



# RICHARD FOWLER, QC – A *PRINCIPLED* ADVOCATE

CRIMINAL LAW

BY NICHOLAS PETERSON

## Who is Richard Fowler, QC?

Richard Fowler, QC, is a criminal defence lawyer and a *principled* advocate. While such adjective plays tongue-in-cheek off Richard's recent victory at the Supreme Court of *Canada in R. v. Bradshaw*, 2017 SCC 35, a guiding case on the principled exception to the hearsay rule, such a descriptor also captures Richard's qualities as an advocate and officer of the court. More on that to come.

Again piggybacking off of the recent SCC *Bradshaw* decision noted above, the judgment began with the following well-known evidentiary principle:

*[1] Hearsay is an out-of-court statement tendered for the truth of its contents. It is presumptively inadmissible because — in the absence of the opportunity to cross-examine the declarant at the time the statement is made — it is often difficult for the trier of fact to assess its truth.*

Fearing any concerns that may flow from this article in fact being an out-of-court statement tendered for the truth of its contents, I felt it necessary to cross-examine Richard on the statements and contents which follow. I hope this calms any concerns about the contents herein being offered erroneously for their truth! All kidding aside, Richard is an admired criminal defence lawyer. He is a true advocate; that much is obvious to those who know and have worked with Richard.

Before law, Richard, born in the Mediterranean on the island of

Cyprus into a military family and then raised in England, studied psychology and holds a B.Sc. (Hons.) in Psychology from the University of Birmingham, England. Following his undergraduate studies Richard went on to study and obtain his law degree from McGill University in 1994 before being called to the B.C. bar in 1995. Richard then articulated in the area of criminal law under the esteemed and late David Gibbons, QC, before forming the firm of Gibbons Fowler Nathanson in 1997. After David Gibbons, QC, passed away in 2004, Richard continued the firm of Gibbons Fowler. In 2011 Richard formed Fowler and Smith before Lyndsay Smith was appointed a judge of the Provincial Court of B.C. at which time Richard changed the name of his current firm to Fowler and Blok to reflect the contributions his colleague Ms. Blok has made to the firm.

Ms. Karin Blok had the following to say when asked about her colleague Richard,

... having articulated for him and now worked with him as a lawyer for almost 5 years, he is an incredible lawyer. He is passionate about advocating for his clients. I can't count the number of people who heap praise on him to me when they find out I work with him. One lawyer recently said he had single handedly changed the practice of defending criminal impaired charges in the Yukon by

making Charter arguments!  
 He is committed... to the betterment of  
 the profession through his work  
 on conferences and various  
 committees and boards.  
 Most importantly, perhaps, he is a  
 genuinely kind and caring person.

Richard is a dominant criminal defence lawyer. He practices at all levels of court in the province and in the Yukon. His trial experience is vast and includes both jury (over 50 to date) and judge-alone trials. His experience includes the handling of complicated cases involving allegations of murder, manslaughter, sexual offences, kidnapping, extortion, drug offences, fraud, dangerous offender hearings and serious driving offences. Richard has also appeared before the Review Board designated to assess the needs of individuals found unfit to stand trial or not criminally responsible because of mental disorder. His cases are complex; they may at times be controversial. That's what the job requires.

Richard understands giving back to the community is part and parcel with the job. He is a regular speaker in the area of legal advocacy, an art and skill he excels in. Richard currently sits on the Board of Governors for TLABC. Richard is a Director of the Canadian Council of Criminal Defence Lawyers and he serves as Treasurer of the Western Front Foundation. In 2016 Richard appeared on behalf of the CCCDL before the House of Commons Standing Committees on Justice and Human Rights regarding access to Legal Aid and Medical Assistance in Dying. He is a past speaker for PLTC, run through the Law Society of B.C. Richard is a guest speaker at UBC Law and an advocacy coach for UBC law students and he is regularly asked to provide insight and analysis for T.V. and radio media regarding current criminal cases and issues.

In 2011 Richard was awarded the Milvain Chair in Advocacy by the University of Calgary Faculty of Law. In 2014 Richard was appointed Queen's Counsel, a designation described by the then Attorney General as one "given to lawyers who demonstrate professional integrity, good character and excellence in the practice of law." Such designation comes as no surprise to those who know Richard both personally and professionally.

Despite the significance of the foregoing, Richard is always quick to humour. Call it that cool, dry British-wit if you will. When not assisting and advocating for his clients, Richard is often the light-hearted and entertaining presence in the room. As for being a presence in the room, I'm reminded of a funny anecdote concerning what Richard says was a closing address he did in a jury trial where he felt it went fairly well. If there was any doubt on how the closing went, after the trial Richard was approached by a juror who agreed - the juror telling Richard quite simply, "great speech, man."

