

April 16, 2017

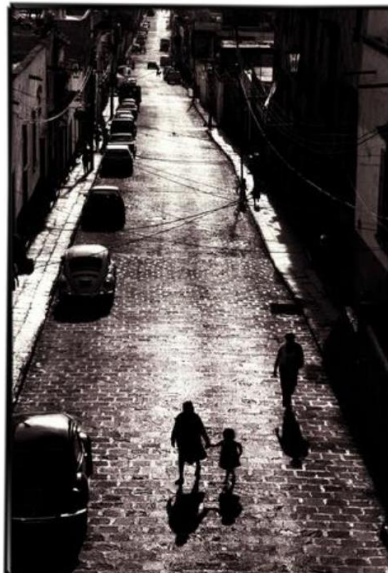
### **Stronger Side-by-Side - The Forstner Law Logo - Origins**

People ask about my business logo: why the semicolon and what about the image of people holding hands? Google [Amy Bleuel](#), look at the image below, and the logo above and below and beside this writing. Amy founded project semicolon; a movement dedicated to recognizing peoples' struggles with mental illness, and the indomitable drive and spirit to carry-on, writing personal stories of recovery. A semicolon is used when an author could have chosen to end their sentence, but chose not to. The author is you, and the metaphor of continuing the sentence is powerful; what was once a story about what has happened to you, can continue with you writing your own powerful story of moving forward deliberately.

I chose the semicolon to be a part of my logo both to support those clients I have, and will have, that have had tremendous struggles in their lives, and also to declare that I have had my own struggles, that continue, and will always be part of who I am. The image of holding hands comes from a photograph of more than twenty years ago, when my wife and I were grappling, through image making, with defining who we were.

Reviewing the tangible results of those early photographic efforts, has allowed me to find the thread of my lifelong search for meaning in the melancholy border between sadness and hope. The image has become part of my logo because I want potential clients to see that their struggles will be recognized and valued should they do me the honour of allowing me to represent them.

Together these two images combine to say I have been searching just like you, and I will do what I can to help you write your own story of recovery. The brackets in my logo represent that we can insert our own important details into the stories that others may be trying to tell about us. The coliseum in the background represents that together, heads held high, we will enter the arena if need be; stronger for our struggles, and stronger, walking side-by-side.



February 26, 2017

### **Punishment Hurts Us All: Therapeutic Jurisprudence and Impaired Driving**

In my first Blog post I mentioned the term therapeutic jurisprudence. For a general description of what the term means, read up about it [HERE](#). It is a field I became interested in after I began law school. My previous work as a probation and parole officer helped to make me understand the immense value in listening to the life stories of all the people I had supervised and in validating their struggles. A therapeutic approach to people who commit crime is part of a best-practice model of reducing recidivism. Yes, my clients had been sentenced for breaking the law, but no they were not first and foremost, “criminals.” In fact, far from it, criminality was only a small part of who they were.

More often, I was struck by their stories of damage, rather than their stories of perpetration. That’s not, in any way, a minimization of crime, or a denial of the need to face consequences. It’s just reality. People who get in trouble, often have heart-wrenching stories of their own.

Why should that matter to a society trying to enforce laws so that it can create safe streets and communities? Because consequences alone don’t change people for the better. To truly reduce an individual’s likelihood to commit crime again in the future, society must acknowledge the wounds of all of the people involved in the stories of crime; not just victims, but perpetrators too. Healing of those wounds is appropriate to target in the quest to increase respect for law and order.

This is a difficult narrative tack to take. And the area of the law that I choose to illustrate my point will demonstrate what I mean. Let’s look at the crime of drinking and driving; a crime that has been demonized rightfully over the last few decades.

People who drink to excess and then drive, put themselves and others at great risk for injury or death. There’s no denying it. Indeed, society has changed its attitudes so drastically towards drinking and driving over the last few decades, that there are few activities so universally condemned in this day and age. One wonders how anyone could fail to get the point. Yet, still, every holiday season, and after every long weekend blitz, the police find hundreds of drivers drunk behind the wheel. Statistically, the phenomenon is less prevalent than in the past, but how could anyone still be stupid enough to find themselves committing such a hated crime?

It defies common sense really. And society has had less and less tolerance for those who do so: “zero tolerance” is nowhere more understood as a policy than in this realm.

Yet there is a paradox. Alcoholism is also recognized widely as a disability. Under the human rights code, if an employee is suspected of having an alcohol problem that is adversely affecting their work, employers are required to offer support, including offering assistance and accommodation for people to get help with a drinking problem. In the area of employment law, lawsuits are routinely won by people who were treated harshly by their employers, if the employer failed to give their employee an opportunity to work through their issues and correct their drinking problems. “Zero tolerance,” if it means automatic dismissal, is against the law when it comes to alcoholism in the workplace.

In employment law terms, disability is not a euphemism; it is not just something we say about drinkers: it is literally now understood that like with epilepsy or blindness, or psychiatric troubles, the alcoholic employee, has a medically recognized disease.

