.

As a result of the adversarial system of dealing with family disputes, thousands of innocent children have found their homes similar to that of Shirin and Lucas in the above cases. These homes are the factories for producing unloved citizens, hostile individual who cause all sorts of social problems, from vandalism to alcoholism and so on. The children of these homes often see everyone in their lives as adversaries, or targets for manipulation and conflict. Shirin and Lucas's home could have been better if a "healing process" had been at work instead of adversarial court hearings to find a "winner" and a "loser".

### HEALING VS. PLEADING

*Holistic view of DV:* I first met Leo in police custody at the cell block of the court house, handcuffed. It was Nora, his wife, who asked me to see him. "I want him out of the jail at any price... I love him," a sobbing Nora said. Ironically, it was for her "protection" that Leo was arrested, following a heated argument, shoving and pushing each other.

Leo was outraged of being detained because of his wife's 911 call. A flash of anger and violence, like gasoline, can burn down the family structure, if it is handled carelessly.

A sudden fight between children or siblings will normally calm down and end peacefully by loving intervention of their parents. Normal relations between them then resumes and friendship prevails again. But a similar fight or argument, happening between spouses, takes a completely different course on intervention by police, lawyers and Court. What almost inevitably happens is that police, lawyers or judges involved in the matter play their adversarial roles, devoid of real care and attention to the feelings, emotions and needs of the spouses. The issue is not viewed holistically. It is labelled domestic violence (DV), i.e., spousal assault. *It is treated out of context, i.e., the family, children and history of the family as a whole, and extended family.*

In my meeting with Nora and extended family, we heard how Leo was a good husband and father throughout their relationship. Leo had in fact dedicated his life to Nora. But he was now so mad at her because of being handcuffed as a result of her call, that he refused to go back to her. This was understandable. This

in itself was the evidence of a lover with a broken heart, but a repairable one. The parties realized how they loved each other. They became tearful, terribly regretful for the incident. We combined our efforts to stop court proceedings and halt adversarial interventions, then restored their loving relationship, now still flourishing 13 years later. Leo's love for Nora deepened further, as he witnessed how she was disturbed and devastated because of his arrest. Now his love is so profound that he can manage his anger and temper. Nora's love for Leo also deepened. If it had gone through the adversarial court, subpoenaing Nora to testify against Leo, their relationship might well have ended.

### TURNING VICIOUS CYCLE TO LOVING CIRCLE

"No more soft talk. Tell Nelson's lawyer that we will see them in the court." said Nancy as she entered my office that morning of a snowy December day. What had happened?

A week before, Nancy had eventually agreed with the draft of a separation agreement I prepared to resolve everything with her husband Nelson, after 18 months of fighting over spousal support and division of family property. Now, her mind had totally changed. I could see in her face only revenge and rage.

In his response to our draft of the separation agreement, Nelson (or his lawyer) had brought up a claim that Nancy had harassed him and had damaged seriously Nelson's reputation in business and he threatened a claim for defamation. He wanted to use that allegation to compel my client Nancy to write off a \$30,000 claim of an old debt against him. After reading this response, Nancy now simply wanted to ruin Nelson. Why such an uncontrolled anger? Because this word "harassment" brought back to her mind all the ugly events happened between them in past, including his call to police and laying criminal charges against her.

Now, like reviving a dormant volcano, refreshing the memory of an old event risked wiping away the result of months of hard work I had done to resolve the issues between them. After much redrafting, amending, revising and renegotiation, I had finalized a draft of a settlement agreement between them which was about to be signed by the parties. But now, after Nelson raised this new

claim, Nancy wanted to show him her power and make him sorry for what he did to her. All old wounds could be reopened by this vicious storm that threatened to arise.

It was a critical moment. I, as Nancy's lawyer, could let her rage over the "harassment" allegation, drop the draft, and go back to litigation in Court. Or I could try to defuse the tension by continuing patient, hard work, to resolve the matter peacefully.

After this aggravating new claim by her husband, it was a tough job to speak to Nancy of a peaceful settlement. She was an ideal client for a lawyer who loves lengthy court litigation at any cost. She had always been trying to persuade me to keep fighting, against my policy. But I had some hope because I knew that she had unconditional confidence in me.

"Listen Nancy: let me take care of his 'harassment' and defamation allegation," I told Nancy. "Don't you want to look forward, minding your own future free of domestic tension of the past?" As I was telling this to Nancy, I could see that I had her full attention. She agreed again not to fight in court, but rather pursue a settlement by the agreement, and the anger was defused.

A first look at a family fight where husband and wife are at each other's throats is unpleasant and looks hopeless. But, as the lawyer or family mediator, if you are prepared for being blamed and in the crossfire, but still patiently continue, you can get the reward. The reward is the inner joy, a pleasure which remains in your life permanently. This is exactly what happened in Nancy and Nelson's case.

"I would like to meet you and discuss to settle the matter..." This was the message from Nelson in my voice mail. "From now on I represent myself," he said.

I could not believe what I heard, but it was true! My patience and tedious attempts to avoid confrontation and clean up the mess of long court proceedings has eventually started working! Yes! Nelson further told me that he had been impressed by my steady efforts to resolve the problems despite his (perhaps his lawyer's?) repeated harsh and provocative responses. He came the next day only asking for some minor corrections to be done on my finalized draft of the settlement agreement, and signed it!

When Nancy was informed of this, she was delighted. She was all smiles and joy. Then, peaceful resolution gained further momentum, and the whole tone of action changed from adversarial to close cooperation. Nancy came back the next day with a new concession to give to Nelson, reducing significantly her previous demands from him, a demand which he had already accepted! It was more than he expected. He could hardly believe it.

The parties continued loosening up further; the fog of tension between them dissipated faster than anyone could imagine. The hard ice of hatred and hostility accumulated over years was broken, an irreversible breakthrough. The vicious cycle of hatred, which had been gaining momentum over the past 14 months, was replaced by a “benevolent circle”, even a “loving circle” with greater momentum, and led to a complete removal of tension between them. Within two weeks, the final settlement of all the issues was reached and turned into a consent court order obtained from a judge and passed to the parties.

It was patience and persistence that eventually removed tensions in the Nancy and Nelson case. That case once again convinced me that a vicious cycle of hatred and hostility not only could be stopped, but reversed, not by adversarial court litigation, but by relentless persistence and full attention and patience to remove the tension and bring peace and even love back to the relationship.

### ADVERSARIALITY IS NOT CULTURALLY APPROPRIATE

Al had left three “very urgent” messages in my voice mail early one morning before I opened my office. Al and his wife were totally devastated when I met them later that morning. Their eight year old daughter “Ma” had been taken from them the day before by police and Children’s Aid Society (CAS). They said they had not eaten anything since Ma was taken from them. They were restless. My phone call with CAS (in Ontario this organization handles interventions on behalf of the State in child abuse accusations) revealed a woeful story. Following Ma’s disclosure to her teacher of some physical discipline against her at home, she was taken from the school to the police station by a CAS agent, to further investigate the case and bring the matter

to court. Within the hour, the police station had been stormed by Al's extended family members, agitated and furious over the child's apprehension. Then, Jal, the most furious of them, had grabbed the CAS agent by the neck in the police station.

Thanks to an understanding CAS agent and police officers, who appreciated cultural differences, the matter was handled with prudence and wisdom. No charge was laid against the attacker and no one arrested. Al and his extended family were advised of the law, the statutory mandate of CAS, and the child given to foster parents pending court intervention the following day.

Understanding the family's country of origin and their culture, why Al and his extended family reacted thus to their daughter's apprehension became clear. Yet it is important to find how the law should be seen and practiced under each circumstance. Under the operation of strict secular law (or culturally-insensitive law), things could have been completely different. All of Al's extended family members could have faced criminal charges, and some of them, like Jal, serious charges for indictable offences. Then, under adversarial court proceedings, with clear evidence of assault and before the eyes of many witnesses, they could have faced long incarceration terms. But wise police officers and the CAS agent in this matter were able to see the real spirit of the law. The spirit of the law would not approve of criminal prosecution in a case where a cultural clash is the issue, with no real intent to break the law. The answer was not an adversarial trial to find guilt, but cultural interpretation and education to bridge the gap between two cultures.

### THE GAME OF ADVERSARIAL LAW

In the final analysis, the adversarial system means a race to find who is the most aggressive, amoral, unethical and unscrupulous to win. The supporters of this system say it gives more incentive to each party to probe intensively for any shred of evidence supporting each side. The question is, what evidence? Evidence that confuses more the trier of the facts by exaggerating or underestimating the facts, or blurring matters, caring only to win?

Adversarial court proceedings are not too different from playing a game. In this game, the winner is usually the one who

has a bigger investment in the game, i.e., putting in more money and a more experienced and aggressive lawyer. This translates into “might is right” as in the law of jungle. This legal system must and will change. I can see a day when adversarial trial proceedings are regarded as a relic from the past, a television show for entertainment, reminding our grandchildren how we once played with evidence to win instead of healing a social disorder or solving legal problems. Adversarial family court proceedings will be viewed in the future as we now view duels with pistols or swords.

The supporters of the adversary system say it makes it harder for any party, like the government or an individual to abuse a legal investigation. They claim that an adversarial system gives more chance to settle disputes outside the court by requiring the parties to go for discovery, that such discovery very often leads to settlement before trial. But these settlements may happen after a lot of energy, time and money is wasted to undo the wrongs created by the adversarial system. Long, unrealistic and exaggerated statements of claims or counterclaims and the pleadings which follow these claims can emotionally or financially exhaust one side. A settlement may be reached after the exchange of provocative and offensive claims and counterclaims, which should not have been done in the first place. **The cost may exhaust people before the exaggerated claims are dealt with, leading to bitterness.**

#### SAVE THE FAMILY FROM AN ADVERSARIAL TRIAL

What follows are negative consequences from the adversarial way of dealing with family disputes, that I have experienced in my family law practice. They leave no doubt in my mind that adversarial proceedings in family disputes must be abandoned.

***Alienation:*** confrontation, debate and argument over parties’ disputes naturally moves parties to take defensive positions. Defensiveness soon gathers momentum and leads to a wider rift between the parties. It may go further to complete alienation, poisoning the relationship between two souls.

