

# A LAWYER'S BRIEF ON FETAL ALCOHOL SPECTRUM DISORDERS

David Boulding, Lawyer  
Port Coquitlam, British Columbia  
[dmboulding@shaw.ca](mailto:dmboulding@shaw.ca)

**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 – bubbles them away. Thus, brain functions are missing.**

**1. FASD IS PERMANENT BRAIN DAMAGE**

**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 lots of research out there: 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
- seek help: you will be started to realize that 99% of psychologists/psychiatrists know nothing here
- FASD is not in DSM-4tr
- few universities fund research in this area
- Canada has just published the guidelines for diagnosis (see the March 2005 edition of *Canadian Medical Association Journal*)

4. **GO PAST JUDGMENT AND UNDERSTAND THE REASONS WHY PREGNANT WOMEN DRINK ALCOHOL:**

- this 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 the poor and marginalized Canadians :rich stockbrokers 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 non-compliance and non-competence. There is a difference, and it is brain-based.* (refer to [www.fasdconnections.ca](http://www.fasdconnections.ca)).

5. **THERE IS GOOD NEWS: IT'S CALLED THE "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
- The "External Brain", as a legal concept, is our duty of care: it is our duty to accommodate because we are all to be equal before the law
- Diane Malbin provides two practical suggestions:
  1. lower your expectations; and
  2. change your environment

This is easy to say aloud but 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 beginning stage; there is much we do not know. Many of our brain-based assumptions in the criminal legal system are clearly wrong.
  3. we all share a social sense that an individual can do well if the individual would just try harder.
  4. change is not an easy or a comfortable process, especially for rigid systems like the criminal legal system or the educational system.
- Most importantly: **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.** So 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.
  - Surf through these two websites:  
  
[www.asantecentre.org](http://www.asantecentre.org) and [www.fasdconnections.ca](http://www.fasdconnections.ca)  
and check out the many resources.