

## **TAB 10**

### **Professional Competence**

**Cettina Cornish**  
**Counsel, Professional Development & Competence**  
*The Law Society of Upper Canada*

**Jessica Kowalski**  
**Complaint Resolution Group - Resolution Counsel**  
**Professional Regulation**  
*The Law Society of Upper Canada*

**Andrea Waltman**  
**Counsel, Professional Development & Competence**  
*The Law Society of Upper Canada*

**Dealing with the Difficult Client by:**  
**Carol Curtis**  
**Barristers & Solicitors**

### **Practice Workshop: Opening your Law Office**



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

**Continuing Legal Education**



## **Fact Scenarios – The Solicitor Client Relationship**

- A. You are retained by another sole practitioner to conduct an examination for discovery as agent for the lawyer. During the examination you discover that the lawyer for whom you are acting as agent has been negligent. You are concerned that if you bring this up with the other lawyer, the other lawyer will instruct you not to let his client know.
- B. Someone contacts you by email or by phone and asks for advice on a simple matter. You provide a quick response. The person never comes in to see you. You do not issue any account because it was just a simple matter.



## **Screening the Client**

A potential client calls your office and wants to see you for a second opinion with respect to the ongoing litigation between her and her husband over the issue of custody of their two children. She tells you that she is thinking of changing lawyers because she is dissatisfied with her current lawyer. She further advises that she is prepared to give you a retainer if she decides to make the change. At the end of the conversation, she mentions that she is aware that there is a pending motion, but her lawyer has not been served with any documentation. You make the appointment for the following day.

The client arrives at your office with one of the children who is 6 years old. She brings with her volumes of material used in previous motions. As you are reading through some of the material, she gets up, walks around your desk to where you are sitting and starts talking about the negative aspects of the case coming closer and closer to where you are sitting as she speaks until she is almost touching you. She then mentions that she received a fax last evening which she believes to be a Notice of Motion for contempt which is returnable in two days.

At the end of the interview, she tells you that she wants to retain you and that she will be back in an hour with the cash.



### **Fact Scenario**

You have been retained by the Vendor and Purchaser in a real estate transaction. The parties have entered into a private agreement of purchase and sale. The Purchaser is a long-standing client of yours, and you recently handled her family law matter. The deal closes, but the bank withdraws the next month's mortgage payment from the Vendor's account. The Vendor blames you for acting in a conflict of interest. What steps can you take to avoid an actual or perceived conflict and related complaint?



# **FOR YOUR INFORMATION**

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To order a catalog, please call 1-800-285-2221, Monday - Friday, 7:30 p.m. to 5:30 p.m. /

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### **ONTARIO BAR ASSOCIATION**

Anyone seeking information about Continuing Legal Education programs organized through the Canadian Bar Association - Ontario (CBA-O) or The Law Society of Upper Canada can contact the following individuals for further information:

#### **Program Registration**

Sarah Couture at (416) 869-1047 ext. 306

Pamela Sta. Ana (416) 869-1047 ext. 307

#### **Publications**

Valerie Dallas (416) 869-1047 ext. 328

#### **Videos**

Kanae Li (416) 869-1047 ext. 304

#### **Financial Assistance**

Price discounts of 50 percent off may be available for those members of CBA-O making a total annual income lower than \$35,000. An application must be submitted to:

Cindy Ng at (416) 869-1047 ext. 407.

### **THE LAW SOCIETY OF UPPER CANADA**

#### **Program Registration**

June Gavina (416) 947-3380

For more information on current month by month programs, please visit our website at:

[http://library.lsuc.on.ca/GL/services\\_cle\\_12.htm](http://library.lsuc.on.ca/GL/services_cle_12.htm)

#### **Publications (materials and videos)**

Heather Huckfield (416) 947-3380

#### **Financial Assistance**

Anyone making a total annual income lower than \$35,000 can apply for a bursary to:

Fina Badaroco (416) 947-3427



## **Web-Based Accounting Software**

Members may wish to surf the web in search of accounting software to assist them in the accounting area of their practices.