***Irreversible harm:*** Quite often, an adversarial “settlement” leads to psychological harm to either or both parties. The memory of being attacked by a person you loved and trusted most, does

not vanish. The fear that it would repeat in another spousal relationship may linger for life. The feeling of a guilty conscience for attacking someone who offered all she or he had for you at one time, may torment you on and off for the rest of your life. No therapy can erase the effect of this harm.

***Harm to children:*** For families with children, the consequence of an adversarial “settlement” is much more severe and destructive. It is a nightmare. The damage affects children’s emotions and mental well-being, sometimes beyond normal repair. In the event of prolonged fighting when the children are at a tender age, their troubled and loveless home becomes a microcosm of the way they see the world in their adulthood, a world of hatred and distrust. If the children are older, they quite often take sides and further spread the alienation beyond the parents, to extended family members. Children may repeat these behaviours as adults, and be unable to form stable, long-term relationships.

***Attempting Suicide:*** Adversarial handling of family matters, especially child custody has caused the suicide of many fathers as reported by Calgary-based Men’s Educational Support Association (MESA). In rare cases, custody fights cause murder and murder-suicide.

***Missing opportunities:*** The adversarial manner of dealing with disputes fails to search for and find areas of agreement or emphasize common ground and use this to further agreement. By sharpening and deepening the differences between the parties, the adversarial system makes it impossible to capture the fleeting chance of cooperation and compromise.

***Abusive system:*** The adversary system, while claiming to prevent family abuse, is itself the main abuser in many cases, leaving parties in a state of bitterness and hatred at the end of the process. Even at pretrial or settlement conferences in the court, the questioning as part of the adversarial process harms the family union, especially the children, because they are used as weapons for one side to win the battle over the other.

***Intimidating:*** Simply the form of the court (judge sitting on a raised level representing authority, the language, the court reporters, the lawyers with their gowns etc.) is totally unsuitable

as a forum to resolve family matters. The forum implicitly promotes alienation and confrontation. It subconsciously encourages parties to take harder positions. It further freezes the normal relations between them and reduces the chance of amicable settlement of the issues. Generally, the spouses or parents are not allowed to speak in the courts, further alienating them from the process. Children, the most vulnerable, are almost never heard, except through “experts” who are often hired by lawyers because of their predictable, often gender biases, towards certain types of clients.

### EDUCATE, DON'T LITIGATE

“I would like to come with my father if you don't mind.” Dina, one of my family law clients, told me. She had had a very long separation and equalization of family property battle with her husband. She had already changed lawyers twice before coming to me, paying thousands of dollars of legal fees, with dozens of court hearings and questioning sessions.

After the first interview, I could see why she needed her father. In fact, it was the father who was behind the fight. It was him who helped Dina's husband Adam immigrate to Canada and helped him establish a business. The father wanted to punish Adam for not appreciating his help. Both husband and wife and an innocent child were to be victimized by the father's revenge. Adam was fair-minded. But Dina was not acting for herself. She was a pawn in the hands of her parents. Dina was missing the concept of marriage. Adversarial litigation in court was not what was needed. She needed to be educated to be independent and not under the influence of her parents. A Dina liberated from her father's influence would not have needed an adversarial court fight with her husband.

In many of cases, it is the “deepening” of the spouses' concept and understanding of the meaning of marriage which is critically needed, before even talking about their dispute. The “deepening” needs a process of learning the very purpose, function, consequence and significance of the union of the two sexes. Often, this deepening corrects the paradigm of the parties about their relationship and marriage, and corrects so profoundly that the

motive for the fight and confrontation can completely disappear, even if they still find the marriage unworkable.

An analytical article released June 28, 2006 in “Canada Social Trends” analyzed the data from married life prepared from Statistics Canada’s General Social Survey. It supports what I am saying about education. It concludes that;

“People who do not believe that marriage is important for them to be happy have a predicted risk of both first and subsequent marriage failure, 170% to 330% higher than people who feel it is very important, when all other variables are controlled for.”<sup>51</sup>

Research shows that college-educated women are more likely to marry than non-college educated ones and are becoming less likely to divorce.<sup>52</sup> The author of “Marriage and Caste in America...” Kay Hymowitz, has come to conclusion that: “What ails marriage... is that Americans no longer understand its meaning.”

*“...The large majority [of college-educated women] will avoid divorce and raise their children with the father. The divorce rate among college-educated women plateaued about 1980 and has even gone down since then. It’s less-educated women who are more likely to become single mothers—both through divorce and non-marriage.”<sup>53</sup>*

Hymowitz sees a split in society between those who value marriage, with such values leading to valuing education, valuing family and spiritual values, leading to financial prosperity. I would argue that our adversarial court system has sided with devaluing marriage, family, spiritual values and consequently sides with financial devastation of families. **The devaluation of these values drives much child poverty, social delinquency and unhealthy relationships. The cited research also suggests that education is a cure for the malaise affecting relationships between the sexes, most evident in the high rate of divorce.**

## *Seven: lawyers who make a difference*

*“Woe unto you, lawyers!” (Jesus, Luke 11:52)*

### *Healer vs. “biller”*

“The first thing we do, let’s kill all the lawyers”<sup>54</sup> said Shakespeare. To many, these words from Shakespeare echo the public’s dissatisfaction and disrespect for lawyers. Others argue Shakespeare was praising lawyers as a bulwark against extremist values. There are arguments for and against these two interpretations<sup>55</sup>. **Praise or blame lawyers?** It depends on how lawyers see the law and practice the legal profession. The law is a double-edged sword, as this chapter shows, by a number of examples.

Ed, a well-established lawyer in his town, helps his clients to understand the law applicable in their cases. In plain language he clarifies the complexity of relevant law to his clients. He gives them a real image of the law, the body and the soul of the law, free of misconceptions and misinterpretations. He lets his clients know where exactly they stand as far as the law is concerned. He tells them whether their claims have merit, whether fears are warranted. He vigorously defends his clients if they need the protection of the law. In a disputed matter, he lets his opponents realize they stand according to the law. He aims at maintaining friendly relations between the parties to a dispute. In a family dispute, he tries to restore loving relations. In short, he does all he can to heal troubled relations between the parties involved. He is a healer. He sees the soul of the law.

Sid is another lawyer in the same town. He sells his skill of

advocacy and litigation and knowledge of the law for money. He finds loopholes in the law to help his clients, even when he knows it is entirely contrary to the soul of the law, and contrary to the real purpose of that particular piece of legislation. He does so to satisfy his clients and support their position, regardless of the merit of their claims. Consequently, he often complicates the legal issues between the disputing parties, thus fuelling the fight between them, and bills his client for the continued fight. He is a “biller”, not a healer.

Obviously, Ed and Sid see the law and legal profession differently. “Let’s kill all the lawyers”, in referring to Ed is an **anti-social** joke. If Sid represents the legal profession, then we have what the great spiritual leader and Sufi, Rumi, called a logician with a wooden leg<sup>56</sup>. Sid sees only the soulless law, the dead body of the law as a cadaver, that can be mutilated and its parts transplanted as the client’s self-interest requires.

This chapter asks the questions: How do lawyers see the soul of the law? How do they see their profession? Is lawyering simply about profit, like others, i.e., selling skill and knowledge for money?

### A LAWYER WHO GOES BEYOND ‘DEAL FOR SKILL’

Who is Mel? I wondered. I had never heard of Mel until I happened to have a client who came to me for a commercial contract to purchase a business. I found Mel’s name as the lawyer for the other party who was selling the business to my client.

In a long list of my requisitions, (as normally lawyers for purchaser require from the vendor’s lawyer), I had demanded from Mel too many documents: business financial records, licenses, statutory declarations, certificates and so on. I even asked for records and figures that normally had to be provided by myself and my client. Simply to over-protect my client, I even asked for materials that normally were not required in similar situations. I expected only some of them from Mel, as normally was the case in similar situations. I was prepared for a “no” from Mel.

My receptionist handed over to me a big package the next day after I sent my requisitions to Mel. Yes, Mel gave me all I asked for, and more. In anticipation of what I might need later

on, Mel had sent me some very helpful materials, that was my job to prepare, and I had never asked him for.

I had not the slightest clue of who Mel was before this deal. But his response made me curious to find more about him. Mel's view of his law business was quite different from other lawyers. Another fact that impressed me even more, was Mel's high level of proficiency in the practice of law. His way of handling a case, protecting properly his client and being a prudent counsel, was admirable.

On the day of closing the deal, we had a four-way meeting: Mel, myself and our clients. That was the day I met Mel for the first time. I knew his client, Jens, who was quite the legal layman, originally knowing nothing about the legal process of business transactions. It was very interesting to me to find that Jens had become very knowledgeable about everything he needed to know in that transaction. Apart from that, Jens' attitude had become significantly positive and friendly. He voluntarily offered some concessions to my client right at our meeting, which was responded with my client's counter concession, and went on like a circle. I found that Mel had induced his own positive and creative attitude in his client, which impressed me even more.

In fact, Mel had not only provided Jens legal assistance, he enlightened Jens by promoting his positive attitude, honesty and trustworthiness. He did more for Jens than simply passing to him a package of legal information, (body of law), applicable to his business case. He taught him the soul of the law.

Mel was a young and junior lawyer at the time I met him. Now, some 15 years later, Mel has expanded his law practice to family law, his clientele and his staff, but has not changed his manner and positive attitude. He never pursued a law career to win by crushing the other party. As far as I know, he has never gotten involved in adversarial litigation in all his family law practice cases. This means a lawyer does not need to use the law adversarially, to prosper and succeed in his profession.

It is not only in a dispute or disagreement that a lawyer makes a difference. A lawyer can induce in his client an opening of heart and mind to the other party in most legal interactions by

being an example himself. This is an opportunity only available to lawyers who have the trust and confidence of their clients. Mel was one such a lawyer., as he did this in his practice. His positive impression was an inspiration to me.

