



Edward Montague

NAME: Ed Montague

LAW FIRM & LOCATION: Campbell Froh May & Rice LLP, in Richmond

TLABC MEMBER SINCE: 1988

SERVED AS PRESIDENT OF TLABC: 1997-98

POST-SECONDARY DEGREE(S) AND INSTITUTION(S): B.A (Hons. English Lit.), LL.B., UBC

YEAR OF CALL IN BC: 1988

AREAS OF PRACTICE: Civil Litigation, with emphasis on Personal Injury, Employment /Human Rights Law, Commercial Litigation

(1) *the Verdict*: What is your concept of justice?

From my perspective, the ideal of justice is tied intrinsically to the concepts of equality and fairness, a level playing field where the least advantaged in our society have the same rights and protections as the most privileged and powerful. Other key components are an impartial and independent judiciary, free from corruption and the influence of government and other powerful interests. And to mean anything, justice must be accessible. Unfortunately, the cost of court proceedings often tilts the balance in favour of those with deeper pockets, so it is often difficult to achieve a truly level playing field. This is an ongoing challenge.

(2) What drew you toward law as your chosen profession?

Growing up as one of the younger members of a large Irish-Catholic family (I am the 11th of 13 children of Desmond and Elizabeth Montague, and the “seventh son of the seventh son”), the ability to advocate for myself from an early age was essential – if only to mount a convincing argument as to why I should get to stay up late to watch the Ed Sullivan show or Perry Mason. With this background, it is no surprise that I am defined by my family upbringing and the values instilled by my late parents. Those values included a good work ethic, the courage of one’s convictions, charity, compassion, humour, and appreciation of art, literature, sports (“Go Habs Go!”), music and learning. Although neither of my parents had the opportunity to attend university, they encouraged all of us to pursue careers of our choosing and instilled a confidence that we could be whatever we wanted to be, without limitations. The result is a broad spectrum of careers amongst my brothers and sisters, running the gamut from education to the arts and from science to business to public service.

Though I had initial thoughts of pursuing a career in medicine, following in the footsteps of my maternal

grandfather Dr. Bernard Mooney (one of Canada’s early radiologists), I recognized fairly early on that my aptitudes lay elsewhere, and law seemed a natural fit. I supported my university education through summer and part-time work, including a number of years as a cook (which included a number of years at the Ferguson Point Teahouse in Stanley Park and two summers as a camp cook at a geological exploration camp in the wilds of the Nahanni Valley, NWT) and working in a hospital laundry and later as a pathology lab assistant (meaning I cleaned the test-tubes and work areas). So, I can truly say that prior to embarking on my law career, I had already been the “chief cook and bottle washer” – as my father would say. These work experiences broadened my horizons, giving me an opportunity to work with people from all walks of life and an array of educational and cultural backgrounds.

Between my undergraduate degree and entering law school, I had a brief undistinguished career as a teacher of English and English Literature (as well as a librarian and basketball and volleyball coach) during a two year stint with CUSO (a Canadian development organization) at a rural school in Nigeria, West Africa. That experience was a life-changer for me in many ways, and for a time I considered shifting my career path to development work or to education, but I ultimately decided that law would give me more choice and opportunity to find my particular niche. After some 27 years of practice, that is still a work in progress.

(3) What is as important to you now as it was 27 years ago, in 1988, at the start of your law career?

From a personal standpoint, family always comes first, and for that reason I have always tried as much as possible to maintain a good balance between my family and work life, despite the inevitable long hours that come with the territory in a litigation practice. From a professional standpoint, courtesy, common sense and respect for

others are as important today as they were when I started out in practise. In general, I’ve found that the most successful and respected members of our profession tend to share these attributes.

(4) Representing individuals and families in difficult legal matters is both a great honour and a great responsibility. Upon accepting this as an obligation, what should a lawyer strive to do while meeting a client for the first time?