In Ontario, if you are found guilty of impaired operation of a motor vehicle, you will be convicted. You will have a criminal record. This is true, even if it is your first offence. But that’s not the case in six other provinces in Canada, where the option exists for the judge to give what’s known as a “curative discharge.” What’s that? Well, it’s no different really than what first offenders get for many other offences. It means that subject to conditions of probation (that will include rehabilitation efforts in the case of alcoholism), the individual will not have a criminal record. They will have a “finding of guilt” recognized, but not a conviction, and therefore, not a criminal record.

The nuances of what a finding of guilt means are somewhat tricky, and it doesn't mean that a record check will never cause problems, but strictly speaking, someone given a criminal discharge, can honestly say that they do not have a criminal record. And that is huge. The stigma of a criminal record travels and reverberates throughout one's life; from employment to travel, to moral judgement and reputation, being labeled a criminal, can be devastating.

So how do we reconcile labeling someone a criminal for what, in many contexts, is understood to be a disability? And why do some provinces, but not Ontario, offer judges the option of treating people less severely for drinking and driving?

I can't answer those questions, but I can tell you that I think that this will be an interesting area of the law in the near future. See the case of [R v Daybutch](#) for an interesting primer on the topic.

However, the more important question, I think, is how do we effectively discourage drinking and driving, more than we already have? As I argued above, it is almost inconceivable that the message "don't drink and drive" still has not sunk in for some. Almost, but not really. In fact, the answer can be quite simple for some. It's called addiction.

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For some people, drinking is a disease. And like with all diseases, it takes time to diagnose. So that means there are people walking around out there with the disease of alcoholism that have not yet been diagnosed, or even if diagnosed, they have not yet gained a necessary level of insight to address the issue. They are literally unaware that their drinking is part of a bigger medical issue that affects them. Should we treat them as being morally wrong, as having a bad character, or; should we treat them the same way we treat someone who has experienced symptoms of diabetes, but has yet to gain insight, learn to control it, and deal with it effectively?

In six provinces in Canada, the answer is that the court can look at the individual and say: do you know you have a problem? Are you willing to address it? If so, we will not yet stigmatize you with a criminal record. We will not pile on sanctions that can drive you further into depression and drinking. We will give you a therapeutic alternative. And if you take that opportunity, we are willing to accept that you do not deserve the same moral blame that accompanies the active decision to commit crime.

In Ontario, however, most drinking and driving infractions, instead cause the person to have a conviction registered against them. In addition, they are required to pay a \$1000 fine, and their driving license is taken away from them. They can walk out of court with no other restrictions: no probation, no requirement for counselling, no suggestion that the law will force them to look at their drinking problems. They may have trouble getting a job because of their criminal record, but they won't have trouble getting another drink, and in a year's time, they get their car back too.

Which would you prefer, as someone who shares the road with other drivers? That someone goes to rehab, but doesn't lose job opportunities, or that someone gets punished but doesn't have to face dealing with their nascent alcoholism?

I know which I think is more safe: the one where someone is treated like a human being and given the opportunity to get a proper diagnosis and treatment. That, in a nutshell is an example of therapeutic jurisprudence in the realm of criminal courts. Treat people more humanely, to affect a reduction in the likelihood of future criminal behaviour. I will come back to this theme over and over again in this blog space. So if you don't get it now, you will hear me give many more examples of when what courts do either does or does not align with this basic equation:

fairness works wonders, punishment hurts us all.

July 9, 2017      **Facebook is Used by Police**

It may not seem like the most unbelievable news to learn that the police are on Facebook, but yes that's right, the police use social media too! And I don't mean their personal Facebook accounts. In fact, one of the first places police go when they are trying to figure out who might be involved in a crime is to the Facebook pages of people associated with events surrounding the crime or the actual victims. No, they don't think that the suspect will openly admit to a crime right on Facebook (although see below for a little story about that!). Instead, when the police are trying to put together what happened, they look at all the pictures that people or venues post. Who is standing close to the victim? Can we identify all the people in the photographs? Then they begin digging. Who is known to police already? What do their criminal histories look like? There's a mint of information out there on social media that just jumps off the page.

It's the same for anybody really. If predators are looking for victims, they go to social media to see what sort of seemingly innocuous information they can find, that might help them to gather important biographical information that can be used to ferret out more useful information in the planning of crime. That's why we always tell our kids not to reveal too much. But what is too much? For police, just seeing group pictures can be huge. If they have already figured out one person they suspect, all they have to do is put together the pieces of who is pictured most often with that individual. Then they begin digging into pictures on that persons profile. And so on. Facebook is a great way for business owners to advertise and get known in their communities, but it is equally useful for a host of others, interested in gathering information.

Let's be honest, we've all 'creeped' a Facebook page or two - people we once had crushes on, or people we don't like. It's no different for the police. And sometimes the police literally find gold on Facebook, like a case I know about from a few years ago. A group of friends had stormed a home and robbed jewelry and sports memorabilia from a crew they had 'befriended.' You guessed it, the next day they had posted pictures of themselves wearing it all on Facebook. They even had an impromptu rap about it on YouTube! Case Closed!