### A LAWYER'S CHOICE

Mirelle's ex-husband, Jacques, was rolling in money. With \$270,000 annual income as a franchisor of a successful business, he was more than happy to pay any legal bills coming from his lawyer to get a court order in his favour against Mirelle, my client. Mirelle was desperately poor, and had been separated for over 15 years from Jacques. But Jacques adamantly refused to pay support to Mirelle. Luckily, Jacques's new lawyer was Bruce, a man who could see the soul of the law. Mirelle's previous lawyer had advised her that she would not succeed because of a lapse of 15 years from the date of her separation from Jacques, and because of the short duration of the marriage. Jacques had remarried, and paid no attention to the misery and poverty of his ex-wife. This didn't appear to me to be justice. Furthermore, an earlier temporary court order had denied support to Mirelle because the marriage was too short and there was a 15 year lapse of time.

I resumed court action to get support for Mirelle. At the same time, I asked for a meeting with Bruce, Jacques's lawyer, to discuss the matter.

"Right! Some 15 years ago your client slept a few times with my client. Then, what? What does she want for it?" Bruce said on the phone. It was not a nice response. But at least he agreed with my suggestion to have a meeting with me.

After the first round of our talks, some sparks of hope appeared in my mind. We talked intensively over his client's ability to pay and my client's desperate need. We talked about how easy it would be for Jacques to set aside \$1,000 a month, from his monthly surplus of thousands of dollars, and how that could change Mirelle's life.

From our discussion, I learned that Bruce was seeing the soul of the law. Bruce was seeing his profession something more than selling knowledge of law and technique of litigation for money. Bruce could chose between two alternatives, as he

wished: Number one: pursuing his client's wish, i.e., denying support to Mirelle. Number two: following the soul of the law, which was the voice of his conscience as well, using his influence and position to convince his client to agree with the request for relatively small monthly support. Obviously, choice number one that could reward Bruce with thousands of dollars of legal fees. Does this mean no smart lawyer would take alternative number two? It depends on what we really mean by smart, smart in seeing immediate but petty gratification, or smart in looking for long run, lasting joy and inner satisfaction.

Bruce was in the law profession for its real purpose. He brilliantly resisted the temptation of getting thousands of dollars of legal fees. He agreed with me in our second round of talks, that Mirelle would get \$1,000 monthly support. We got a consent order for the same amount within two weeks! We got justice done without litigation, without big legal bills, hours of waiting in the hallways of the courthouse, and above all, we saved Rebecca, the daughter of the two, who loved both of them, from the nightmare of seeing her parents' fight.

This was all because Bruce was a lawyer, not "biller". In fact, he could have cited dozens of cases as precedents, supporting his position for denying my client's claim, as happened in the initial court motion. Since our legal system is not as responsive to the soul of law as it is to the objective evidence and precedents, Bruce likely would win the case for his client. But he didn't choose that alternative. He was smarter than smarts. He knew that in the long run he gains a thousand times more than what he could gain from those type of legal fees, as he gets inner satisfaction, spiritual power, building up a powerful and unshakeable personal integrity and authority. And that he did.

An "opposing" lawyer is not more a lawyer than a "consenting" lawyer. It is a misconception that the best lawyer is the one who fights for his client's claim, regardless of the means, ethical or unethical. A lawyer who agrees with his counterpart and tries to convince his client that his claims are not realistic, may also not be a good defender of his client. It is not necessarily litigation and conflict that measures the dedication of a lawyer to his cli-

ent, but cooperation with the other party to find the soul of the dispute and find a solution that is good for both parties.

### WHEN LAWYERS FAN THE FLAMES

“She wants to be with me overnight,” said Ted, who had been my client for couple of years for his family matter. He complained that day access to his daughter Mona, 6, given to him by interim court order, was not enough.

We had a serious problem as Cindy, Ted’s separated wife, had changed her lawyer. She then became much less cooperative in resolving issues she had with Ted. She even attempted to deny completely Ted’s access to their daughter. What caused this new hostile attitude? They had been living separately and had no contact. Their child continued to be picked up and dropped off by a third person. Nothing had changed. So, what could have been the cause of this new adverse and negative attitude? It appeared that someone other than Cindy had caused the hardening of her position. **That person was Cindy’s new lawyer, Jeanna.**

In interviewing a client for the first time for a domestic dispute, a lawyer can fan the flames between the parties, or help put the fire out. **Jeanna** had apparently added to the fuel.

No mediation! This was the main point of the five page letter to me from Jeanna. She simply declared an unconditional war, ruling out all other alternatives to resolve the matter. A family, trusted by both Cindy and Ted, had offered their services to mediate and resolve the dispute. Jeanna had contacted that family and dissuaded them from intervening.

Jeanna had made a long list of new claims against my client, including compensation for “psychological harm”. Cindy never raised these claims in two years of dealing with her two previous, very experienced lawyers. Both those lawyers had numerous interviews with Cindy. But Jeanna’s perspective of the law was quite different. She saw herself as the saviour, defender and legal protector of Cindy, regardless of Cindy’s relationship to others. She did not see it as her business if everything else went wrong, including the child’s mental health, the future of the parties’ relationship or their extended families.

Unfortunately, there are many lawyers like Jeanna who miss

the very core concept of the law, which is connectedness, relatedness, and the belief in oneness and love, especially in family law. No matter how vigorously Jeanna defends her client, if she acts contrary to this very core element of law, she is missing the very goal of law. As a traveler, if you miss your goal, your destination, you are nowhere, no matter how fast you travel, no matter how luxurious the vehicle.

### LAWYERS HAVE AN IMAGE PROBLEM

When I left the courthouse one late Friday, I was terribly tired after over five hours of attending the court hearing or waiting in the hallway for my case to start. I didn't wait to remove my robes, just walked out of the courthouse to get to my car. As soon as I stepped out, an aboriginal woman approached me begging for money. I found a one dollar coin in my pocket and passed to her. "Sorry, I have no more with me," I told her. She smiled. "You are a lawyer and you don't have more? So, lie more," she said and walked away.

We cannot ignore that there is a stereotype about lawyers as liars. However, a deeper look at the legal profession reveals that it has little to do with the personality and character of any lawyer. It is not the wish of any student going to law school to be branded a liar after years of most intensive and quite often painful study and training. The adversarial system, the harsh contest for winning, is the mother of the image problem that lawyers have to face. In the ruthless competition for winning for a client in a civil case, or saving him from jail in a criminal case, or gaining him hundreds of thousands of dollars in an injury case against an insurer, lawyers' consciences are put to the toughest possible test; win and prosper in your career, or lose and perish. In the adversarial system lawyers lose have the time. No other professionals seem faced with such a tough professional test. Nevertheless, there have been and there always will be, lawyers who stand firm and pass the test of integrity, to become examples of human conscience and moral values. **Many such lawyers make history.**

***The Guardians:*** For centuries lawyers were seen as the guardians of justice, democracy and order in the society they lived.

They made a huge difference, by raising their voices and objecting fearlessly to tyranny, lawlessness and injustice. Mahatma Gandhi, Thomas Jefferson, Nelson Mandela and Abraham Lincoln are just a few examples. The history of civilization preserves their example. Our society does not see lawyers any more as reformers, forerunners of change and guardians of justice and order. Our too-adversarial, too-secular and too-pragmatic legal system is to blame for this change to the image of lawyers.

Those lawyers who pass this conscience test deserve the highest praise. Nobody, whether a lawyer or non-lawyer, can pass this test except those who dedicate themselves fully to honesty and integrity at any price. Under a secular legal system devoid of spirituality, it requires sacrifice, it requires heroic performance on the part of the lawyers to embrace the truth throughout their practice. There are lawyers who do this and they make a big difference, especially in family law when they transmit this sense of heroic integrity to warring parents. They are the conscience of society, the conscience of the human race at large. They are the hope of humanity, the hope that real justice shall prevail.

*A vacant position:* When religion was everything for people, priests or the clergy were the conscience of the masses. Now, fewer people look to religious leaders and clergy as their conscience. The law and the lawyer now tells them what is legally right and what they can't get away with. People need someone in lieu of priest or clergy, with wisdom and insight in law, to rely upon when they need to have a clear conscience that they are doing things right. This position, so badly needed, is vacant, because most lawyers are primarily concerned about selling their services and finding a market for their business to survive. When lawyers subordinate timeless values, conscience and integrity to marketing and business, they vacate the positions of ideals, heroism and leadership.

## THE LEGAL PROFESSION NEEDS A NEW LOOK

Bill, an instructor of law, asked me and Gloria, another student, to remain in the classroom at break time to talk. We were in our Bar Admission course after graduation from law school. The subject was criminal law. Every student was supposed to

perform as a criminal lawyer in a mock trial. The issue was how you would react after your client privately disclosed to you that he committed the murder. According to Bill's instruction, you should not reveal his admission and continue defending him, as if your client is absolutely innocent, because of your position as his lawyer. Among the students, Gloria and I could not agree with Bill's view.

Bill gave us a serious warning at break time for the way we were viewing the practice of law. He found our understanding of law practice inconsistent with general practice. In fact, his warning to us could be phrased thus: the legal profession requires from you to be a defender of your client, not the defender of truth, honesty and justice. This means that in the event of conflict between the truth and honesty in one hand and defending your client on the other, defending your client must prevail. It was tough for me to digest his instruction. It still is.

Profound changes currently press hard on the legal profession to revisit established precepts. The public, individuals and especially the younger generation expect the legal profession not to be solely a servant of the client at the expense of all other principles, timeless human values, truth, honesty and good faith.

There is a new awareness by the public of understanding of our common interests on this planet. This new consciousness finds the old law practice out of date. It appreciates the inter-relatedness of all, the oneness of all and common goals much more than hiring lawyers to win at the expense of another's loss. The law profession has to open up to these realities and reform accordingly, or gradually lose its reputation.

The legal profession should be the forerunner of these new developments, not blocking them. In fact, quite a few lawyers have already started working in this direction. The history of nations, from Greece to the Roman empire to revolutionary movements in Europe and America all show us how the forerunners of many major changes were lawyers. They have been those who have made big differences, and they can do so again.

