

Neil Finkelstein Eulogy

Dear family and friends, we are gathered to honour the memory of Neil Finkelstein: Husband of Marie; Father and Father in law of Jonathan and Natasha; Emily and Rocky, and Sara; Grandfather of Ty and Jacob, Brother and brother- in-law of Michael and Karen, and of his late brother Eric and his wife Darlene.

Neil Finkelstein was born in Montreal, Sept. 5, 1951. His parents, Edward Lawrence Finkelstein and Helene Grossman, were both born in Montreal. His father was a businessman and his mother was a homemaker and involved in charitable causes.

Neil was the oldest of three boys – his brother Michael was born 1952 and his youngest brother Eric was born in '1955.

Neil had a happy childhood – he and his brothers were very close and were known as “the three musketeers” growing up.

Neil attended Westmount High School and then McGill, but truth be told during those years, he was mostly indifferent to his studies, preferring to play bridge in university than immerse himself in his studies.

But when his grandfather Arthur- who he admired - and who himself had always wanted to be lawyer – passed away, Neil became a serious student and went on to win many scholarships and academic prizes.

First he became a CA, practicing for a few years specializing in tax, and then went back to McGill for his law degree which he received in 1979 graduating number 2 in his class. Then it was off to Harvard Law School for a year, where he received his LL.M (Masters of Laws), before he moved to Ottawa for a year, where he clerked for the legendary Supreme Court Chief Justice Bora Laskin.

For Neil, clerking for Bora Laskin was a great experience, even though Neil sometimes disagreed with his legal reasoning. But Bora Laskin always said: "Oh, I love it when you challenge me" even though Bora Laskin, of course, always had the last word. They had a good relationship and Neil authored the 5th edition of Bora Laskin's Canadian Constitutional Law at the specific request of Bora Laskin. They were close to each other and respected one another, I was told.

It was during his time at law school in Montreal - in 1977 - that Neil first met Marie. For Neil, it was love at first sight. But Neil had to find a way to get Marie's attention. You've already heard from Emily regarding the lengths he took to find out her name, and get her to go out for coffee with him.

One of the stories Marie shared with me, was when they were both in the library, and Neil made believe he did not know the answer to a certain legal question. He has asked to Marie and her friends "Do you guys know what the deal is with this?....referring to some obscure property question..." And Marie piped up very confidently: "Oh, it's the Wait and See rule!" And it was the complete wrong answer. Of course, Neil knew that, but he was smart enough to just say: Oh, thank you, since it was love that was on his mind, not the technical niceties of the law!

After a few coffee dates (even though neither Marie or Neil actually liked coffee) the couple knew they were meant for each other – and eventually were married by Rabbi Shoham in Montreal 1978.

When I asked Marie what drew her to Neil, she told me this:

"I just loved his mind. I thought he was so brilliant. There were a few things. There was the wonderful intellect that I just loved. But also, he made me laugh. He always made laugh. He had a great sense of humor and a very positive, sunny outlook on life. He was so optimistic! That was something I found really wonderful. I thought he was very attractive, but he was also the least vain person I've. He was never self-conscious.

Of course, while there was the physical attraction, but the chemistry came more, I think, from the things we talked about. We never ran out of things to discuss. We could spend hours a day talking and never run out of conversation. And sometimes we were happy to sit quietly together, and not talk, and still feel very connected. It just felt so right. It just felt inevitable. It felt very inevitable, like this was how it was going to be. We never doubted it."

And of course, Mare feelings for Neil were more than reciprocated by Neil for Marie. He thought Marie was beautiful the first time he saw her – and felt that way and told Marie so..... all the years of their courtship and marriage. He loved her kindness and thoughtfulness and her good instincts and judgement. Neil always felt that Marie could do anything – even when Marie doubted herself. And if Neil had a difficult problem, he would come to her first, the children told me.

Marie remembers with fondness their early years together, before they moved to Toronto, when they graduated law school together in Montreal, then moved to Boston, and then Ottawa.

Marie remembers looking for an articling job in Ottawa, which she was very nervous about, and at some point, going for an interview with a couple of law firms in Ottawa. So she took a bus from Montreal, and as the bus was pulling in to Ottawa she sees Neil's little Chevette pulling up too.

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He had drove there to be there for the day just to be by Marie's side during this stressful day - Marie ended up getting two offers, eventually accepting one from Soloway, Wright, one of the best Ottawa law firms.

Shortly thereafter, the Neil and Marie moved to Toronto, where they raised their three children, Jonathan, Emily and Sara.

During Neil's illustrious career, he worked at Blake Cassels for many years, as well as Davie's Ward and at some point for Ian Scott, Attorney General of Ontario , where he served as senior policy advisor. He concluded his career at McCarthy's.

Sara told me that when Neil finished his clerkship with Bora Laskin, he applied to the Seven Sisters, the best law firms in Toronto, and got job offers from all of them except McCarthys because, at the time, McCarthys only hired their own articling students. Since Neil articled at the Court he was not eligible. So when Neil joined McCarthy's later in his career, he joked that McCarthys finally decided to waive their articling requirement.

During his exceptional legal career, Neil did many areas of law,: he was a constitutional law expert, he was competition/anti-trust law expert, and was a corporate/commercial litigator.

"Neil had cases in courts all across Canada at every level", Marie shared with me "Many litigators specialize in appeal work, or they specialize in hearings, but Neil did everything."

“He started out as a constitutional expert”, Jonathan shared with me:

“What made him distinctive in those days was, that Canada had just brought in the Charter of Rights, which was modelled to some extent, on the individual rights in the US Constitution, which he had just finished studying at Harvard. So, he had, in those days, an unusual expertise.”