## **Member Annual Fees Payment Plan**

Did you know...

### **The Law Society of Upper Canada**

The Law Society of Upper Canada allows its members to pay annual fees in installments on a pre-authorized member payment plan. There is an administrative fee of \$75. per member. The first payment will be effective in February for eleven months thereafter; the last payment is due in December. A member wishing to enrol sometime later on in the year may do so by contacting the following number at (416) 947-2025.

For more information on the above, please visit our website at:

[www.lsuc.on.ca/services/services\\_fee\\_en.shtml](http://www.lsuc.on.ca/services/services_fee_en.shtml)

### **Lawyers' Professional Indemnity Company (LPIC)**

LPIC allows its members to pay annual fees on a lump sum, quarterly or on a monthly payment plan. There is no administrative fee.

For more information on the above, please visit LPIC's website at: [www.lpic.ca](http://www.lpic.ca)



## **LINK**

Toll-free number: 1-800-268-5211

Toronto: (905) 278-1491

### **DID YOU KNOW...**

**LINK** is a confidential, professional counselling service, for all members and student members of the Law Society of Upper Canada experiencing personal distress.

**LINK** is concerned with any personal problem that affects your health, well being and professional life, including:

- Anxiety
- Depressing
- Marital or Family Problems
- Alcohol or Drug Abuse
- Eldercare Concerns
- Work and Career
- Financial Difficulties where they cover the following topic areas:
  - Debt management
  - Pension plan
  - Personal tax
  - Retirement planning
  - Budgeting management
  - Purchasing a home
  - Financial aspects of divorce proceedings
  - Financial planning in general (They do not give investment or product advice)
- any other issues which cause distress. If in doubt, call and ask.

### **What About Confidentiality?**

**LINK** is a confidential service, designed to maintain and respect the privacy of its clients. Only statistical information will be provided to **LINK** by Corporate Health Consultants. The names and any information provided by members will be treated as confidential by CHC.

### **How Does LINK Work?**

**LINK** will provide short-term counselling, as well as assistance in finding the best resources available in the community. Just call for an appointment or for more information about how **LINK** can help you. **Fees for initial sessions with your LINK counsellor are covered by your membership in the Law Society of Upper Canada.** If any additional services are required, fees are the responsibility of the member.

**LINK** may not be something you need today - but the service will be there for you if the need arises. Please keep the telephone numbers handy.



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- Suicide Awareness and Prevention
- Creating Balance in Professional Life
- Drugs and Addiction
- Living with HIV / AIDS
- Heart Attack / Stroke & Recovery
- Model Programs for Lawyer Assistance
- Employment Program for Young Lawyers
- Managing Bipolar Illness
- LPAC Info Package

LPAC  
Adrian Hill, Executive Director  
Legal Profession Assistance Conference  
2200 - 439 University Avenue  
Toronto, ON  
Canada M5H 1Y8  
Tel: 416-520-9016 Fax: 416-595-1731  
E-Mail: [adrianhill@sympatico.ca](mailto:adrianhill@sympatico.ca)  
Website: [www3.sympatico.ca/adrianhill](http://www3.sympatico.ca/adrianhill)



