

People choose to represent themselves even when they can afford lawyers

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After two hours spent riding herd over a parade of teenaged mothers, deadbeat parents and argumentative spouses, the last thing Judge Harvey Brownstone wanted to deal with was another unrepresented litigant raising a smorgasbord of legal issues.

"This isn't a grocery store where you can come and tell me what you want," the exasperated Ontario Court judge said. "I'm not your lawyer. I'm a judge."

The vignette illustrates a problem that is plaguing the courts, Judge Brownstone said in an interview outside the courtroom. Litigants weaned on TV shows such as *Judge Judy* and *People's Court* seem to believe just about anybody is capable of representing themselves in court.

"I don't think that people realize that 70 per cent of people coming to Family Court have no lawyer," he said. "People would be surprised to know that there really is quite a crisis going on. At first blush, one would think that they can't afford lawyers, but interestingly, that's not true.

"They have chosen to represent themselves, partly because they watch too much television and see that nobody has a lawyer on *Judge Judy*. They feel they can tell their own story better than any advocate could. But this is not television. People need to understand this - in the same way that you wouldn't try to fix your own car or you wouldn't try to fill a cavity in your own tooth."

Judge Brownstone said that many unrepresented litigants run aground because they are unfamiliar with court procedures and fail to produce proper documentary evidence. Others cannot detach themselves from their emotions.

"We have people who come in here and fill out their form on an application for custody, saying the grounds for seeking custody are: 'She's a bitch,' or, 'He's a Nazi,' " he said. "No lawyer would let someone present that kind of thing."

Curiously, the judge said, many people are caught up in both a family dispute and a criminal case - usually involving allegations of domestic assault - yet, they retain a lawyer only for the criminal case. "When they are worried about going to jail and losing their liberty, they get lawyers," he said.

"But their family issue is going to go on much longer, and is much more significant in the long run to their family life," he added.

In the case of an estranged couple admonished by Judge Brownstone last week, each party had arrived with a laundry list of issues, ranging from support payments and visitation rights to special child-care expenses. They had not given each other proper notice of what they would be applying for in court, and they lacked documentary evidence, so he sent them packing.

He noted in the interview that each ex-spouse had obtained the help of duty counsel (a lawyer paid by Legal Aid to work at the courts assisting unrepresented people) after arriving at the courthouse. However, a duty counsel can do little once a case is at the courtroom door, he said.

In many cases, unrepresented litigants seek a lawyer after they start to comprehend the complexity of the court process or they have made a strategic legal mistake, he said.

"By then, the litigation has often become very hostile and adversarial," he said. "The parties have become polarized in their views. I feel that if they had gotten a lawyer in the beginning, things might

have gotten off to a better start."

The biggest surprise of all may come at the end of the case, Judge Brownstone said: "I think people need to understand that when you lose, you pay the costs of the other side. And if the other side did have a lawyer, you are going to pay their legal fees."

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