DECENT DISCLOSURE

A. Introduction

B. A Little History

C. Ending Relationships:
   (i) Minutes of Settlement
   (ii) Trial Readiness
   (iii) Mediation, Arbitration and Judicial Dispute Resolutions

D. “Starting” Relationships - Pre-Nuptial and Cohabitation Agreements

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   (v) Funding/client concerns and restrictions on the lawyer’s role
   (vi) Timing
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A. INTRODUCTION
   The giving and getting of relevant background information and supporting documentation in family law cases is an ever increasing concern of lawyers and the Courts. Judges want evidence and they want their decisions to be supportable and appeal proof. Lawyers want their clients’ interests protected while at the same time they want to avoid ALIA involvement and the testing of the efficacy of their LLP designations. Clients want anything from “everything”, “revenge”, “vindication”, to the ubiquitous, but often difficult to define “justice” (as
Those practicing in family law in fact have various involvements that give rise to disclosure concerns, not always the same concerns. There is the obvious - the negotiation, and conclusion, of a Settlement Agreement ending an existing and fatally troubled marriage or long term “common-law” union. Increasingly, we are asked to assist in (the ounce of prevention versus the pound of cure) Pre-Nuptial or Cohabitation Agreements. For matters that can’t be settled, we need to know and effect the necessary disclosure to make a case “trial ready”. Perhaps we are assisting in the attempted resolution of a contested domestic dispute by way of Judicial Dispute Resolution (“binding” or “non-binding”) or by way of private mediation or arbitration. We are called on to provide independent legal advice in the reviewing of a draft and already negotiated Settlement Agreement. Finally, and perhaps soon to be an increasing involvement, we may assist and involve in a “limited scope retainer matter”.

Accordingly, when I foolishly answered Krista Frohlich’s call a month or so ago, I was asked two things:

1. If I would agree to “speak” (and doing a paper was implied) at the annual CBA Mid-Winter meeting specifically on how our different involvements in family law dispute resolutions impact on the disclosure required to be swapped; and,

2. Because “disclosure requirements” is a topic largely beaten to death by Practice Notes, Legislation and CBA lunches and is a topic so inherently turgid and boring in any event, please would I be screamingly funny?
I don’t know if it was that “bait and switch” or it was the pure challenge that lured me in. I confess to having struggled in the past with comments of Judges and lawyers made after speaking engagements where I attempted humour (funerals, Judges’ dinners, game dinners - or any combination thereof). Often the comments were to the effect that I had somehow “missed my calling” - flattering indeed until I realized, on reflection, that these comments were coming from Judges and lawyers and that in fact my calling is “lawyer”.

Here then lies the challenge - learned discourse on disclosure concerns or lawyers falling out of their seats, yapping like spaniels and lying in little pools of their own (spilled bottle water - editor).

When last heard from, Krista thought it would be a bright idea if I would “go first” because... well, I can’t really recall why. Perhaps it was because she already voted me most likely to nod off before the panel session is even over. Still, I liked it - it is like representing the Law Society at a Judge’s swearing in - after you, the CBA rep gets a shot and finally the local Bar Association rep bats clean-up.

(No. 1, Law Society - “I bring greetings to your Lordship on this most momentous of occasions.... distinguished barrister.... landmark case involvements as leading counsel.... years of public service.... loving, loyal, supportive and accomplished wife and family... a real loss to the Bar... an outstanding addition to the Bench... (hope to join you soon)...”).

No. 2, CBA - “As my learned friend has already said...”.

No. 3, Local Bar - “Hi Judge.... How’s it hanging?... quoting anonymous sources... brushes with the law... (good God, the Chief is asleep)...”).

Now, I raise this because I need to “blurb” a bit on each of the processes touched on above, Settlement Agreements, Pre-Nups, trial prep,