



## FAMILY LAW PRACTICE TIPS

## ISSUE No. 12

**Topic:** “Where to sit in the courtroom”  
(and other relevant stuff)

**Opinion by:** Justice Doug Campbell

**Date:** January 30, 2015

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*This memorandum was prepared by Justice Doug Campbell in reply to the request of ACJ O’Neil as outlined in his Notice to the Bar dated November 6, 2014. It represents Justice Campbell’s personal viewpoint and may or may not require some adjustment to conform to the preferences or practices of individual Judges. That will be left up to the Judge and the lawyer, if any, involved. Readers who make use of the within material do so therefore at their own discretion and subject to their own judgment.*

- Formulation: 1)** When self-represented parties arrive in Court, their facial expression appears to be asking: “Where do I sit?” as if they intuitively know that there must be a protocol for that.
- 2) There is or was one.
- 3) At least in Supreme Court - Family Division, that has become blurred.
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### Discussion:

It seems to me that the seating arrangement at a Trial was originally *a function of the location of the Witness Box*, which varies by Courtroom. A rule not universally applied was that Plaintiff’s (Petitioner’s, Applicant’s or Her Majesty’s) Counsel sat at the front table in the seat closest to the Witness Box. The Defendant’s (Respondent’s) Lawyer sat at the opposite end of that same front table. Only the Lawyers sat at “Counsel Table”. Very simple!

### *The complications:*

What if there was a Third Party?

Easy Answer: Regarding at least the front table, those Lawyers sat in the order that their clients’ names appeared in the Legal Process, clockwise from the Plaintiff’s Counsel if the Witness Box was to that Lawyer’s left; Counter-Clockwise if the Box was to her right). Less simple!

But what if the Litigants sit with Counsel?

The Supreme Court – Family Division sitting at Devonshire in Halifax has inherited the former Halifax Family Court’s practice of permitting litigants to routinely sit with Counsel. Historically in Supreme Court, that would not be permitted except on direction in exceptional cases.

For obvious reasons, Family Law litigants often do not want to sit “shoulder to shoulder”.... There goes the front table model! [In child protection cases, especially when the spouses present a common plan, there may be no discomfort factor regarding seating and often the Litigation Guardian and Counsel need a seat; often best taken at the front table).

But, what if the papers were massive or if the Lawyer was assisted by 1 or 2 lawyers such that each table was needed for a Legal team. Easy answer: The Defendants’ Counsel, regardless of which division of the Court, took a back table (if there was one).

In Family Division, whether the below conclusion is driven by a need to avoid the discomfort factor or by the large amounts of paper or numbers of participants, a study of the wise of the clock, a notion which does not always offer a solution, is a non-starter.

*So, what is the Protocol about seating in the Family Division of the Supreme Court at Halifax/Devonshire where the lawyers have their clients at their side?*

*Or more to the point, should the players in the Court process care?* I can think of 4 reasons:

- 1) The Judge can sometimes profit from connecting the paperwork to the faces of the people, conclusions about which to some extent derive from where they sit. Trial management requires the Judge to call the order of Examinations, Cross-examination, re-direct and Speeches, etc. A seating order protocol helps with all that;
- 2) Everyone must acknowledge the discomfort factor;
- 3) Tradition is sacrosanct; and
- 4) Why not be regimental?

So, either way, especially when the litigants take up some of the available chairs at Counsel Table, seating is a live question.

*Opinion:*

Plaintiff’s Counsel, with or without client, should sit in the traditional spot at the front table where she/he is closest to the Witness Box. Everyone else should sit where the efficiency of the Trial is promoted. While they should be aware of the “ according to the order of names ” Rule, in the end, they should take a seat somewhere that provides a modicum of comfort for each litigant viz. a viz. the opposition. Everyone should take that same seat each day of the trial.

There are arguments supporting the view that litigants should not sit with Counsel; however, Counsel's proven need for frequent on the spot client instructions seems to justify the Devonshire sit-with-Counsel habit – one that, in any event, is too deeply entrenched there to be changed, in my opinion and a practice which most Counsel seem by acquiescence to endorse.

Self-represented litigants can try to follow this less than clear protocol but ultimately they should take comfort from the fact that they will be directed by the Sherriff, the Staff or the Judge as to where to sit and should therefore worry about something else.

For a more strict and traditional view of some of these and other matters of Courtroom Decorum, I found a comment by Justice Joseph W. Quinn presented at the 2012 Family Law Institute in Toronto on February 10, 2012 to be a great read and at time hilarious. It is called " A Judge's View : Things Lawyers do that annoy Judges.....found by that title on the internet.

*PS: Please - no gum, water bottles, coffee or overcoats. **And please do not turn your back on the Judge to address opposing Counsel. Make comments through the Judge.** (While many individual Judges will confirm that she/he does not need these gestures of respect; it is the Office, not the individual Judge that occupies the office that need the gestures in order to protect its role.)*

*[See FL Practice Tips # 3 for an explanation of the above choice of the word "Judge" instead of the word "Justice"].*