Raymond MacLeod

Litigation is sometimes called a game, sometimes a battle. On either metaphor, Ray MacLeod brought to litigation what many would call his appropriate experience as a football lineman with his name on the Grey Cup.

Ray passed away on June 20, 2016, four days before his 83rd birthday. A native Vancouverite, he attended high school first at Kitsilano Secondary, then at Vancouver College. The latter institution was where he earned a football scholarship to the University of Oregon. The former was even more important because it was where he met his life partner Olga ("Ollie"). Ray's death came only a month before he and Ollie would have celebrated their 63rd wedding anniversary.

After playing football at Oregon, Ray played for three years in the Canadian Football League—two with Edmonton and one with Winnipeg. His second year in Edmonton was 1954, when the team won its first of many Grey Cups. His teammates that year included such CFL legends as Jackie Parker and Normie Kwong.

After his football career ended, Ray eventually found his way to law school at UBC. While studying law, he also worked full-time selling insurance. The practice of law students working for a living was, at the time, neither common nor looked upon with much favour by the law school. After graduation, he articled with the late Tom Griffiths and was called to the bar in 1964. He remained at Griffiths and Company after being called and was immediately thrown into the deep end, acting by himself for plaintiffs in personal injury jury trials.

Later in the 1960s, he and Dan Small formed the firm of MacLeod & Small, which later became MacLeod, Small and Bray. Although Ray's practice there focused on securities law, he also acted for Torazo Iwasaki, a Japanese-Canadian whose property on Salt Spring Island had been seized and sold during the Second World War. Two decades before the federal government acknowledged and apologized for its historic wrong, Ray advanced a breach of trust claim that sought the return of Mr. Iwasaki's property or, in the alternative, damages. In 1968, the Exchequer Court held that the government-appointed property custodian had been "under no trust in favour of an alien enemy." The Supreme Court of Canada dismissed the appeal in a single paragraph.

That loss did not dampen Ray's passion for representing the underdog against well-funded adversaries and often at long odds. He became a sole practitioner in 1978 and over the next few years his practice came to consist exclusively of acting for plaintiffs in medical negligence cases. While a few plaintiffs' personal injury lawyers did the occasional medical malpractice case, Ray was for many years the only lawyer in B.C. with a practice entirely dedicated to that work. By the 1990s, the majority of his clients were families with children who had suffered catastrophic injuries at or around the time of birth—perhaps the most challenging category of cases within a challenging area of law.

He continued to run these often complex cases with no help from partners, associates, or anyone else, other than his long-time legal assistant, until 1995. That was the year he was looking for someone with experience in the field to join him and be ready to take over the practice when he eventually retired. I jumped at the opportunity and we worked together until he left day-to-day practice in 1999.

Ray was not one to simply turn a file over to an expert and ask if he had a case. He developed his own wide-ranging medical knowledge and would review medical records in detail. Only after forming his own theory of liability would he approach experts with specific questions. Because of that approach, he developed a reputation for efficiency and succinctness. The seven-hour time limit on examination for discovery now contained in the Supreme Court Civil Rules would have been irrelevant to Ray, whose discovery of a defendant in even the most complex medical case rarely exceeded two or three hours.

There is probably no greater testament to Ray's professionalism than the fact that the defence counsel who was most frequently on the other side of this hard-fought litigation, Chris Hinkson (now Hinkson C.J.S.C.), also became a close personal friend. Ray was also respected by the small community of medical experts who regularly testified in medical negligence, and particularly birth injury, cases. In one trial, Ray was cross-examining a defence expert, a leading high-risk obstetrician, and put to him some scientific proposition or other. The witness's response in court began: "That's not quite correct, Ray."

Ray was a firm believer in the contingency fee as "the key to the courthouse door" for the average litigant. Because so many of his cases involved catastrophic injury and large damages for infant plaintiffs, there were some large fees that became the subject of disputes with the Public Guardian and Trustee. It always annoyed Ray that neither the PGT nor the court seemed to give what he considered adequate consideration to the many unsuccessful cases where he not only received no fee, but had invested thousands of dollars in disbursements on behalf of clients who could never repay him. He would complain privately about his fees being reduced by judges "who know they will get a cheque on their desk at the end of every month."

At the close of argument in his last trial, the presiding judge, the late Mr. Justice Peter Fraser, was told that it was Ray's last case and paid tribute in open court to his long career of acting for clients who would not otherwise have had access to the courts.

Ray was an advocate of and believer in work-life balance before the concept became fashionable. "I don't live to work," he once told me, "I work to live." That life revolved around his family. He and Ollie had four children, numerous grandchildren and, more recently, great-grandchildren. They rarely missed a child's or a grandchild's artistic performance, athletic competition or even a practice. However, there was one tragedy in an otherwise idyllic family life: their eldest son Michael's death from cancer in 1994.

Although busy with family and practice, Ray did not abandon his love of football. He coached his sons in North Shore minor football and in the 1960s was head coach at his old high school, Vancouver College. Later, he was a volunteer assistant coach to his old friend and former Edmonton teammate, Frank Smith, with the UBC Thunderbirds. He regularly drove to Eugene, Oregon to watch football games at his alma mater and was particularly proud in the mid-1980s to watch his youngest son, Matt, playing in an Oregon uniform. During one exhibition game between the Oregon varsity and an alumni team, the alumni coach asked Ray to suit up and sent him in for one play—on the defensive line while Matt was kicking a field goal. "Don't bother blocking him," Matt told his teammates, "he'll never get here."

Ray was an accomplished golfer and marathon runner, but in middle age his athlete's body began to fail him. He developed diabetes (perhaps due to a long-ago and undiagnosed pancreatic injury on the football field) and with it complications that cost him much of his eyesight. In his office and in courtrooms, he would read cases or medical records with the aid of a very large magnifying glass. Hinkson C.J.S.C. still thinks the magnifying glass was largely for effect, but as an occasional passenger in Ray's car I can testify to the terrifying reality of his visual impairment.

One day while we were in trial, Ray struck up a conversation with a woman carrying a white cane who happened to be in the great hall of the Vancouver courthouse. He asked her about her visual acuity values and learned they were better than his own. That is when he told me about one of his pet peeves—the alleged eagerness of agencies for the visually impaired to "force white canes on people."

Over the years, Ray underwent at least a dozen laser procedures for retinal reattachment. That experience is what must explain one anomaly. Ray spent countless hours listening with patience and empathy to people who thought they had grounds for a medical malpractice claim, carefully explaining to the vast majority of them why they did not. But he had little patience with those who complained of alleged errors causing relatively minor visual impairment. Once, when I was looking at a possible such claim, the client called the office when I was out and was, for some reason, put through to Ray. The client was shocked to hear Ray telling him, in effect, to stop whining, suck it up and get on with his life.

Despite his visual impairment, Ray continued to play golf, aided by the fact that, unlike most recreational golfers, he could usually predict where his ball would go even if he could not see it. For a time, he also owned a dog that was trained to help find his ball—a player's aid that golf course starters were resistant to for some reason.

Unfortunately, Ray's health continued to decline in later years and he was never able to enjoy his retirement as much as he had hoped. He had to give up golf and weightlifting. The walks he took became progressively shorter. He and Ollie were not able to do as much traveling as they would have liked. But he remained keenly interested in whatever his grandchildren were doing and made sure he remained a part of their lives.

A dedicated lawyer, husband, father and friend, Ray will be missed by all who knew him.

The Honourable Mr. Justice Nathan Smith

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