

## A LAWYER'S BRIEF ON FETAL ALCOHOL SPECTRUM DISORDERS

David Boulding, Lawyer  
Port Coquitlam, British Columbia, Canada  
dmboulding@gmail.com

Alcohol in the womb is a solvent and acts on the baby's developing brain like paint stripper acts on layers of old paint on furniture: it dissolves brain cells, bubbling them away. Thus, brain functions are reduced.

1. FASD IS PERMANENT BRAIN DAMAGE – There is no fix, no way to bring back missing brain cells.
2. FASD IS A MULTI-SECTOR PROBLEM:
  - It is a school, police, social, legal, medical, community, family, and national problem.
  - It is a delusion if you think one agency can solve this problem.
3. DO NOT RE-INVENT THE WHEEL:
  - There is abundant research available: there are lots of people ahead of you; and once you get connected to the various sources of knowledge there is much positive work you can do.
  - Early assessments are key: use a multidisciplinary assessment team.
  - Do your own research on who is knowledgeable. You will be started to realize that 99% of psychologists/psychiatrists know little about fetal alcohol.
  - FASD is not in DSM-5, often Canadian doctors do not have a billing code for this assessment.
  - Few universities fund research in this area. University of Manitoba, Doctor Ab Chudley (retired) is a leader and still conducts research. Vancouver's Sunny Hill Hospital and Dr. Chris Loock is another source.
  - Canada has just published the second edition of national guidelines for diagnosis (see the December 2015 edition of Canadian Medical Association Journal)
4. GO PAST JUDGMENT AND UNDERSTAND THE REASONS WHY PREGNANT WOMEN DRINK ALCOHOL:
  - Becoming non judgmental is difficult and requires a heartfelt, clear-minded knowledge of family violence; the history of close relationships; poverty; lack of education; addiction; and an understanding of how to cope with daily difficulty
  - FASD is not restricted to poor and marginalized Canadians: rich stockbrokers and dentists have wives who binge-drink while pregnant; young, educated professional women binge-drink almost as a rite of passage, often not knowing they are pregnant.
  - Jan Lutke has some pregnant advice: distinguish between noncompliance and non-competence. There is a *VITAL* difference, and it is brain based.
5. THERE IS GOOD NEWS: DR. STERLING CLARREN'S *EXTERNAL BRAIN*
  - The External Brain means appropriate supervision 24/7, and it means designing appropriate structures that create opportunities for the person to be successful: it is our responsibility to set up ways to create success for persons with FASD. All the drugs you can name, all the available therapy, all the time in jail, all the best intentions, all the court orders, will not generate new brain cells. This offender will be the same every time they come into your courtroom. They are not going to change until we design structures that

work for them. Think of the concrete ramps on street corners that let people in wheel chairs cross the street.

- The External Brain, as a legal concept, is our duty of care: it is our duty to accommodate because according to the Canadian Charter of Rights and Freedoms we are all to be equal before the law.
- Diane Malbin, from Oregon, has written the best book on this topic. It is 86 pages and costs \$12 and called “Trying Differently, Not Harder.” Buy it. Diane Malbin provides two practical suggestions:

1. Lower your expectations; and
2. Change their environment: Use probation orders and informed parenting.
3. Buy Diane Malbin’s second book “Information for Professionals and Parents.” See [www.fascets.org](http://www.fascets.org)

These accommodations are easy to say aloud and difficult to implement for four reasons:

1. We all have this little voice inside us that says: *they should not get away with this behavior.*
  2. If we *really* knew how the brain worked, we would punish differently: we would design our teaching and corrections industries differently. Our knowledge of the human brain is in the early stages; there is much we do not know. Many of our brain-based assumptions in the criminal legal system are clearly wrong. Read Section 718 of the Criminal Code of Canada.
  3. We all share a social sense that any individual can do well if the individual would just try harder: not true if your brain is missing pieces.
  4. Change is not an easy or a comfortable process, especially for rigid systems like the criminal legal system or the educational system, especially when your brain is missing pieces.
- Warning: *caregivers and others charged with dealing with persons with FASD will experience near total exhaustion very quickly this includes police, teachers, lawyers, social workers, and judges.* You must guard against dying inside yourself, the same way a long distance runner guards against fading too soon. There are training tips and they involve physical, mental, emotional, and spiritual fitness - take care of yourself. Like the monotonous warnings on airlines, put on your air mask before helping others. You are useless if dead, or unable to do your appointed task.
  - Helpful sources of accurate information:
    1. [www.asantecentre.org](http://www.asantecentre.org)
    2. Professor K. Sulik, University of North Carolina, Bowles Institute for Alcohol Studies.
    3. Professor Ed Riley, University of San Diego
    4. Doctor Ab Chudley, Retired, University of Manitoba
    5. Professor Julianne Conry, Asante Centre
    6. Professor Anne Streiguth, Retired, University of Washington, Fetal Alcohol and Drug Unit (Seattle)
    7. [www.davidboulding.com](http://www.davidboulding.com)