The first meeting is a learning process, both for the lawyer and the client. I may be the first lawyer that the client has ever met with or spoken to, and certainly the first litigator, so there is understandable nervousness on his or her part. The client is also typically meeting with me at a particularly vulnerable and stressful time in their life, such as after being dismissed from their job or injured in a crash, so one of my goals in the first interview is to try and defuse some of their anxiety. This is done by first by taking the time to listen carefully to their story before starting to ask more specific questions, and then advising them of their rights and options and answering any specific questions they would have. Generally, the more information the client has, the less anxious they will be, so if you can allay some concerns, and give the client some concrete and realistic options going forward, then you are off to a good start.

It is often just as important for me to let the client know what I can’t do for them as it is for me to tell them what I can do. If you have a client with unreasonably high expectations of their claim, then it may be important to give them a reality check early on. If you can’t get over this hurdle, then both you and the client would probably be better off with someone else. It is important to outline fee arrangements at the first appointment, as the client will want to know about this even if they don’t raise the question directly. And although I always discuss fees at the

first appointment, I typically do not ask the client to retain me right away, but instead suggest that they take some time to consider before formally retaining me.

(5) Does your approach to work these days differ significantly from your approach during the first 10 years of your career? If so, what are some of the biggest differences? If not, describe the core elements that always have been, and will continue to be, key aspects of your work.

There are some differences, but for the most part I'd say my approach has been pretty consistent. Technology has certainly changed things, particularly the advent of the Internet, email and social networking. The advances in technology have changed the way we access case law and other information to the point where we seldom need to use libraries anymore. Email, which wasn't even a concept when I started practising in 1988, is now the dominant form of communication. Email has tended to speed up the pace of communications, not always for the better. Technology has also changed elements of practice, from e-filing to video-conferencing, to the use of Skype in the courtroom. In terms of demonstrative evidence, we've gone from chalkboards and flip-charts to digital projectors and interactive white boards. The advances in cell phone technology have also influenced significant changes in how we practice law. Although I held off for a long time before getting my first cell phone, I won't go anywhere without my iPhone, now.

(6) What are among the most difficult aspects of your workweek with respect to the logistics of the day (e.g. time management, commuting, scheduling)? Verdict editorial note: The people around TLABC during the big no-fault battle in the mid-1990s will recall that you commuted by cab almost exclusively during that time and throughout your TLABC presidential tenure – constantly back and forth between Vancouver and Richmond, to say the least.

Civil litigation is a juggling act, where one is constantly prioritizing and re-prioritizing the workload that you have. It is not unusual to have a hundred or more files on the go at any one time, all of which demand time and attention in varying degrees, depending on the stage the file is at. Keeping on top of everything is difficult, and there are never enough hours in the day to get everything done that you'd like to do. And as soon as you start to get on top of things, that's typically the time when a new urgent matter, or two, comes along to throw everything out of whack. This is simply the nature of the beast in a busy litigation practice, but is a constant daily challenge, and can be the type of thing that keeps one up at night when competing priorities raise the stress level. It is not uncommon for me to come to work for 2-3 hours on the weekend, just to review and update my "To Do List" for the following week, so that I can reshuffle my priorities and give myself a plan of action. Finding the time for more labour-intensive work tasks, such as preparation for discoveries or trials, can be difficult and often has to be specifically scheduled into my calendar. If anything could make my job easier, it would be to have the luxury of focusing on one priority at a time, rather than several, and to have more time to do so.

(7) What are among the most challenging aspects of the cases you take on regularly?

In wrongful dismissal cases, it is not uncommon – at least in the first instance – to be dealing with an unrepresented employer who has a limited understanding of its statutory and common law obligations to its employees, so a certain degree of educating is needed to get negotiations moving. This tends to be even more challenging in smaller, family-run businesses. In the personal injury context, the challenge is in putting together the evidence needed to establish the claim, which varies a great deal from case to case and is a continuous learning process. Having the time to review,

evaluate and understand (and in some cases decipher) the volumes of medical information that are generated in many claims is always a challenge. Another challenge that applies across the board is purely economic: given the high cost of legal services, there is always a balancing act between the desire to do the very best job for the client and at the same time doing what can be done to keep the legal costs to an acceptable level.

