

## Family

# Smart, practical ways to handle high conflict between lawyers

By Cheryl Suann Williams



Cheryl Suann Williams

(July 20, 2018, 8:56 AM EDT) -- As lawyers, our job frequently involves finding the path forward for parties who cannot agree. While high conflict negatively affects any form of legal dispute, the job of family law lawyers becomes much more difficult when spouses or common law partners cannot agree as their legal issues involve their most sacred concerns (their family, home and financial well-being) and is much more stressful, personal and emotional.

The task of coming to agreement can also be complicated by the way lawyers behave with parties, as well as with each other, both inside and outside the courtroom. Sometimes, the high conflict is not as a result of the opposing party, but the opposing party's lawyer, which becomes a detriment to a successful, economical and efficient resolution of the case.

The following are practical tips that, although intended for family law lawyers, also benefit lawyers in other practice areas:

### Remember your professional duties

When dealing with a difficult opposing counsel or self-represented party, it is sometimes easy to get drawn into the conflict. However, the *Rules of Professional Conduct* should prevail in all interaction with opposing counsel or self-represented parties.

### Protect your reputation

Despite the increasing success of the collaborative law process where parties in family law disputes agree to a resolution-based approach outside of the court system, when people shop around for a lawyer, it is still often that they view a good lawyer as a "shark." However, the lawyer with the arrogant shark attitude may not necessarily be the best lawyer especially if they wish an amicable, timely and cost-effective resolution.

When potential new clients question me about whether I can be the "shark" they

desire, I advise them that that is incompatible with my style of practice and suggest that they seek another lawyer. I think it is wise to be true to myself and focus on the long-term view of my reputation in the legal profession.

### **Avoid the dramatics**

We have all seen television shows where the charismatic or overly dramatic lawyer humiliates the opponent on the witness stand and triumphantly wins his (most often) case or the client who disrespects the television judge through inappropriate comments and behaviour. In reality, this behaviour may be expected from the client, but has no place in the courtroom or interaction with opposing counsel.

The lawyer's reputation follows them into the courtroom as well and a well-respected lawyer is of more benefit to the client. Lawyers are wise to be skeptical of information advanced by clients for drafting pleadings and court documents generally. First, judges do not have time to read each detail and allegation that a client wishes to advance and outlandish allegations weaken what could otherwise be a valid claim. When I am solicitor-of-record, the pleadings and court documents must reflect my style of practice and not what is merely regurgitated by my client.

### **Be careful of what you put in writing**

It is easy to identify letters either written by clients and merely signed by the lawyer or written by the lawyer to impress his or her client that often carry an unprofessional or demeaning tone. Words may be forgotten once spoken, but those put in writing remain and may make their way into affidavit material and be damaging to the lawyer's reputation and career.

When dealing with a difficult situation which I am required to respond to in writing, I will often put off writing the correspondence until my emotions have subsided and I will have my law clerk or colleague review the correspondence prior to it being sent out.

While technology has provided many advantages, e-mails can be a particularly dangerous way of communicating: they are often written quickly without being proofread and, therefore, open up a much greater ability to be taken out of context. As well, e-mail correspondence encourages an immediate response often when one is not required. Our need to be hyper efficient — "off my desk and onto yours" — is frequently not a good thing. It is very easy to hit the send button when e-mailing and regret it moments later.

### **Do not enable your client's bad behaviour**

People with high-conflict personalities can often be the driving force in prolonged, high-conflict and costly litigation. As lawyers, it is important that we not become enablers or encourage this behaviour. If we are drawn into the conflict, we can no longer remain objective in advising our clients which, in turn, may necessitate removal from the case.

### **Diffuse the conflict**

The most effective tools that I have learned when dealing with opposing counsel or others are to diffuse the conflict, either by lowering my voice during an outburst, or using humour in my response when least expected. Lowering your voice is the antithesis of what is expected when someone has just shouted at you. Humour has a way of disarming people — it's the proverbial curveball. It also puts the other person off guard when a remark that was intended to be derogatory or to provoke did not have its intended effect. I have learned to be more selective, pick my battles and determining what, if anything, I will respond to and allow to stress me.

*Cheryl Suann Williams is managing partner of Williams Family Lawyers, Markham, Ont., and can be reached at [Cheryl@williamsfamilylawyers.com](mailto:Cheryl@williamsfamilylawyers.com).*

This is part six a series on high-conflict divorce and separation. Part five; Part four; Part three; Part two; Part one.

*Photo / [chatchaisurakram](#) STOCKPHOTO.COM*

*Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Peter Carter at [peter.carter@lexisnexis.ca](mailto:peter.carter@lexisnexis.ca) or call 647-776-6740.*

---

© 2018, The Lawyer's Daily. All rights reserved.