#### ALARMING SIGNS IN THE PROFESSION OF LAW

The legal profession is not giving enough inner satisfaction to

lawyers. This fact is revealed by many writers and poll surveyors.<sup>57</sup> Benjamin Sells, himself a psychotherapist and lawyer, has shown in his book how lawyers are experiencing distress in their lives as a result of their profession. The cognitive dissonance of surviving under a harsh adversarial competitive legal system on one hand, and their own moral standard, belief and integrity on the other, has created psychological problems for lawyers. Lawyers are increasingly becoming dissatisfied with professional life.<sup>58</sup>

The legal profession is becoming increasingly devoid of virtues and moral values. **Civil law is becoming uncivil.** The emergence of very big law firms and harsh competition between them is changing dramatically the character of a typical lawyer. It challenges the core belief, the moral standard of lawyers. It makes him or her increasingly a technician who uses the law, rules and its technicalities as tools for making money. Character and wisdom, integrity and high moral standard of the lawyer are not determining factors in his/her profession. No wonder lawyers no longer have high profiles as leaders of their community or nation. As Anthony Kromman writes, increasing bureaucratization of the legal profession, large law firms with their power and domination in setting standards and models for profitable law practice are substantially responsible for these changes.<sup>59</sup>

The law profession can once again become an honoured profession by disentangling itself from strict rules any time that they stand between the lawyer and spiritual values that he lives for and is proud of. It is a long and painful journey for lawyers to regain a reputation as the conscience of the public. But it is also a great accomplishment.

***Too much logic, too little emotion:*** The secular and adversarial system has another ominous side effect; it makes lawyers (perhaps not all lawyers) too rational. That means distancing from real life. Real life is having reason and emotion and feelings, all in balance. Too much logic compels lawyers to disregard their own consciences and intuition.<sup>60</sup>

## *Eight: some conclusions*

*“Love and compassion are necessities, not luxuries.  
Without them humanity cannot survive.”*

*—Dalai Lama*

In the course of thousands of years of evolving, our cultural and spiritual growth has now reached a critical transitional stage. At this stage, our advances in science and technology are far ahead of our progress in culture and spirituality. We are now able to send messages around the globe in a matter of seconds. Yet, we often fail to communicate with our next door neighbours and know them little if at all.

The goal of our too-secularized legal system is “don’t harm your neighbour.” We must change that to “love your neighbour.” This law is devoid of its vital element, its soul, which is love. Without love, there is no real progress in the realm of law to match the amazing progress and achievements in the realm of science and technology. In fact, secular law has stepped backward by turning a totally blind eye to spirituality and love.

Victor Hugo said that no army is so powerful as an idea whose time has come. That idea whose time has come now is that we must go beyond *secular justice*, and transcend it to *humane justice*. In a more practical expression, we must pursue justice in the light of love. We must pave the way for loving relations with laws and legal justice which promote human values and self-actualization. We need a proactive law and legal system which aims at encouraging loving relations, as opposed to a reactive

one which is inactive except when public order or arbitrary rules are disturbed.

*The new heroes:* Secularism intended to separate traditional religions and sectarianism from the realm of law, but it has only replaced one religion with another. It has replaced traditional religions with its own religion, i.e., consumerism, where God is market. In this new religion, virtue is consumption. Serving God is replaced with serving the market. Any action which makes profit is good by the god of consumers, i.e. the market. There is no force to check and control the power of the market. Social injustice and starvation of millions on the earth, global warming, corruption and pollution are only a few of the results of this new religion. The secular legal system drives out the soul of the law in catering to idolizing the market. It used to be that our heroes were the great lawyers who stood against injustice, like Mahatma Gandhi, Abraham Lincoln and Nelson Mandela. Secular law replaces these with new heroes: entrepreneurs who use sharp dealing to monopolize a market, lawyers who make millions on exculpating criminals, the pedlars of exploitative, anti-social trash.

*Erosion of the foundation of law:* We are experiencing a catastrophic new development, the erosion of the very foundation of law. The market is progressively wiping out the timeless human values, replacing them with market values. Man's trustworthiness, honesty and faith in loving mankind and universe makes no profit for him and nets no dollar value. They have become valueless bonds, as the bonds of family are less and less valued in family courts.

Fraud, corruption and embezzlement of public funds are increasing. The news of Enron's scandal, as an example of corporate fraud in US is still fresh at the time of writing<sup>61</sup>. The sponsorship scandal in Canada just a few years ago, that cost taxpayers millions of dollars, is a further example of government-type corruption.<sup>62</sup>

The sponsorship scandal was essentially an adversarial, manipulative approach to national separation, much as our current family law system is an adversarial, manipulative approach to

family separation. The sponsorship system attracted the amoral, the opportunists, those without spiritual or moral values, and worsened the problem. Many people believe that what has been revealed so far, is only the tip of the iceberg, and that there are thousands of unrevealed scandals. We are facing a deficit of honesty and trust. How can law and justice operate without these virtues? Policing every single person all the time?

To replace a secular system with a traditional religious system is not the answer, as society is a diversity of religions. It is our value system that must change. The problem is exploitative, unsustainable adversarial values, particularly in regard to families. As David Loy writes, such exploitation is depleting not only the natural resources on this planet, but moral capital.<sup>63</sup> I suggest that it also depletes our human capital, which overwhelmingly means strong, non-adversarial families.

To rectify the problem, we need a force to overcome the seduction of consumerism, counter-balance the force of adversarial exploitation. We cannot expect traditional religions to bring back the soul of the law and control the conscienceless and callous. It is the God within everyone of us, our conscience, that needs to be listened to. Does rushing to consume more and more satisfy our needs, or just make us needier?

We have all sort of laws and regulations to maintain peace and order, yet order fails as soon as the law enforcement system fails,<sup>64</sup> and absolute chaos looms, because the soul of the law is missing. We have lost the linkage between law and love. We have only the lifeless body of the law. As we discuss in this book, “love” is more than a component of law and order. Love is an integral component of the law. It is our destiny, goal and our *raison d'être*.

We are experiencing the vicious cycle of a “money-value” syndrome, which masks the soul of the law and disrupts the natural linkage of law and love. This cycle converts most values to money, making pride, honour, honesty, altruism and unconditional love valueless. Consequently, our thinkers, writers, and talented humanitarian innovators, must produce something marketable, or perish. The vicious cycle of this money = value syndrome is

that many of our talented artists, film directors and actors are compelled to produce senselessly violent films, or produce works promoting antisocial conduct, vandalism and terrorism, to meet market demand. **They do so to survive financially, because of the perverse market incentives we place on anti-loving art.**

This money-value syndrome will go all the way to destroy the very system that harbors it, i.e., the community, the state, the very planet. Some war veterans who had fought courageously for their nation, now take up arms and become mercenaries, sometimes even fight against their own nation, for money. The most trusted individuals who had access to the most sophisticated weapons of a country, smuggle those same weapons to bandits, drug dealers and murderers, for money. Under the existing law and legal system, it is perfectly ok that you make money, no matter through what immoral and antisocial, even illegal way, so long as you leave no trace, no objective evidence behind. As we discussed in this book, our secular legal system does not brand such an act illegal because it relies on nothing but objective evidence.

Furthermore, the result of the money=value syndrome is that amoral secularists spend millions to fabricate objective evidence for courts so long as it appears to be real. Likewise, secularists fabricate evidence to discredit real evidence of an opponent, in order to confuse the court and officers of the law<sup>65</sup>. This happens almost as a matter of course in family law courts. These mock justice and are the by-products of secular justice, a secular legal system which does not see the soul of the law. This is obviously not in harmony with our real goals to be more humane-beings, but to be solely “smarter-beings”. And “smartness”, is measured in money and profit.

We all know the advantages of delaying gratification. We have learned this principle from our early school days that how postponing our fun to a time after studying well for an exam would give us great joy after finishing the exam. Yet, in our daily life, we miss great opportunities, waste time and energy by neglecting this principle, being tempted by immediate pleasure at the expense of missing the real and lasting joy of life. A proactive law and legal system can have a role to play in this respect

by promoting this principle of delaying gratification. This is the principle which leads us to our final goal, which is becoming a more humane being. But the soul-less, reactive law that we have, does quite the opposite, encouraging immediate and fleeting gratification.<sup>66</sup>

The producer of a film, book or other work of art that moves our hearts and promotes human values never gets paid as much as a producer of a movie which entertains with acts of violence or sexual thrills. Yet the inner pleasure you get by making the first one is profound and permanent. Lawyers, judges and the law itself must decide to sacrifice profit for this inner satisfaction. Our consciences clearly tell us what are our long-term interests and our inner satisfaction. The law must reflect and promote this voice of conscience, and discourage the “clever tricks”, the profiteering, the inequitable in relationships.

Our current laws and legal system are the followers, as opposed to leaders of the market. They react to, and follow the immediate and superficial desire of individuals, even if the satisfaction of these desires and needs are undesirable, harmful, or socially destructive in the long run. Our laws give green lights to antisocial, immoral, and inhuman acts, as long as certain criminal code details are not violated. Our laws turn a blind eye to social injustice, excessive wealth over extreme poverty, as long as the formalities of secular law are met. Secular law has become a body of law, devoid of a spiritual soul.

#### THE DISCONNECT BETWEEN LOVE AND LAW

We pay a heavy toll in disrupting the connection between law and love, because we lose the soul of the law. We pay the heaviest toll in the family. It is in family relationships where the linkage of law and love is most needed, the most vital. We observe it in practice in many actual cases discussed in this book.

The statistics of divorce and broken families cry loudly for as change in approach. We reviewed some of these alarming figures earlier in this book. The real meaning and value of the family union is fading. We are sadly observing the undermining of the only place where our children can learn that which make us human, the only institution which successfully and sustainably raises

future generations. Fewer marriages, the rise in divorce rates, more children born to unmarried women, and poorer parenting are the harbingers of a bleak future.

Hours that used to be family time for parents and children are increasingly usurped by electronic entertainment. **Increasingly, the paid child care industry, the market, usurps the role of parents. This is yet another replacement of love and altruistic family values with the employer-employee relationship of a “caring” industry.**

The adversarial resolution of family disputes in our current legal system does nothing to help but makes this crisis worsen. The actual court cases we saw in this book showed us how the current legal system itself undermines the family.

What can be done?

Our system could be a family preserver as opposed to the family destroyer that we have now. I realize the difficulty of such a radical change as bringing love and spirituality to family law and legal procedure. But I believe it is possible to take a few immediate steps, such as making education and mediation in family disputes mandatory, removing perverse incentives, and replacing adversarial procedures.

