



Anne Derrick: Law and Justice Her Way

BY AARON DHIR

There is no question that Nova Scotian lawyer Anne Derrick has already written herself into Canadian legal history. In addition to advocating for such clients as Donald Marshall Jr. and Dr. Henry Morgentaler, she is also a partner at one of Canada's few all-women feminist law firms. Known for her fierce representation of various equality-seeking groups and affinity for social justice issues, Anne Derrick has established a national reputation of being an intelligent, fearless advocate.

Perhaps we could begin by discussing how you stumbled into a career in law.

Anne Derrick: Well, it wasn't exactly a stumble. I had decided that I wanted to go to law school when I was still doing my undergraduate degree...I had gone to university with a view of having a career where I could be of help to people who needed someone to be in their corner. For various reasons I came to understand that lawyering would be a way of delivering services to people who were in disadvantaged positions. I saw it as a way of giving expression to what I wanted to do with my life.

In establishing yourself as a lawyer in Nova Scotia, do you feel that you have encountered difficulties that have arisen solely because you are a woman?

Derrick: I think that I've had an easier time than some women in practice because I have essentially worked either on my own, or in a supportive and sympathetic setting of my own creation...sure I've had experiences that I'm sure male lawyers haven't had, but in my actual work setting I haven't been dependent on how other people might choose to treat me.

You spoke at Dalhousie Law School this winter about compensating victims of institutional abuse in Nova Scotia. In the time that has passed, do you think your clients' wounds have slowly begun to heal?

Derrick: Well, it varies very much...one client of mine has had her claim settled, and she has expressed feelings of closure after having gone through the process successfully — of being able to heal to a certain extent. Other people have simply been disappointed and frustrated by the process itself, and even though they may have achieved a conclusion, the wounds go too deep.

I'd like to explore the issue of access to third party therapeutic records in sexual assault cases. With a high standard in place, in practice, how is an accused supposed to meet a "likely relevance" test without having knowledge of what is contained in the records?

Derrick: Well, that's certainly what accused persons in sexual assault cases are always arguing — that this is a catch 22 — and cases in both Ontario and Alberta have held that the Bill is unconstitutional. In fact, the Alberta case is going to the Supreme Court of Canada, so the constitutionality of the legislation will be addressed before the highest court. In my view, which is a view that would be shared by other equality seeking activists and feminists, these records are simply not relevant. I certainly have always been of the view that there ought to be an extremely high standard on the accused...also, there may be circumstances where an accused knows the victim, and may know what is in the records. In circumstances where they don't, on what basis would they argue that they [the records] are likely relevant? An accused saying that he wants access to the records, without knowing what is in them, is just saying that he wants to paw through them in order to find something to discredit the complainant.

But the fact that there could be something in the records that is relevant, and the fact that the accused is in no position to make a valid "likely relevant" argument, does that not infringe upon his Charter right to full answer and defence?

Derrick: Well, what really troubles me about the production of third party records, is that the heated debate about the fair trial rights of an accused always comes up in the context of sexual assault prosecutions. Very rarely does it come up in other criminal prosecutions — if you have a bank teller saying "Yeah, that's the guy that robbed me", you won't have accused persons going after her psychiatric records. But in sexual assault cases, suddenly fair trial rights rise and fall on whether or not the accused can get access to these records! I don't believe that fair trial rights are at risk in sexual assault prosecutions.

Do you think that the potential disclosure of therapeutic records ignores the idea that therapy is not just a fact-finding process, but an exploration of emotional and psychological spheres?

Derrick: Yes, that's a very good point, which I think has been addressed by Madame Justice L'Heureux-Dube. Accessing these records may very well distract the

trial process and be counterproductive to there being a fair trial. Also, remember that the complainant has fair trial rights too, not just the accused...I think that as a result of

anomalies, or are they symptoms of a larger problem with regards to law enforcement in Nova Scotia?

Derrick: Well, I'm not sure that I would say it is a problem that is confined to Nova Scotia, nor do I think that it is a problem that arises in each case — and I should say that I don't know very much about the Clayton Johnson case. But I think that if you look across the country, it is a problem that has not gone away. For example, if you look at Marshall and you look at David Milgaard, in those cases the original triggers to the wrongful conviction happened a long time ago — in the early 70s...but then we have cases that are more recent. I do think that in Nova Scotia there have been steps to improve the way that cases are investigated. I think the Marshall inquiry has had an impact on the justice system, but we do have to continue to be aware of the kinds of things that produce wrongful convictions...they are what is responsible for the initial wrongful conviction, but then there's the maintenance — once the person is convicted, there are many systemic issues that play into what

maintains the conviction. So, there could be circumstances where you

get a wrongful conviction even when the police conducted themselves appropriately.

When you were on the cover of Canadian Lawyer magazine, there was a quote from someone who had said that you have a tremendous amount of "compassion" for your clients. Translated from Latin, the term "compassion" means to suffer with another. Suffering/putting an emotional investment into your work must have a very draining effect at times.

Derrick: Well, it does...and I think that lawyers who invest emotionally in their work and clients will discover both the burdens and the joys of practicing law. The rewards of trying to shoulder an aspect of your client's burden, and coming to appreciate their strengths, fears and dreams, is a wonderful human experience. It is also difficult at times — especially when part of what you are shouldering is a burden that society imposes on them [the clients] by oppressing them. It's a tremendous weight that you are trying to dislodge when you are working on behalf of people who are not amongst the favoured of society...but I am very fortunate to have a very supportive family and friends — I'm not all alone...I think it would be very difficult to do if you were isolated, because you would get drawn into all of the suffering and struggles that people experience — you have to be able to separate yourself from that...I think that if you are not an empathetic or compassionate person, then there are certain kinds of law that you are not going to be suited to do.



Anne Derrick. Photo by Aaron Dhir

this debate, sexual assault centres have been put in a very difficult position which I don't think the courts have adequately understood. There's a lot of value in having centres keep good records — for example, in determining if there's some kind of patterns between different assaults. Or if a woman has had a history of physical abuse and sexual assault with an individual, and eventually kills the guy, and has a self-defence argument — what if there are no records to support that history? Women's interests are not being served by there being no records, and yet, because of the danger of these records potentially being produced, centres have had to look at other ways of compiling records. And that may not be in the best interests of the women they are trying to serve.

You have represented Donald Marshall Jr. in two Royal Commissions. I think that one of the striking things to come out of the Marshall affair was the level of police impropriety. Now another Nova Scotian, Clayton Johnson, is claiming that questionable police conduct contributed to his wrongful murder conviction. In your view, are these

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