

Legal Wrangling

by Fred Stenson



Even when it isn't in my own country, the words "legal wrangling" give me a pain in the wallet. Last fall, my radio told me that Virginia and Maryland were having a wrangle over which state would get to try the sniper. As U.S. legal wrangling generally costs multiples of our own, I suppose a few million traded hands from the public purse to the coffers of the law firms before that was settled. If they had put me in charge, it would have cost a penny. Because it really doesn't matter which state tries the sniper—flip a coin and be done with it.

Now that I've saved our neighbours to the south a few million, what can I do for Canada?

To start, I would institute Panels of Sensible Folk: people in sets of three who would review all civil suits before they entered the costly and cumbersome court system. They would sort them into three piles: doesn't matter (coin flip), matters very little (split the difference) and might matter (go to court).

Already, much money has been saved. The litigants, who are liable for damages and court costs if they lose, have saved a bundle by flip-

ping the coin or splitting the difference. In their gratitude, perhaps they could give to worthy causes, stay healthy and keep their children out of jail.

In that "court costs" probably don't cover all the real costs of court (salaries for judges, court reporters and bailiffs; heating, lighting and maintaining all those big old buildings), the taxpayers would benefit as well. As for the cost of Panels of Sensible Folk, don't worry about it. They're not lawyers, and will be more than happy with a hundred a day, that being twice what they used to make

flipping burgers, mopping floors and telling people what day they must return the video.

Once things do go to court, civil or criminal, a further savings could be realized by what I call the Perry Mason Maximum. Back in my childhood, defence lawyer Perry and his prosecution counterpart, District Attorney Hamilton Burger, solved such knotty problems as “The Case of the Restless Redhead” in one week—all by themselves. I speak of contending lawyers here. Of course, there was a judge and jury on hand as well, but by the time Perry had cornered the true murderer into a confession in the witness box, there was hardly any need for them.

Nowadays it’s different. Most civil and criminal trials are fought by about six lawyers a side, as in hockey. You have your tax specialist, your DNA specialist, a lawyer emeritus with a best-selling book, a retired politician who has the skinny on everyone in Ottawa, a cross-examiner or “gunslinger” in case it gets nasty, and a team leader or communications specialist in charge of keeping the team “on the same page.” All this just to decide who grandpa meant by “my heirs” in the part of his will dealing with his patents. If a tree and a property line are involved, you’ll need an arborist and a specialist in lost survey markers. One hears much about the rule of law. I think that law is: nothing is simple.

The implication is that only a fool or a pauper shows up in court with one lawyer. One suspects that the legal profession had more than a little to do with seeding and fostering this notion, but that’s all in the past. It’s already as ingrained as the need for two and one half bathrooms in every middle-class home. The problem is I can barely afford one lawyer. Because I have begged her to be quick (given her hourly wage), because when we enter the courtroom there is a whole offensive line of lawyers arrayed against us and because she really does have my

best interests at heart, my lawyer’s goal from the outset is to lose as quickly and inexpensively as possible. Still, it is not quick at all, because all of the opposing lawyers, being professionals with professional pride, wish to speak. There is the man challenging the X-ray. How do we really know this X-ray is of the plaintiff’s body and not the body of some other overweight, middle-aged man of average height? There is the gunslinger, here to cross-examine my only witness, a teenager who was watching from the side of the road. It is quickly proven that the teenager hasn’t had an eye exam, or a passing grade in math, in over two years. Then there’s the matter of my doctor having received his training in a country known to be part of the Axis of Evil.

When the lawyer and I are finally outside again, having lost, I will say, “But I was in a crosswalk.” And she will say, a little testily, “You’re damn lucky they didn’t counter-sue. It’s no small thing to be accused of breaking both someone’s legs, you know.”

So, all in all, if in charge, I would insist upon the Perry Mason Maximum: one litigant, one lawyer; one accused felon, one lawyer. No exceptions. Tom Paxton has a song called “One Million Lawyers,” from an album called “One Million Lawyers and Other Disasters.” The song supposes that by the year 2000 there would be a million lawyers (in the United States). But even the mighty Bill Gates, who could afford to hire all million to appeal his monopolist practices conviction, would, under the PMM system, be restricted to one.

But I have to admit that the PMM will probably never fly, not even in Canada. To make it stick, I would have to be Prime Minister, or at very least Minister of Justice, and as we all know, those jobs are usually restricted. Only lawyers need apply.

Fred Stenson’s new book is *Thing Feigned or Imagined: The Craft of Fiction*.