How? My proposed pilot plan, the next chapter of this book, shows these workable changes. I am convinced that the plan will show that justice in the light of love is only complete when love prevails at the end, not when it leads to alienation and disunity.

I am also convinced that a “law linked to love” is needed in commercial and business relationships if we are to move forward to a level of human progress that is our destiny.

## *Nine: Family Protection Plan (FPP)*

If we wish to protect families from a destructive, adversarial, profit-making legal system, we must have a plan. The plan must be comprehensive, tested and effective. The Family Protection Plan is a proposal on how to develop and test such a process. It is based on tested, effective alternatives, most in effective operation in family law in various jurisdictions. FPP puts together these alternatives in a comprehensive process designed to reform family law outcomes from the viewpoint of those parents and spouses encountering it. A key prerequisite is reform of divorce law so that shared parenting and equality of parents is the default for court decisions. In the plan proposed here, adversarial actions in any form, including court litigation, are excluded as an option in resolving family disputes, except in some very rare cases, which must be factually demonstrated.

The plan proposed here operates in harmony with the general goals of mankind, i.e. spiritual growth. It is about professionals working methodically and patiently on awakening the consciences of the parties, to make them sufficiently conscious of the concept of family unity, spirituality and love in relation to family life and raising children.

There are some family counselling, educational programs, mediation and other similar efforts currently at work for avoiding adversarial approaches to family issues. However, these measures do not go far enough. Adversarial litigation in family courts is still taking a heavy toll, in long court battles over child custody, child access, fights over family property division and so on.

## *What is NEW in the Family Protection Plan?*

1. Reform of Divorce Law so that parents keep their rights and responsibilities to their children unless strict standards of proof are met by the State.
2. Mandatory entry into education, mediation and collaborative law if parents do not agree to shared custody.
3. Each family court is to have a Case Processing Director with a mandate and goal of resolving 95% of family law cases without court actions. Any judge or case processing director must document the reasons for any exception from non-adversarial procedures and the facts on which these reasons are based.

## *How will this proposed FPP work?*

### CASE PROCESSING DIRECTOR:

All family issues, including, child custody, child access, support, divorce, and division of family property shall be referred to a Case Processing Director (CPD). The CPD shall have his/her office in the family court of every jurisdiction.

Parents, spouses or parties to the dispute may bring their issues to the CPD by an Application, or Joint Application and a Case Brief. The Application and Case Brief may be completed according to the requirements of the CPD.

### PARENTS FREE TO DECIDE BY MUTUAL CONSENT:

Based on the Case Brief, the CPD may find the issues (or some of the issues, such as child custody, or child access) resolvable by giving the parties the guidelines, parenting plans and information relevant to their issues. The CPD invites the parents/spouses involved to come up with their own terms for settling the issues. If they develop a mutually agreed parenting plan, none of the paths are mandatory. The CPD may use his/her expertise, experience and knowledge to draw up an agreement (or a draft of consent order for the court, if the parties wish so). Any agreement so reached and signed, shall be final and binding between the parties. Alternatively, the CPD may make a draft of a court order based on the minutes of settlement between the parties,

to be sent to a judge for signature.

When Parties are unable to reach mutual consent in some or all of the issues, the CPD shall refer the case to the following *paths* in sequence, until resolved:

Path A: Profound family Education Program (PEP)

Path B: Parenting Program

Path C: Mediation

Path D: Collaborative Lawyers' Involvement (CLI)

E: Court of last resort

Based on the information from the Application and Case Brief, CPD may skip any path which he/she may find unsuitable or unnecessary.

### **CONSENT OF THE PARTIES: A CRUCIAL FACTOR:**

Through all the paths, no decision may be reached by the professionals or officers and administrators involved unless both parties to the dispute agree. Professionals shall make all possible efforts to avoid putting undue pressure on either party to agree with any recommendation.

### **FAST RELIEF:**

Based on the Application and Case Brief, if the CPD is convinced that quick intervention of a Court is needed because of urgent nature of any issue, the case may be heard by a judge for a temporary judgment. However, the CPD may still later refer the matter to the appropriate path, seeking a permanent resolution of any matter. In the temporary judgment, the judge may set a deadline, (eg. one to several months, depending on the nature of the issues), for the revision of the temporary order and finding a permanent resolution in the light of the outcome and the recommendations of the path concerned.

A spouse or parent whose application is not found eligible by CPD for Fast Relief, and disagrees with CPD's finding, may be given a chance to be heard by a duty judge for reviewing the case. Nevertheless, no court intervention without a Certificate may be allowed unless there are compelling reasons for doing so. Any judge making a temporary (or long term) decision must state the facts upon which the decision is based.

## *Path A: Profound family Education Program (PEP)*

Profound family Education Program (PEP) is the first path to take when parties cannot resolve issues themselves and that there is a good prospect of the parents resolving issues after completing PEP. PEP is an extremely important educational process as it is designed to give the parents the understanding, perspective and stability to make the decisions and do the tough work to accept both parents in the lives of the children. PEP can give practical training on conflict resolution skills, illustrative and comprehensive training, advice and guidance about the extremely important role of the family. Parents may be exempted from PEP only if CPD finds it not suitable because of the parties' ages, experience or positions.

Very often, couples marry or cohabit and raise children without realizing what a great union they are establishing (or potentially ruining), without fully realizing their critical responsibility as parents. Young couples marry or simply cohabit, often as a matter of convenience and friendship. They may not appreciate the significance of their unity, joining to be "one" and at the same time remain independent individuals. Quite often, they do not realize fully the critical environment each provides for their children, or they are unbalanced by the emotional stresses of the failure of the marriage. The law and the PEP mechanism come into play to rebalance the partners.

Regardless of the faith, cultural background, ideology and belief of the parties, family is the base upon which our society is built. Families are the "love cells" that make the fabric of our civilization. Their fall means the civilization's fall. This proposal may be criticized for intervening and making family education mandatory. But the need for the child to keep both parents is so important, it justifies relatively minor restrictions to individuals' rights to "take it to court". **Just as an individual needs to be educated before making critical medical treatment decisions, rather than making regrettable decisions under emotional distress, parties in family court need education before making**

critical decisions in family law. Cultures (or individuals) with stereotyped views of the roles of men and women may need culturally-sensitive education about the value of both sexes before dispute resolution steps.

Stressing the element of real “love” under PEP can act as “activation energy” to initiate healthy dispute resolutions. PEP reminds the parties of an integral component of human relations, i.e. love. The PEP is about learning how to treat family disputes in the light of genuine love, focussing on the restoration of loving relations, full understanding of caring as the foundation of family, and the value of the family relationship. Care should be taken to have participants become “love-conscious” through the PEP course.

***PEP can do great things:*** If performed ideally, the Profound family Education Program can revolutionize family relations. A deep understanding of family and loving relations helps spouses and parents to overcome ill-feelings against each other. It helps liberate them from the pains of past “baggage”. It gives them the powerful message, with the authority of the State, that love and loving relations can and should prevail and continue, even if cohabitation is no longer feasible. It helps them focus on the present and future as opposed to their past.

***PEP and the Emotional Divorce Process:*** Most divorces are initiated when one side wants a divorce and the other, surprised, does not. In these circumstances, if a divorce is inevitable, then the job of PEP education is to put off the legal divorce until both parties have gone through the emotional divorce process, and thus are emotionally ready for the legal divorce process. The divorce initiator needs to understand that the other side will still be in their lives as co-parent to the children. The surprised or respondent parent needs to work through the process of acceptance of the divorce, like the stages of dying: Denial, Anger, Bargaining, Depression, Acceptance. Until both parents are emotionally ready to accept the divorce, proceeding through legal steps usually produces conflict and problems. PEP educators and participants need to understand the importance of waiting until both parents are ready to accept the divorce.

## *Path B: Parenting Program*

When custody, access and child support are issues and one parent demands sole custody, (and the parents cannot resolve this themselves) the CPD may refer parents to Parenting Program Path (PPP). PPP includes professional counseling for deepening the parents involvement in the true interest of their children, their need to be raised by both parents and the parents' mutual needs to parent the children. When divorce or permanent separation of the parents is unavoidable, the Parenting Program helps parents work out a timetable, a well-studied plan for care and control of the children to the satisfaction of both parents. The following factors are guidelines to work out a plan of care and control of the children:

- i neither parent has exclusive custody of the children;
- ii parent's need to maintain his/her natural relation with his/her child may not be sacrificed for any other interest, including child's interest except as agreed by the parents;
- iii No sole custody of the child shall be granted to one parent by the court or similar tribunal except under special circumstances. The judge would have to state the facts on which such a decision was based.

## *Path C: Mediation*

### NOTES ABOUT MEDIATION<sup>67</sup>:

In Quebec, the first five mediation sessions are state-funded. Mediators suggest that most couples are able to resolve their issues in mediation, and even those who do not, resolve 90% of their issues, so they are still further ahead. Mediated agreements of the parents are far more likely to be respected compared to court-ordered arrangements, which are usually against the wishes of at least one parent.

There may be concern about the mandatory nature of mediation. Would there be good faith on the part of the participants? How about the parties' privacy rights and confidentiality? How can the decision be enforced?

*Should mediation be mandatory?* The argument that mandatory mediation goes against its usually mandatory nature, is not very relevant. Parties may be reluctant to go to mediation, but soon find mediation in their interest when they explore more about each other's positions. Parties will soon realize the advantage of mediation which provides a non-adversarial channel of direct talk in the presence of a neutral person. They realize how mediation gives them a chance to consider resolving and compromising on issues without going through a lengthy and costly trial, and without the fear of an authority forcing a one-sided decision on either party.

*Can mediation ensure privacy?* There could be strict rules protecting confidentiality of all information discussed in mediation. The fact that mandatory mediation has been practised successfully under Civil Procedure in Ontario courts for many years, shows that it could work in family courts as well.