(8) You were recently advised, in December 2014, that you were selected to be the recipient of a big TLABC award, i.e. the Public Affairs Committee (PAC) of our association named you a Champion of Justice, thereby selecting you as the latest member to receive PAC's Larry Kancs Legacy Award, an honour that is presented bi-annually (Note: to date, current governor Faith Hayman is the only other person to receive this award, back in 2012). Awards and recognitions aside, what are among the most rewarding aspects of your career – be it memories, milestones or any other specifics?

One of the best things about my job is that every day I have an opportunity to make a real difference in the lives of people who've entrusted their legal issues to me. That is very satisfying. Equally rewarding is the opportunity to meet and work together with people from all walks of life, and from a wide diversity of cultural, socio-economic and educational backgrounds. In terms of highlights, a couple of things stand out for me: one would be serving as TLABC's Vice-President in 1996-97 and then President from 1997-98, which happened to coincide with the last serious ICBC and NDP government-led initiative to introduce a full no-fault auto insurance regime in BC. Needless to say, my leadership years with TLABC were busy ones, but very fulfilling, particularly with TLABC's integral role in the development of the Coalition Against No Fault, which with the help of other key stakeholders was ultimately successful in convincing the government

to shelve its no-fault plans by June 1997. Having an opportunity meet and work with legendary consumer advocate Ralph Nader, who provided assistance to the Coalition Against No Fault during the campaign, was special.

The other standout for me was having the honour to represent two BC families who lost loved ones in the September 11th, 2001 terrorist attacks on the World Trade Center in New York, as one of more than 1,100 lawyers who provided free legal services to the families of victims under the auspices of Trial Lawyers Care, a non-profit organization established shortly after 9/11 with the goal of ensuring that the families of victims had ready-access to pro bono legal services to assist them with their applications under the U.S. September 11th Victim Compensation Fund.

(9) We've heard it said many times that law school does not prepare lawyers from some of the key aspects of managing a law practice. What are

some of the practical everyday things that you learned from scratch, i.e. post-law degree? Alternatively, what advice are you likely to give to law students and new lawyers?

Learning the ropes of managing a litigation file from start to finish is something that can only be learned from experience, everything from initial client interviews to drafting of pleadings, to chambers motions, to preparation for and conduct of a trial. You get a taste of this during the articling process and PLTC, but it's always something of a baptism by fire when you conduct your first trial, and a continual learning process thereafter. Another thing not taught at law school is the art of persuasion and negotiation, essential tools of the trade for any lawyer, particularly litigators. These skills tend to be honed with experience, with many mistakes along the way. Continuous upgrading of our skill-sets is a must, and seminars such as provided by TLABC and its U.S. counterpart AAJ/ATLA

have been, and continue to be, hugely important to me for this reason. The best advice I could give to any law student or lawyer interested in pursuing a career in litigation or criminal defence would be to join TLABC and take advantage of its great seminars and other benefits.

(10) Had you not entered the law profession, which career (or careers) do you think would have been the most suitable for both your skills and aspirations?

I can think of a number of careers that I might have pursued, but probably journalism or international development work would be at the top of the list. Managing U2 would be my dream job...

(11) This edition of the Verdict is themed on personal injury, a field of law in which you have a great deal of experience. Aided by both your experiences and retrospect, what do you regard as some of the most important ways in which things have

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changed for lawyers and law clients when it comes to personal-injury law?

One of the things that has developed over time, for better or worse, has been a greater emphasis on expert evidence. In a typical personal injury case, it is not unusual to have multiple experts involved, including medical specialists, economists, vocational and rehab consultants, cost-of-care analysts and so on. One result of this is that the cost of running these files has increased in proportion to the expert costs, which is something that plaintiff law firms have had to grapple with, particularly as the vast majority of such claims are handled on a contingency fee basis where disbursements – sometimes in the tens of thousands of dollars or more – are carried by the law firm throughout the course of the claim. Given that serious injury claims may go on for years before settlement or trial, the cost of carrying such disbursements can be a substantial burden on a law firm, which has given rise to an industry of third-party disbursement funders and a spate of legal decisions as to the recoverability of interest charges on disbursement funding, culminating in the recent decision of the BC Court of Appeal in *MacKenzie v. Rogalasky*, 2014 BCCA 446 in which the Court concluded that such interest expenses were not recoverable as disbursements under the Rules. Although it remains to be seen what impact the BCCA judgment will have, in my view the effect of the decision is to tip the balance in favour of institutional defendants when it comes to disbursement funding, given their deeper pockets.