Neil was Co -Counsel to the Gomery Commission, in which he cross examined a number of witnesses including the then Prime Minister, Paul Martin, the first time this happened since the days of Sir John A McDonald.

“Neil’s attitude was, he wanted the truth”, Marie told me. “He never tried to make digs or cast aspersions. He was very straight with all witnesses. He didn’t have an agenda.”

He was a fabulous orator, Marie recalled. He was a very good speaker in court and was always organized. He spoke very clearly and always made eye contact. . In court, you’re allotted a very strict time limit, especially the Supreme Court but he was always able to answer the question, or say: I’m coming to that.

In total, as you have heard, Neil participated in over 100 trials and went to the Supreme Court some 30 times.

Sara remembers that in December 2012, going to the Supreme Court with her father. “It was my first and only time, but I went to go see him argue at the Supreme Court. He’d already been two or three times that year and the security guards said: Hello Mr. Finkelstein, like they knew him, because he’d already been so many times.”

One of Neil's most recent Supreme Court victories was in the Bhasin case, a leading Canadian contract law case, concerning good faith as a basic organizing principle in contractual relations in Canada's common law jurisdictions. The Supreme Court of Canada sided with Neil's client, maintaining that Canadian contract law comes with a duty of good faith that requires parties to perform their contractual obligations honestly.

"I think this is the most important contract case in 20 years," Neil said at the time. "We're going to find another series of jurisprudence arising out of this case over time about how far this duty of good faith and duty of honesty goes"

Any time there's a contract now, they must consider the implications of this case, I was told

Jonathan remembers his father speaking to his first year law class. After the lecture, a fellow student asked Neil: Why should I be a lawyer? Neil answered: "As an adult in the world, you will find the world to be in many cases unfair, but you can go to court and say this is unfair, and they have to consider your argument – and that's really the only place you can do this." Neil felt that fairness was the most important organizing principle in law- that everything should flow from that - and that, indeed, is part of the Bhasin's decision's legacy.

One of the legal efforts that Neil was most proud of was his pro-bono work to challenge Holocaust deniers in Canada, leading the fight to prosecute the likes of Ernst Zundel, Malcom Ross and John Ross Taylor.

He was one of the leading legal people in Canada fighting Holocaust deniers, and was very proud of putting Holocaust deniers out of business, though this efforts did lead to numerous death threats from the supporters of these same Holocaust deniers.

Yesterday, the family shared with me a short video on YouTube, where Neil talks about his feeling for the law and being in the courtroom. During the short clip, Neil – ever so articulately –explains his love for every aspect of the courtroom, from presenting his case to the judges, to cross examining the witnesses, in effect, acting like a movie director, writer and actor all combined in one person. Even from this very short video, it was clear that Neil had chosen a career that was perfectly suited to him, which his exceptionally distinguished career also attests to.

When I asked the children to describe their father, here is what they shared with me:

He was just the best. He loved being a father and it was obvious. He never missed a play. He took your phone calls no matter what. We always knew we came first and was very expressive about his love for us. Every time he saw us, there would be lots and lots of kisses and hugs. He had this dance he'd do when he'd see us. He'd go: KIDS! And he'd do this river dance!

As a husband, Marie told me, he was very demonstrative in his love for me and so supportive of me, no matter what I was doing, whether It I was my law related work, when I was on the Ontario Review Board for many years, or when I wanted to concentrate on my art. He took so much pride in my art. He was always after me to show my work. “

Neil was diagnosed with his illness shortly after Jonathan and Natasha's wedding but through his illness, as all his family members told me, he never complained. Just at the very end he said, "I don't like being helpless

Sara reflected that: He was never, ever "Woe is me." If he ever got upset, it was about leaving us. Because he wouldn't be there for us. But he was always positive.

Marie remembers, how, no matter what he was experiencing he felt that, *each day of life is worth living.*

Neil faced his illness with tremendous courage. He was very determined. He'd say, whatever they doctors can do for me, I'm going to do it.

Sara observed that: You imagine, "cancer", I'm going to fight it, like a warrior. But it's not glamorous, there's not a lot of dignity. It's very hard to wake up every day, and your loved ones see it, you see it yourself, all the things you were able to do slowly slip away. And it's just your everyday life.. But there was never a day when he would just lie in bed. He got up and he got dressed every day. Every day up until the day he couldn't - which was just this past Sunday

Every day was a day to live and he was going to live that day out, Marie added.

When I asked the family to sum a few of Neil's qualities, here is what they shared with me:

Brilliant. Very generous. He was such a good mentor to so many people. He was so happy to share and give people opportunities. He was so much fun. He was always ready to laugh. He was so very exuberant and enthusiastic. But his most important attribute was his: love for and pride in his family, his Team, as he so often called them.

And I would also like to add the words Marie used when she first informed us of Neil's passing: Beloved Husband, Father, Zayda, Brother, Uncle, Friend, Partner, Mentor, Scholar & Advocate.

Let me conclude by adding one last thought:

During Neil's illness, Marie told me yesterday, "If I was worrying or upset, Neil would often say: But I'm here, I'm still here..."'

And indeed though Neil has physically passed from this world, he is still here in so many significant ways - in the exceptional legal legacy he leaves behind, in the way he touched the lives of so many people, and most importantly in his undying love for his wife, his children and their partners, and for his adored grandchildren.

And it is in the memory of Neil's blessed life, we hope the family finds comfort in the days ahead.

May his memory always be for a blessing.

[delivered by Eli Rubenstein, June 14, 2018]