## **LIST OF COLLEGES OFFERING WORK PLACEMENT OPTIONS**

### **Seneca College, Toronto**

#### Law Clerk / Legal Assistant - 2 year course

Placement: One day per week plus one full week, in 3rd and 4th semesters, Unpaid

Contact: School of Legal and Public Administration, at (416) 491-5050 ext. 6500

### **Success Business College, Toronto**

#### Legal Secretary / Assistant, 26 week course

Placement: work placement service

Contact: (416) 487-6493

#### Paralegal, 54 week course

Placement: work placement service

Contact: (416) 487-6493

### **Humber College, Toronto**

#### Law Clerk, 2 year course

Placement: 1 day/week for 16 weeks in 4th semester

Contact: Philip Sworden, (416) 675-6622 ext. 4278

#### Court and Tribunal Agent, 2 years

Placement: 4 weeks full time

Contact: Phillip Sworden, (416) 675-6622 ext. 4278

### **Centennial College, Scarborough**

#### Law Clerk, 2 years

Placement: full semester placement, 4 days/week

Contact: Patti Ann Sullivan, (416) 289-5214

#### Office Administration, Legal, 2 years

Placement: 4th semester field placement

Contact: Cheryl Butler, (416) 289-5214



## Dealing with the Difficult Client

Carole Curtis, B.A., LL.B.,  
Barristers & Solicitors,  
260 Richmond St. W., Suite 506,  
TORONTO, Ont.  
M5V 1W5  
416.340.1850 x 222  
fax 416.340.2432  
[carolecurtis@carolecurtis.com](mailto:carolecurtis@carolecurtis.com)



This paper and this presentation are dedicated to Bernice Daigle and Pauline Lee, my wonderful law clerks,

- who have put up with more difficult clients, difficult court staff, and difficult lawyers (including me) than anyone should have to;
- whose grace under pressure, ability to meet unreasonable deadlines, hard work and loyalty have made me the lawyer that I am; and
- without whom I would no longer want to be a lawyer.



# Dealing with the Difficult Client

Carole Curtis

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# Dealing with the Difficult Client

Carole Curtis  
October 2003

## 1. Introduction

Lawyers often act for or deal with clients who are difficult. Dealing with a difficult client is one of the most challenging parts of legal practice and requires care, attention and planning. This analysis assumes that you have decided to act for this client and that you have identified the client as a difficult client.

Difficult is, of course, a relative term, that is, who is seen as a difficult client may be a function of the area of law you practice in, or the other clients you act for. Often clients are seen as difficult in comparison to the other clients in the lawyer's practice. Also, there's no doubt that the personal traits of the lawyer affect the lawyer's ability to deal with difficult clients. Some of us are just more tolerant than others. Some lawyers have a rescuer fantasy, which may increase the number of difficult clients they represent, and may affect the way in which they represent the difficult client.

As well, some lawyers have decision-making authority about the clients they represent, and as a result, have control over which clients they act for. Obviously, this allows a lawyer to act for fewer difficult clients, or even perhaps no difficult clients. However, that is not the case for most lawyers.

## 2. Why should you be concerned about the Difficult Client?

The difficult client is a very hard customer to satisfy. They can be frustrating, demanding, even upsetting. They can ignore your advice. They can treat you badly, or (even worse) treat your staff badly. They can be unhappy with the progress of the case, no matter how hard you have worked or how good the results are. In short they can be unreasonable.

The difficult client is more likely to do the three things that distress lawyers most:

- The difficult client is more likely to not pay the lawyer.
- The difficult client is more likely to complain to the Law Society about the lawyer.
- The difficult client is more likely to sue the lawyer for negligence.

It is important, in dealing with the difficult client, to protect yourself at all times, and to protect yourself at the same time that you are trying to serve your client.



### **3. The Basic Three Steps of your Involvement with the Difficult Client**

#### **a. Whether or not to Act for the Difficult Client**

Lawyers can, under certain circumstances, refuse to act for a particular client. This is less difficult for lawyers who practice in large urban centres, where the client can usually find another lawyer, and is less difficult for lawyers who restrict their practice to certain areas of law.

With time, the lawyer can tell in the first interview if the client is going to be a difficult client (this is known as trusting your instincts). Often, the lawyer can even tell on the telephone that the client is likely to be a difficult client. This possibility is an added incentive for making your own appointments with new clients (rather than allowing the secretary to make your appointments), so that you have the opportunity to speak to every new client yourself on the telephone before they come in to see you. You might also consider not even offering a consultation to a client you assess as a difficult client in the initial telephone contact.