I recently had the opportunity to ask Richard a few questions

and learn a bit more about him. As always, the answers are compelling, thoughtful and at times cause some much needed second-thought.

### What are some of the main reasons for you choosing a career in law?

After studying psychology in England, I had intended on pursuing further study in clinical psychology after spending a year working with young offenders in a maximum-security youth treatment center in Birmingham. During this year I was exposed to various court proceedings for some of the offenders, including appeals and sentence reviews at the Old Bailey and Royal Courts of Justice. And so started a nascent interest in pursuing a legal career.

In 1990 I visited Montreal. One evening at a friend's house I found a copy of the LSAT guide and tried some of the 'test' questions. I ended up taking the test and was offered a place at McGill.

In September 1991, I began my law studies with barely a dollar to my name, except I somehow managed to persuade a manager at the CIBC to lend me enough money to get started!

### How did you choose your area of practice, and why is this area important to you?

I went to law school with the intention of becoming a criminal defence lawyer. As much as I was interested in psychology as a means of helping people, I had begun to see the law, specifically criminal law as an opportunity to help people, while also endeavoring to achieve or ensure justice.

While studying in Birmingham during the 'Thatcher Years', I had become increasingly aware of social and racial inequality in Britain. I was aware of the plight of the Birmingham Six and the Guildford Four – all ultimately proven innocent of the terrorist bombings for which they had been convicted. I eventually met Paul Hill and his wife Courtney Kennedy (Niece of JFK) when they came to a conference on human rights in Ireland that I helped organize.

### What motivates you to do the work you do?

Many things motivate me to do the work I do – I find the law endlessly interesting; my cases and my clients challenging; I have great colleagues and friends who are also criminal lawyers. I thoroughly enjoy the intellectual, emotional and physical challenge of doing trials – particularly jury trials.

It is also a privilege to help people – many of who are in great distress when you first meet them.

I have also done this work long enough to have experienced a number of clients 'reform' themselves and become healthy and productive members of society.

I also find mentoring other lawyers extremely rewarding and have been fortunate to have had many opportunities to present at conferences across Canada.

## How do you handle the pressure that can often accompany the life of a busy lawyer?

There is absolutely no doubt that the work of a criminal lawyer can be extraordinarily stressful. The types of cases, sometimes the types of clients, and occasionally the very high-profile nature of some of the trials, combine to place enormous pressure on you.

The clients, their families, the courts and often the public, have very high expectations of what can happen in any criminal trial.

The best advice is to stay fit, eat well, find a good counselor and talk openly to colleagues, friends and families about the impact your work has on yourself. In my first 15 years of practice I 'toughed' it out – the countless murder cases, the untold anguish on the faces of family and friends that you witness, the images of bodies and injuries I have seen, take an emotional toll that is hard to describe. It affects relationships with those you care most about.

I was fortunate to know one of Canada's most eminent forensic psychiatrists and in speaking with him about the effect of this kind of work on him, I became aware that I was experiencing symptoms of PTSD. After a period of professional help, but mainly through being physically active, including good diet(!), I feel much better. The truth is that the effects of what we do creep up on you – my advice is be open about it, talk to colleagues and anyone else you trust to be supportive, but also who can offer you advice about changes to make to your life.

I dare say that those people who decide what amount of money to put into legal aid are utterly oblivious to the mental/emotional impacts of this work – or they don't care. In years gone by, after a tough few weeks or months of trial, lawyers would take time off – now many of us just move on to the next case.

## What do you enjoy most about your chosen career path?

The expression 'never a dull moment' completely captures my career. I have always enjoyed the intellectual challenge of going to court, either arguing an issue, or cross-examining an expert witness, for example. I have been so fortunate to work with so many smart dedicated lawyers, young, and older! I have worked on many interesting and high-profile cases.

## What advice would you give your younger self?

Of all the questions, I find this the hardest to answer. Firstly, a younger me could not afford my advice! Secondly, I very much do not live my life looking backwards, but focus very much on the present and the future. That does not mean that I have no regrets – but I do genuinely try to learn from my mistakes and move forward in the knowledge that all I can do is learn from the past, but I cannot change it.

## If I wasn't a lawyer, I would be a ...?

If not a lawyer, I could have been a doctor. In fact, I went to medical school in England for a year when I was 18. But I have no regrets and feel truly blessed and privileged to be a lawyer – I don't ever think I wish I had done something else.