How can mediated agreements be enforced? The following steps may be taken to make mediation outcomes enforceable:

- Making a strict dividing line between the two phases: phase one; the course of mediation, which is the dialogue, parties' views and mediator's comments and observation. Phase two; the outcome of phase one, i.e. the agreement reached between the parties with the help of the mediator.
- Having the parties fully understand all the terms of the agreement reached in phase two without doubt or confusion.
- The outcome of phase two may no longer be a private and confidential matter and may be admissible evidence in the court and enforceable, should the dispute end up requiring a court's intervention.
- Having some authorities (like CPD, or a listed mediator other than those involved in the case) attending phase two and witnessing the process.

#### WHAT IF A PARTY FEARS A GENDER-BIASED MEDIATOR?

It may be advisable to have a couple, as mediators. Two mediators, a man and a woman, both skilful and experienced, may be more likely to be seen to make a fair mediation between husband and wife.

## REPLACE CASE MANAGEMENT WITH MANDATORY MEDIATION

The case management system now at work in Ontario family courts means well. But in practice, it has been far less successful than initially expected, not because it is the wrong procedure, but in the wrong place, i.e., in the courtroom. To the parties, the very courtroom attendance means confrontation and fighting. It means the intervention of an authority who can order something against the will of the parties, disempowering them. The intimidation of the courtroom atmosphere, with the judge positioned on the bench on the higher level, the formal, centuries-old process of the court and the attendance of at least two lawyers, clerks and court reporters leave no room for plain, candid and friendly party-to-party talk. Court makes a show, often a show of power. Replacing the mandatory “case conference” currently at work in Ontario, by mandatory mediation proposed here, as directed by CPD, will produce far better results.

### *Path D: Collaborative Lawyers’ Involvement:*

In any case that CPD finds PEP, Family Parenting and Mediation unsuitable, or not enough to resolve the issue, it may refer the parties directly to Collaborative Lawyers’ Involvement (CLI). With the help and direction of CPD, parties may appoint their own legal counsels who are willing to collaborate in order to find a mutually agreeable settlement, without the intervention of the court. CLI operates quite similar to what is known as “Collaborative Family Law practice”<sup>68</sup>. All lawyers interested in collaborative family law practice may be added to a source list available to the parties to appoint their lawyers.

This settlement effort may take place in a four-way negotiations, i.e., parties and their lawyers. This is not adversarial or confrontational. It is an honest disclosure of each party’s financial information, facts, reasons, explanations and complaints. It is a cooperation to reach agreement through the parties and their professional representatives. In this approach, the lawyer of each party may know very well, not only his/her client, but the spouse of his/her client, and the reasons for their claims.<sup>69</sup>

## HOW DOES CLI WORK?

Parties retain their own lawyers who are prepared to practice “collaborative law”. Under collaborative law, lawyers of both parties get the agreement of their clients not to take the matter to court or any similar forums, but collaborate with each other until the matter is resolved to the satisfaction of the parties. If the negotiation is not successful, parties may have the leave to take the matter to the court, but those lawyers withdraw from the case and the parties must retain other lawyers.

During this negotiation, parties may fully disclose all the information and pertinent facts to each other in a non-adversarial manner. Briefly, here is how CLI works, step by step.

- a. Parties agree at their lawyers’ offices to comply with the following terms and conditions of CLI:
  - i. CLI lawyers shall not take the matter to court;
  - ii. They disclose all pertinent information to their lawyer
  - iii. Their lawyer shall have authority to disclose the information to other party’s lawyer as he/she finds necessary
  - iv. All info remains confidential and shall not be used in court if CLI fails to resolve the matter
  - v. It is a four-way problem-solving talk to reach an agreement, and not a debate and not an adversary argument over claim and counterclaim to win.
  - vi. The lawyers use their profession to finding satisfactory and amicable solutions in an atmosphere of openness, free of provocation, intimidation, secrecy and unethical conduct.
  - vii. Discussion may take place in a conference attended by all four parties.

## BENEFITS OF CLI

- a. *win/win*: In our present system, whether winner or loser, the spouses carry with them a bundle of unpleasant memories of litigation, trial and court fight. No one can feel proud of fighting with the parent of his/her own child. Litigation, regardless of its final outcome, also creates a rift between children and parents, siblings, extended family members and close friends, perhaps for a lifetime. CLI saves parties from

such lose/lose litigation with a win/win alternative.

- b. ***A deeper understanding:*** CLI helps parties to look more realistically at their claims and revise their initial objectives, narrowing the gap between them. Lawyers exchange disclosures and advise their respective clients of their opinions to help clients to re-think, and quite often settle peacefully the disputes in the light of amicably disclosed truth. The nature of issues between spouses is different from an ordinary civil dispute. They are mixed with emotions, feelings and resentments. Rushing into a full adversarial confrontation quite often worsens the tensions in the relationship, and produces no solution. In CLI, on one hand, parties would be in more relaxed mood since they have a trusted lawyer to stand for them. In this relaxed mood, it is more likely that the parties tend to move from extreme positions to close to a reasonable resolution.
- c. ***Amicable Discovery:*** In an adversarial atmosphere of confrontation, the parties are more inclined to hide facts, financial sources etc., from each other. In CLI, parties find that their honesty and conscience is put to the test and they will be more likely to disclose in discovery sessions.
- d. ***Better than mediation:*** CLI can be better than mediation in difficult cases because here the parties benefit from the advice, skill and experience of their own lawyers throughout the whole process. However, the lawyer is not acting against the other party to win, but cooperating with other party's lawyer to resolve the case, to seek a win/win solution, without prejudice to a client's right to court's intervention.
- e. ***Generating and exploring options:*** there could be other options to resolve the matter, better than what parties visualize at the beginning of their dispute and tension. These options which could save them money, time and stress, might never occur to them, if parties' only option is to fight. Collaborative family law brings these options to their attention.
- f. ***Legal but not hostile:*** Parties to domestic disputes are quite different from parties to a civil disputes. In many if not all family cases, spouses are inclined to know their "rights" and

demand them, but perhaps at the expense of ruining family ties or jeopardizing good relations with their children and in-laws. Collaborative lawyers are usually experienced lawyers seeking an alternative to the destructive, emotional, win at all costs games of adversarial family law. These lawyers have the legal skills to inform clients of rights and legal positions. They also have the motivation and problem-solving skills to find the best solution for everyone. They minimize the harm to good relations between the parties, with children, or in-laws. CLI minimizes legal bills for court litigation, questioning, trial, examination and cross examination etc.

- g. ***Efficiency:*** In CLI, things can move much faster and easier. Parties do not have to wait for any other authority, court, board, clerks or judge. A telephone call to their lawyer will move the process on. They can drop their documents and notes at their lawyer's office at any time, or e-mail them. The two lawyers do not need to wait for a court date to meet. They can chat over the issue in their lunch time, or by telephone or e-mail. They can have their clients to join them in the discussion at any time that all four of them can agree.
- h. ***Long-run guaranteed win:*** Some differences between spouses are, by nature, unresolvable. CLI may not succeed in saving the relationship and family unity in some cases. But it can still make a big difference. When parties go through CLI, properly exhaust all possible remedies thereof, they may be convinced that they can no longer cohabit, but they also have no intention to harm each other. Their consciences are clear, their honour and dignity is saved. They do not carry with them a pain, a feeling of guilt and shame for the rest of their life. They do not blame themselves later on, neither their children, friends, relatives or in-laws blame them. They are convinced that they acted wisely and humanely, not foolishly giving in to ego. Their lawyers will have similar feelings of accomplishing something positive.

#### COURT OF LAST RESORT :

It must be recognized that there are a small number of people who will remain unbalanced and unco-operative even with the

best education, mediation, parenting plans, collaborative law and arbitration processes. Typically, going through such a process is a nightmare for the other, co-operative, friendly parent. Yet there is much there for such a parent to learn about managing relationships and perhaps avoiding selecting such a partner in future.

Access to the Court of last resort is only with certificates showing reasonable attempts at the prerequisite paths. With correct procedures and incentives, a Court of last resort may have to deal with a remaining 5% or so of cases, wherein one or both parents are so intractable as to make non-adversarial processes unsuccessful.

It must be recognized that current adversarial law is not successful in these cases either. Research by Calgary-based Canadian Research Institute for Law and the Family classified 24% of family law cases in the current system as “high-conflict” in that these cases had been through four or more court hearings within two years. Thus, the current adversarial system is clearly ineffective in resolving these, even with repeated hearings.

The Family Protection Plan will do better in three ways:

1) removal of adversarial incentives will reduce intractable cases from 1/4 to less than 5%

2) a Court of last resort will use resolution hearings, standard in non-family-law civil cases now, to encourage settlement.

3) Judges in last resort cases may make any decision, but must state the facts on which any decision, other than equal shared parenting, is based. Thus a judge may not simply cite “best interests of the child” in ordering sole custody, but must cite facts in evidence sufficiently persuasive (beyond a reasonable doubt) that the parent was, for example, a danger to the child.

## CONCLUSION:

Under this proposed plan:

- \* Court intervention and litigation is not an option for parents or spouses to resolve their disputes, except in special cases.
- \* Parties to the dispute shall be educated about the true concept of family and parenting responsibilities.

- \* Parties get a chance to explore avenues available to resolve the issues amicably, before making any decisions.
- \* Parties proceed through mediation, family education, and collaborative legal negotiation, in parallel or in sequence, as the case requires, before a final decision on issues.
- \* Shared parenting shall be an essential principle to be observed in all family cases. Sole custody may not be ordered to one parent, unless the factual basis for this is clearly stated. (Parents would still be able to decide themselves on split custody, parallel parenting or alternating sole custody, or other arrangements, but the education program and professionals would encourage equality and respect for both parents.)

#### WHAT WOULD BE THE OUTCOMES?

- \* Ill-feeling, emotional harm and economic loss to the parties and their children is reduced or removed.
- \* Shared values, interests and ideas are explored and agreed upon by both parties and used as steps towards defusing tension and misunderstanding.
- \* An atmosphere of mutual cooperation to disclose parties' financial and non-financial facts and information is created, further removing tension and ill-feeling.
- \* Parties are educated and prepared to face and welcome new realities if the divorce is unavoidable.
- \* Parental dignity and decision-making are maintained.
- \* No sole custody of children shall be recommended, ordered and practiced, unless under extremely exceptional cases.