Another thing that has changed over the years has been the expansion of the use of technology in the courts and in pre-trial proceedings such as mediations. This has changed how we manage and present cases, from the use of case management software such as Amicus and Summation, to PowerPoint presentations in opening and closing arguments, to the use of videoconferencing for distant witnesses, and the use of a multiplicity of iPad apps

developed specifically for trial advocacy purposes. Advances in technology have also given us additional ways to present demonstrative evidence more effectively, from poster-sized blow-ups of MRI and CT films to medical illustrations to 3D copies.

The explosion of the Internet and social media has also had a direct impact on personal injury claims, both in terms of how our clients present themselves to the world at large (and therefore to insurers defending claims), and how we as lawyers are presented on our websites or in social media. It has now become routine to “Google” potential clients, witnesses, opposing parties and lawyers, to find out what we can learn about them online. The clients are doing the same, and apparently so are juries (sometimes even in the course of trials, despite instructions from the bench).

(12) You joined the Trial Lawyers Association of BC the same year you were called to the Bar, which was all the way back to 1988. What have you found to be some of the most helpful aspects to your long-standing affiliation and membership with TLABC, whether in general or as an active member of the Executive & Board?

I cannot say enough about the value of being a member and involved with TLABC. Certainly, from an educational perspective, TLABC’s seminars are second to none, particularly when it comes to the nuts and bolts of everyday litigation practice. The development of the TLABC listserver groups, another offshoot of technological advances, has been a huge benefit to members, particularly newer lawyers and those in smaller communities or firms, as it gives immediate access to the collective wisdom of trial lawyers from all over the province. The high calibre of the membership of TLABC and the willingness of members to give freely of their time to mentor other members is also a hallmark of TLABC. Getting involved with TLABC early on in my career gave me an opportunity to

rub shoulders with some of the giants of our profession, which helped my development as a trial lawyer immensely.

Another element of TLABC that I’ve always found attractive is its willingness to take a principled stand on issues of importance. The campaign to oppose no-fault in the late 1990s is a prime example of this, and I have great pride in the central role that TLABC played in this, buoyed by the support of a broad-based coalition throughout the province. Our success in that campaign would not have occurred but for the literally thousands of hours of volunteer time of TLABC members and the very substantial monetary donations from members to the association’s PAC fund. More recent examples of TLABC’s public-interest advocacy are its direct role in the successful appeal to the Supreme Court of Canada in the court hearing fees case (*Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59), the association’s leadership in lobbying for changes to BC’s antiquated wrongful death legislation, and its ongoing lobby for increased legal aid funding in BC.

(13) Whether far back in world history or closer to present day, who are some of the lawyers and laypeople that come to mind when you think of people you admire, and what do you find admirable about them?

I’ve always admired Winston Churchill for his steadfast leadership during World War Two, and for his wonderful facility with language. No one could turn a phrase better, or at a more crucial time in history. Similarly, Martin Luther King, Jr. stands out for the courage of his convictions in the face of oppression and injustice, and of course his passionate and moving oratory skills. In a Canadian context, I admire Pierre Elliott Trudeau for his singular vision and drive to enact the Canadian Charter of Rights and Freedoms, and for his *joie de vivre*, his unique sense of style, and intellect (“fuddle duddle” notwithstanding).

On a personal level, my late parents Desmond and Elizabeth Montague both set an example of steadfastness, faith and courage in the face of a number of very difficult challenges throughout their lives, including my father's time as a prisoner of war in Germany during World War Two, the death of my mother's younger brother in the same War, the tragic loss of two of my sisters, one in infancy and the other as a result of a car crash at the age of 18, as well as personal battles with illness and other crises, all the while sharing the stress and burdens of raising and providing for a large family with good humour, patience and grace. This was a remarkable feat.