## What advice would you give to those just beginning their career in law?

Unfortunately, it is a very difficult time to be commencing a career as a criminal lawyer. Legal aid, the means by which many young lawyers develop their practices, and their skills, has been so depleted of proper funding for so long that realistically you cannot think of starting out and doing criminal law alone. This is a huge problem for our system of justice as we simply are not investing in the next generation of criminal defence lawyers – young lawyers do not have the mentoring or trial experience they need to become skilled barristers. This impacts the whole criminal justice system – it is short sighted and ultimately will deplete the courts of the quality and experience we need for an efficient and just system. Where is the next generation of provincial court judges going to come from – I ask rhetorically.

It continues to amaze me that as a society we are prepared to pay so much to resolve commercial disputes, but think it is appropriate to pay lawyers who strive to ensure that we do not convict the innocent so little. What governments are prepared to pay private lawyers to do their work far exceeds the money they are prepared to pay criminal lawyers to defend people – this should embarrass governments, but it doesn't.

## Do you have a favourite mantra, quotation, expression or song that you find particularly inspiring?

My mantra – given to me by my associate Karin Blok, is 'don't make things out of things that aren't things.' In other words, don't sweat the small stuff, not everything matters, keep a healthy perspective. And I guess fundamentally, most people are very decent and are trying their best and mean well. Most people are extremely well motivated, kind and caring.

## Why is being a member of TLABC important to you?

Membership in TLABC has allowed me to meet many other excellent lawyers who practice in other areas of law, who are all committed to professional values that mirror my own – protecting individual rights, enhancing access to justice, protecting the innocent and improving standards of professionalism of trial lawyers.

It is an excellent organization, which with the addition of some new staff is getting even better. I would encourage young lawyers to become engaged with the TLABC, join committees, take their programs or volunteer to teach. Although many see the TLABC as a personal injury law group, it is not – most members do not do personal injury.

### What keeps you busy or interests you outside of the office?

My biggest out of work commitment right now is a regular and fairly intense physical training regime to prepare for 10 days cycling some of the legendary climbs of the French alps. Other than that, I love spending time with my two boys, Sam (20) and John (15). I enjoy my friends very much, playing some very bad golf, time on my boat, and reading.

### Who has inspired or inspires you professionally and why?

I have been extremely fortunate to have been mentored by some outstanding barristers. My principal, and ultimately my law partner, David Gibbons, QC, was a great teacher, gifted trial lawyer, and a remarkable person, taught me so much. Richard Peck, QC, has supported and encouraged me (as he has so many other lawyers), has always been available to offer advice and guidance – as well as inspire me. My friend and colleague of over 20 years, Marilyn Sandford, QC, is a remarkably talented barrister who I am lucky to share thoughts, ideas, cases and much laughter with. I have also learned so very much from some remarkably talented and decent prosecutors: Sandy Cunningham, QC, through two very difficult cases, for both of us, brought the very best out of me every day. We fought hard and honourably in court – and laughed, smiled and hugged outside the court. Elliot Poll and Chris McPherson, QC, are equally gifted prosecutors who work tirelessly on difficult cases, usually murders, for who I have the utmost respect.

These are a few names from a long list of people I have been very lucky to work either with or against.

### What does life after law look like for you?

Life after law – a lawless life! I honestly spend little time thinking ahead. I enjoy working – why would I look forward to stopping doing something I enjoy so very much?

### In simple terms, how would you respond to a view that the certain individuals (with certain alleged offences) perhaps aren't as entitled to due process and equal treatment under the law?

The true measure of us all, as a community, as a society – as a country, is how we treat the vulnerable, the disadvantaged, the poor, mentally ill, which describes so many of the people who come before the criminal courts. However hard it can be, as a society we are better off for the compassion, the mercy, the forgiveness and the decency we extend to those who have committed even the most heinous crimes. This of course still means that some people have to be sent to jail, for some people, albeit a very small number in my experience, are never likely to rehabilitate themselves. But what it means is that we have to extend to all people accused of crimes the same constitutionally enshrined due process to ensure that they receive a fair trial, that we do not cut corners, that the ends should never justify the means. Ultimately, the true measure of our system of justice is that it will provide a fair trial to all accused, and most importantly for those accused of the very worst crimes.

We measure ourselves as a civilized society by the fact that we have police officers who, as recently occurred in Toronto, put themselves in great danger to protect the life of a man who likely just killed 10 innocent people and injured many others. This singular act of heroism, by one officer, discloses to me the depth of belief Canadians have for justice.

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