## END NOTES

1. The cases used in this book are real, but the names are pseudonyms to ensure confidentiality of the individuals. Furthermore, certain immaterial facts in those cases have also been altered to make identification unlikely.
2. Statistics Canada, *The Daily*, December 13, 2005. Also US National Vital Statistics Report for 2005. We have more about the statistics of divorce and marriage in this book.
3. Robert E. Emery, *Marriage, Divorce and Children's Adjustment*, 2nd edition, 1999, Sage Publications Inc. Thousand Oaks, California 91320.
4. Dawson, *Family Structure and Children's Health and Well Being National Health Interview Survey on Child health*, *Journal of Marriage and the Family*, Vol. 53, No. 3, Aug 1991.
5. US Census Bureau American Community Survey Report, released on August 2006.
6. US National Centre for Health Statistics, a report released on November 2006.
7. Statistics Canada, *Population and Demography*, Catalog No. 89-566-XE
8. Jeffery M. Leving and Glenn Sacks "Birth trend travail" *The Washington Times*, American Newspaper, December 4, 2006.
9. Study published in *Archives of Sexual Behavior*.
10. We may ask this question differently as, Who are we, without spirituality? Bunch of bones and flesh? Great Persian Poet and Sufi, known as Rumi, says "Oh brother, you are all thought, the remaining of you are just bones and tissues."
11. By the word "secular" in this book, I do not mean necessarily 'non-religious', but 'devoid of spirituality'. There is a separate chapter on secular law in this book. We will see how secularization of the law and legal system has gone too far to deplete the law from its soul.
12. Thomas Moore writes: "...We see signs of this drain [of soul] in language that has become manipulative and empty, in the anemic condition of ethics and morality, and in the hunger for real pleasure and meaningful lives that even affluent and successful people confess to." From Thomas Moore's Foreword to Benjamin Sells' book (*The Soul of the Law* 1994, Element Inc. Rockport, MA, USA),
13. This talk about commodifying administration of justice reminds us of O.J. Simpson's so called "Trial of the Century" in California, U.S. In this lengthy and highly publicized trial in 1995, it was not justice that was served, but the market for publicity, media and individuals who made fortunes. Millions of dollars of profit were made, yet, the issue of murder of two human-beings remained absolutely unresolved. Justice under our secular and adversarial system showed its loyalty to the market, not the truth.
14. Enron energy company in Houston Texas is one example. This, one time huge corporation with 21,000 employees collapsed about the end of the year 2001, because of accounting fraud, breaching the trust of public, causing huge losses to thousands of innocent investors, loss of job of thousands. It is simply one example of many corporate corruption, many never revealed in the media.
15. As an example of public sector corruption in the western world, I can name the one happened in Canada around the years 1996- 2004, known as the sponsorship scandal. Millions of dollars of taxpayers' money were wasted because of broad corruption, illegal actions and misuse and misdirection of funds by

the government, and in particular, the Liberals, the ruling party at that time. Again, many public sector corruptions and scandals are never revealed to the public.

16. One of the greatest men of all ages in the area of law and theology, St. Thomas Aquinas, said some 800 years ago that “the purpose of human law is to lead men to virtue, not suddenly but gradually.” St. Thomas Aquinas, father of the church (1225-1274) *Summa Theologica*, 11,1,96,ii
17. The most recent example of law being a follower rather than leader is the decision of Supreme Court of Canada, which was made on December 2005, legalizing swingers’ clubs, or simply group sex business. Why? The legal system simply follows the needs, no matter if they are for immediate gratification with adverse consequences on long term spiritual and non-material needs, such as strong family relations. The problem is not the bad interpretation of the law by courts, neither bad laws. The problem is our secular law system which is void of spirituality and love. (We have more about secular legal system in chapter 4 of this book).
18. Talking about the linkage of love and law is not new. Over two thousand years ago, Marcus Cicero, the great lawyer, politician and philosopher (106-41 BC) refers to the relation of law and love. He says, we discover justice because by nature we understand reason. Then he says, God (or in his term “gods”), who gave us sense of reason and punishes us or rewards us for our bad or good action, cares for us and loves us. What Cicero said some half a century before Christ, could also be found in all great religions of the world, in one form or another.
19. Talking here about capturing the opportunity of a criminal incident to change the wrongdoer, reminds us of how Jesus changed Mary Magdalene.
20. In this context, the comment “the law is an ass, an idiot”, in Charles Dickens’ story makes sense. Charles Dickens *Oliver Twist*, Chapter 51, p 489
21. Benjamin Sells, *The Soul of the Law* 1994, Element Inc. Rockport, MA, USA p 31.
22. The analogy of “the seer and the blind” as I have here is my paraphrase and interpretation from Jalalu’ddin Rumi (1207 - 1273), one of the great spiritual masters of all ages. It is from his *Masnavi* Book 1, (London: Luzac and Co. 1926, repr 1969), pp 115-6. Here are his verses translated by Nicholson:
 

v2125 Myriads of conformists and legalists [+FN1, below] are cast into the  
abyss (of destruction) by a single taint (of doubt),  
For their conformity and their drawing evidence from logical  
proofs and all their wings and wing-feathers (every means which  
they employ in order to arrive at the truth) depend on opinion.  
The vile Devil raises a doubt (in their minds): all these  
blind ones fall in headlong.  
The leg of the syllogisers is of wood: a wooden leg is very infirm,  
[ (+Footnote 1): Literally, “followers of signs (external evidences).”]  
Pg 116:

.....  
v2130 The blind man’s leg is a staff, a staff, so that he may not  
fall headlong on the pebbles.  
The cavalier that became (the cause of) victory for the army  
who is he for (the army of) the religious? One possessed of  
(spiritual) sight.  
If, with (the aid of) a staff, the blind have seen their way  
(yet only) under the protection of (other) people are they

clear-sighted.

Were there no men of vision and (spiritual) kings, all the blind in the world would be dead.

.....

What is this staff? Inferences and (logical) demonstration

Who gave them (the blind) that staff? The all-seeing and almighty One.

Since the staff has become a weapon of quarrel and attack, break that staff to pieces, O blind man!

23. David Loy, , Religion and the Market, a paper, Faculty of International Studies Bunkyo, Japan, Copyright, 1997. David Loy is a professor of Comparative philosophy in religion, in Bunkyo University, Japan.

24. "Happy are the ones walking in the law of Jehovah" Psalm 119

Professor Jeffrey Brauch writes "...Divine grace and mercy are the presupposition of law in the Old Testament; and the grace and love of God displayed in the New Testament events issue in the legal obligations of the New Covenant." Jeffrey A. Brauch *Is Higher Law Common Law?* (Littleton, Colorado 80127 1999), at 354.

In Islam, this linkage of law, love and grace is emphasized in a number of different ways.

Millions of Moslems repeat at least five times daily "God is the merciful and the beneficent" when they observe the law of Salat or ritual prayer. So, Muslims, as they observe divine law, are daily reminded of the connections between God's law and his love.

In the Bahá'í Faith, which is the youngest of the world's major religions (1844-), the connections between observing the law through love are emphasized in its Book of Laws, with a reminder from its author at the beginning of the book saying "Observe my commandments, for the love of my beauty". The *Kitáb-i-Aqdas*, para. 4.

25. What is Justice? Perhaps this is one of the oldest questions puzzled philosophers who were seeking a definition for. But we all can have an idea of what injustice is. In Aristotle's doctrine, justice is a virtue, and like other virtues, it is a mean between the extremes. Philosophical search for justice raises numerous questions, such as whether justice is simply giving everyone what he / she entitles, or whether generosity, charity or even care and love is part of justice. After all those debates, comments and conflicting opinions given by scholars and writers of all times (from Greek philosophers, to John Lock, Thomas Hobbes, Jean-Jacques Rousseau, John Rawls and others), I find Martin Luther King's view of justice most profound. He said that Justice is really love in application. Justice is love correcting that which works against love.

26. J. Rumi, *Op.Cit*

27. Fania E. Davis, professor of New College School of Law, San Francisco University, California as appears online in [www.restorativejustice.org](http://www.restorativejustice.org). Ghandi's view of Justice is quite similar to Fania E. Davis, as he said that action alone is justice which does not harm either party of the dispute.

28. As we will see later in this book, counselling is not the care we speak about here. The normal counselling practised in most of the cases appears as a package of information and facts, or recorded lectures (whether on tape or counsellor's mind) prepared in advance for similar circumstances, that would be replayed over to the offender.

29. David Loy *op.cit*.

30. Aleksander Solzhenitsyn, Harvard Commencement Speech. Solzhenitsyn, a Russian novelist won the Nobel Prize in literature in 1970. He was exiled from

- the Soviet Union in 1974. He had been well known for criticizing communist aggression but also warning the West about the weakening of moral values.
31. As professor Harold Berman writes:  
What is threatening is the secularization of legal thought. The threat is the exclusion from our legal philosophy of any religious belief of faith. Harold Berman, "The Interaction of Law and Religion" *Mercer Law Review*, [1980] Vol. 31 note 1, at 410 (footnotes).
  32. Judge Lois Forer writes: "Everyone comes into my courtroom, places his hand on the Bible and swears or affirms to tell the truth. But many of them lie. There is no consensus that lying is wrong. There are those, like professor Monroe Freedman, who assert that lawyers have a duty to lie for their client."  
Judge Lois G. Forer "Some Problems in the Administration of Justice in a Secularized Society", *Mercer Law Review*, Op.Cit. note 1 at 450. Judge Forer's is an ominous statement and it is quite likely that Forer's concern would be shared by many other judges. The administration of justice is in dire peril if we cannot find truthful witness.
  33. To find more about this see Josh Freed, *Merchandising Murder* [Video recording] (Toronto: Canada Broadcast Corporation C. 1994)
  34. US National Center for Health Statistics, 2005.
  35. *Ibid.*
  36. Statistic Canada, Catalogue No. 89-566-XIE
  37. *Ibid.*
  38. Wade Horn and Andrew Bush, "Fathers, Marriage, and Welfare Reform" Hudson Institute Executive Briefing, 1997, Hudson Institute, Herman Kahn Centre, 5395 Emerson Way, Indianapolis, USA
  39. Atila Turgay, M.D. American Psychiatric Association's Scientific Meeting, May 1994.
  40. U.S. Census Bureau's 2005 American Community Survey.
  41. Statistic Canada, op.cit
  42. US Census Bureau. op.cit.
  43. For more on this see *Middletown Journal*, OH, USA "Traditional black marriage in trouble? Expert say black are most likely to divorce and least likely to marry." By DeAnna Pretty Contributing Writer: February 16, 2007.
  44. Reuters, December 23, 2006, reported from the High Court of the Red Sea Port of Jeddah, Saudi Arabia.
  45. Sarah Abdulla, "Many women [in Saudi Arabia] shunning marriage" *Arab News*, February 11, 2007
  46. For more in this issue, see William J. Bennett, *The Broken Hearth, Reversing the Moral Collapse of the American Family*, 2001, Random House Large Print Society.
  47. Dr. Scott Peck, *The Road Less Traveled* (New York: Simon & Schuster Inc. 1985) at 207
  48. If we call the core belief of a man, the way he sees the world and life, religion, then everybody has a religion, even an atheist. In the words of Scott Peck: "(A)mong the members of human race, there exists an extraordinary variability in breadth and sophistication of our understanding of what life is all about. This understanding is our religion. Since everyone has some understanding- some world view, no matter how limited or primitive or inaccurate- everybody has a religion." *Ibid* at 185. Also, Timothy Macklem writes: "According to one of the most influential psychological accounts of freedom of religion, every person has a religion, and that religion is composed of that person's deepest commitments or ultimate concerns." Timothy Macklem "Faith