(14) If you could have been counsel on any case in history – in any field of law - which case would it have been, and what is it that draws you to it? Additionally, which lawyer (or lawyers) in history do you think you would have enjoyed most working against or alongside?

The Nuremberg Trials after World War Two, in which 24 of the surviving military and political leaders of Nazi Germany – including Hermann Goering and Rudolf Hess - were tried for war crimes, would have been fascinating to have been involved in, both for its great historical significance and for the sheer scope of the endeavour.

As to lawyers, I would have loved to junior the great American trial lawyer Clarence Darrow on the 1925 Scopes "Monkey" trial, relating to the prohibition then against teaching the theory of evolution in public schools.

(15) Featuring law as a central theme, or as a compelling backdrop to a story, which book or film is at the top of your list of favourites?

Ed: Hard to pick a single favourite here, as there are many great ones: "Inherit the Wind," the 1960 fictionalized version of the 1925 Scopes "Monkey" trial, with great performances by Spencer Tracy and Fredric March in opposing trial lawyer roles would be one; another would be "A Man for All

Seasons," the true story of Sir Thomas More's refusal as Chancellor of England to sanction King Henry VIII's decision to divorce Catherine of Aragon to marry Anne Boleyn, which led to More's trial for high treason and eventual beheading. The film featured an all-star cast led by Paul Scofield as Sir Thomas More, and Robert Shaw as King Henry VIII, both of whom earned Oscar nominations for their roles (Scofield won for best actor, Shaw was nominated but lost for best supporting actor). And on a lighter note, the chaotic courtroom scene ("Chicolini's Trial") in the Marx Brothers' 1933 classic "Duck Soup," with Groucho as the judge and Chico as the accused, doesn't get much better.

(16) Which mantra, quotation or expression do you find particularly inspirational and perhaps even helps guide you through your day-to-day activities?

I can offer a few:

"Where there's a will, there's a way"
(unattributed)

"The secret of getting ahead
is getting started"
(Mark Twain)

"Never, never, never give up"
(Winston Churchill)

(17) Ed, if all of your arguments were made and your law books were closed forever, where would you be living and what would life be like for Mr. Montague? Alternatively, describe an ideal non-work day in which you are living life exclusively on your terms.

My ideal non-work day would be somewhere where I can get out for a nice walk or swim and enjoy the beauty of natural surroundings, preferably either lake or ocean side, but it could also be in a metropolitan setting, with the pleasure of a good book, some great music, food and drink, and the love of my life at my side. A picnic lunch at a winery overlooking Okanagan Lake, or a bustling bistro on the Champs-Élysées, would be perfect.

(18) At this stage of your career – with the sum and strength of your vast experience as a lawyer – what can you, long-time legal professional Edward Montague, say for certain about law?

Law is a lifelong learning experience. The more I know, the more I realize I've got a lot more to learn. It is a never-ending process. And there is never enough time...

(19) Today – with the benefit of your many life experiences to date – what do you, Ed Montague, know for certain about life?

The fact is that nothing in life is certain, and there are many, many things we can't control. The best we can do is roll with the punches, and play the roles we are given the best we can. Shakespeare perhaps said it best in Macbeth:

*Life's but a walking shadow,
a poor player
That struts and frets his
hour upon the stage
And then is heard no more:
it is a tale
Told by an idiot, full of sound
and fury,
Signifying nothing.*

(20) - Ed to Ed – Asked & Answered. Ed's question to himself (asked): If you could invite any four people from history to join you and your wife Deborah for dinner, who would they be?

Ed's reply (answered): Assuming language was no barrier, and in no particular order, I'd invite Mozart (he'd be responsible for after-dinner music and inappropriate jokes), Leonardo da Vinci (for some tips on the latest greatest inventions we haven't yet seen), William Shakespeare (for brilliant wit and confirmation that he really did write all those plays himself!), and last but not least Cleopatra, to add both sparkle and some gender balance to the occasion (although the men would outnumber the women 4-2 at the dinner, I'm sure that Deborah and Cleopatra could more than hold their own in this company). V