- as a Secular value" [2000] McGill Law Review Vol 45, No. 1. note 22 at 23.
49. Adversary system which has replaced the former oppressive, inquisitorial religious systems appears to be working well in trial. It is expected that in the course of the adversarial trial and the arguments of opposing lawyers, the truth will emerge and justice will be served. It is further presumed that the judge will remain neutral and render a just verdict once the truth has been explored. At the end of the adversarial trial, it is also presumed that the judge will feel confident enough to make the right decision after hearing the cogent and vigorous arguments of the parties' lawyers. This is not necessarily the case, as we will see in real family cases in this Chapter. Upon closer analysis, we realize that serious flaws mar the adversarial system. It makes justice into the rule of the stronger (*la loi du plus fort*). In response to those who praise the adversarial trial and who are partisans of the secular system, Anne Strick writes:
 

[In the secular adversary system] There is no mention,...of destruction, crushing blows, ambush, annihilation... no word of "confusing the Court as easily as the jury or witness," nor of "no matter how honest the witness, there is always some way, if you are ingenious enough, to cast suspicion, to weaken the effect. No mention of "Never ask a question unless you know the answer will be favourable" or cannot be given." Anne Strick *Injustice For All*, (New York: G.P. Putnam's Sons, 1977) at 107
  50. "Divorce and the mental health of Children", Statistics Canada, The Daily, December 13, 2005
  51. Warren Clark and Susan Crompton, "Till death do us apart? The risk of first and second marriage dissolution." Canadian Social Trends, Summer 2006, No. 81 Statistics Canada.
  52. National Marriage Project based at Rutgers University, New Jersey, US, founded in 1997.
  53. Kay Hymowitz: marriage and Caste in America: Separate and unequal families in a Post-marital Age, Publisher: Ivan R Dee, Nov 30, 2006. Kay Hymowitz's words quoted here are from her interview with National Review online, January 23, 2007, conducted by Kathryn Jean Lopez
  54. William Shakespeare: Henry VI part 2 play. There are those who believe Shakespeare's words "The first thing we do..." really mean praising the lawyer. It is a compliment for lawyers. They argue that the character (Dick the Butcher) in King Henry VI, Part II, who says "...let's kill..." was a villain, a murderer. He was talking about a plot to overthrow a legitimate regime of the king; it was about an evil revolution against the king. The lawyers were seen by the rebels as the protector of the regime and the truth, in Shakespeare's time. Therefore, it is not out of the context to interpret that phrase as "let's praise the lawyers".
  55. There are others who believe that the words said really meant disrespecting and blaming lawyers. They argue that the king (Henry VI) was an unpopular king and imposed heavy taxes on people. He was accused of corruption. The rebels wanted justice and the lawyers who were in fact acting for the regime in power, were an obstacle to the rebels.
  56. Rumi op.Cit. Book (Daftar) 1, line 2125. We quoted his words about logicians in Chapter 2 of this book under "The limits of objective evidence..."
  57. Selected bibliography about the lawyers who are facing low morale and depression problems:
 

Steve Keeva, "Transforming practice: finding joy and satisfaction in the legal life," (Contemporary Books, 1999.

- Anthony Kromman, "The Lost Lawyer: the filing ideals of the Legal Profession" (The Belknap Press of Harvard University Press, 1993).
- Mark Perlmutter, "Why Lawyers (and the rest of us) Lie and engage in other repugnant Behaviour," (Bright Books, 1998).
- Benjamin Sells, "The Soul of the Law," Op.Cit.
- Susan Diacoff, "Lawyer Know thyself", an article 46 Am. U.L. Rev/ 1337 (1997)
58. You will find more on this in Chapter 5, "Tyranny of the Mind" of Benjamin Sells, Op.Cit.
  59. Kromman *ibid*
  60. This reminds me of an unbelievable murder incident we were told about in Bar Admission Course. There the father of the murdered girl came to the murderer's lawyer and asked for a favour for letting him know where his client has dropped the body of his daughter. The lawyer (who knew the whereabouts of the body) refused to help the father flatly with no explanation.
  61. Supra footnotes 14 in Chapter one
  62. Supra footnotes 15 in Chapter one
  63. David Loy *ibid*.
  64. In Chapter 4 of this book we referred to the lawlessness, such is looting resulted from disastrous events like New Orleans's hurricane in 2005, and power breakdown in New York and racial tension in Los Angeles in 1992. These events showed that in the absence of law enforcement, nothing stopped those individuals who, under cover of darkness, flood disaster, felt free to break the law, because there is no faith, no conscience and belief in justice and truth.
  65. A good example is the highly publicized trial of O.J. Simpson for murder charge for which he was acquitted in 1995 in California.
  66. A good example is the decision of the Supreme Court of Canada as we mentioned earlier in this book, (endnote 17 above).
  67. Mediation is already mandatory in the state of California for all cases where custody or visitation are contested, as stated in California Family Code Section 3170.) It is also mandatory in Wisconsin, USA, and Quebec, Canada
  68. Since 1991, when the idea of Collaborative Family Law (CFL) started among a small group of lawyers in Minneapolis, Minnesota, U.S.A., this approach to family dispute resolution has been spreading in North America. Now, many like-minded CFL lawyers have formed their groups, including here in Ottawa, where I am currently practicing family law. The members of these groups are becoming the hope for maintaining family unity. They can help saving families of today and those yet to establish, from the risk of running into adversarial court litigation. The collaborative lawyers are getting increasingly better prepared by building up and exchanging their experiences and learning. The very fact that they act as a coach and not advocate for their clients, significantly safeguards the dispute resolution process from being adversarial and acrimonious.
  69. Some jurisdictions already have a recognized similar method in family law practice. Section 6.603 of Texas Family Code recognizes collaborative law in resolving disputes.

## *Epilogue: "First, do no harm"*

We have discussed the application of “Loving Law” and a non-adversarial approach to family law problems in this book. However, there are an increasing number of other problems which cannot be solved with an adversarial approach.

An obvious one is any of the environmental challenges. Global warming, pollutants, water shortages, and many other environmental challenges cannot be solved by pitting one group against others, by blame and shame approaches, by the array of adversarial approaches that traditional law trains lawyers in.

Let us go further: Lawyers trained in adversarial approaches to problem-solving are the largest, and certainly the most influential group in political parties and governments. Inevitably, adversarial lawyers bring adversarial training to their problem-solving approaches and our laws, governments and society itself increasingly reflect the adversarial model.

Our adversarial approach to native problems means decades in court, billions of dollars in legal fees, and issues dragged out for years over procedural wrangling.

Our security systems, it could be argued, increasingly reflect our failed, adversarial family law system. Just as some parents lose custody or access to their children because of an unproven accusation, stereotyping or “something they might do in the future”, so we are implementing similar restrictions to those accused of “planning” future security crimes.

The sheer cost of the legal system, because of its adversarial nature, means the overwhelming majority of Canadians cannot hope to defend themselves in serious civil or criminal matters, without exhausting life savings or bankruptcy. Like an arms race, the adversarial legal system runs up costs that escalate far faster than the average income.

Like family law, where procedural manipulation, inflammatory accusations, manipulation and financial exhaustion strategies are used, our political systems are increasing rampant with the same tactics which drive out good, loving people and attract the amoral, the dishonest, the vicious, the greedy.

Lawyers and politicians are already the least respected and loved profession on the planet. The least respected section of the law is family law. The more that politics reflects adversarial family law, the less the public will respect it and have any confidence in the ability of lawyers to solve problems.

If lawyers and judges and politicians do not develop a loving, problem-solving alternative to adversarial law, the public will quite rightly see the legal profession as only a self-serving industry profiting from people's misery and from preserving problems. The law must no longer be the weapon of big business, big government and big courts against the poor, the average and the ordinary man. Our law must be a caring law.

Lawyers and politicians must take a cue from the Hippocratic oath taken by doctors, "First, do no harm." In the real world it means the courage to step back, restrain ourselves from tossing vulnerable people at a vulnerable time, into a financially exhausting adversarial fight. In the real world it means to educate people in the skills, knowledge and balance needed to decide solutions to their problems themselves. In the real world of politics it means fewer, simpler laws that can be understood by people without an army of lawyers.

Lawyers must become healers, teachers, and mediators, rather than hired warriors. The ideals of lawyers must be that of a loving parent: wise, responsible, and respected. We must be determined to lead our clients to happy, independent lives, empowered as fully human persons.

Loving law cannot be legislated, although some law reform is needed. Loving law must be taught in law schools, and practiced in family court. We must replace the idolization in the legal profession of the "big win" with the ideals of "win-win" and the "big solution". The ideals of collaboration must replace the adversarial model which will otherwise lead the legal profession, and society, to unsustainability and mutual destruction.