These are some questions to ask early in your contact with the client that will help you to identify a client who may be a difficult client:

- Am I the first lawyer dealing with this particular problem for you?
- How many lawyers have you consulted or retained about this problem?
- Why did you leave your previous lawyer(s)?
- Who are your previous lawyers?
- Can I talk to your previous lawyer(s)?
- What stage is this problem at (particularly if the problem is in litigation)?
- What are your expectations about the resolution of this problem?
  - What are your expectations about time to conclude?
  - What are your expectations about result?
  - What are your expectations about cost?

#### **b. How to deal with the Difficult Client during the Retainer: 5 Tips to Stay Sane and Stay in Practice**

##### **i. Understand your role**

Your role as lawyer is usually pretty straightforward, but may appear to be less clear with a difficult client. Your role is to analyze a given situation and offer a solution to the problem presented, or a means of achieving the goal the client has presented. Sometimes, there are several possible solutions or means, all of which should be offered to the client. Don't forget



that "do nothing" is always a possible solution (although that solution may have outcomes that are unacceptable to the client). The lawyer's role then is to advise on the consequences of the different courses of action. It is the client's job to make decisions about which course of action to follow, not the lawyer's. After all, it is the client's life, or the client's business, or the client's estate, or the client's litigation.

Some categories of difficult clients (dependant clients, for example) are often totally unwilling to make decisions about their legal issues and want the lawyer to do that. **DO NOT DO IT.** Let some other influential person in their life help the client with the decision. Your job is to help the client understand the choices.

## **ii. Protect Yourself Throughout**

Document everything you possibly can, including telephone calls, voice mail messages and e-mail messages. The verb "document" means "to record in a document; to provide with citations or references to support statements made".<sup>1</sup> Confirm the client's instructions to you in writing, and confirm your instructions to the client in writing. It is also necessary to include, in writing, the possible consequences of various courses of action the client may be contemplating.

If you deal with this client or their work electronically, save messages and instructions in your usual way as part of the permanent record of the file (which may be electronic or on paper). The difficult client has a way of turning on the lawyer more often and with more damaging consequences than other clients.

Documenting (in this context) means recording sufficient details to assist you in a future disagreement. The record you make is not of any use if there are insufficient details to assist you. This means recording at least the following:

- the client's name,
- the file name,
- who the contact was with,
- the date of the contact,
- the nature of the contact (telephone call, meeting, voice mail, e-mail, etc.),
- how long the contact took,
- the details of the contact (who said what, including what the lawyer said), and
- any instructions given (by the client or by the lawyer) during the contact.

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<sup>1</sup> Katherine Barber, ed., *The Canadian Oxford Dictionary*, Toronto: Oxford University Press. 1998. p. 409.



Practice management software programs can make this task less cumbersome and more reliable than scraps of paper the lawyer scribbles on.

It may also be wise to discuss the advice you give this client with a colleague, including discussing the fears you have about the client.

In notes of meetings or conversations with the client, be sure to record the information and advice you gave the client, not only the information the client gave you. Where there is a dispute between lawyer and client, this area may, in fact, be the biggest area of disagreement, and is also among the least documented. In litigation between the lawyer and the client, where there is disagreement about the information provided or the legal advice given to the client and that advice is not documented, courts have often preferred the evidence of the client on this issue.

Practice management software is undoubtedly the most powerful tool for keeping track of all the work that has to be done on a legal matter. The two most widely used practice management products - Amicus Attorney ([www.amicusattorney.com](http://www.amicusattorney.com)) and TimeMatters ([www.timematters.com](http://www.timematters.com)) - are powerful law-office specific tools that allow you to collect and organize information around a single matter. These "practice management systems" contain, in one database, almost all the information you need to handle files and run a law practice. They provide functionality that was often found in separate, software programs, including time and billing accounting, automated document generation, document management. When used properly, a practice management software unifies all the data about a client, potential client or matter into a single point of reference. You can instantly and easily see, in one place, every letter, e-mail, appointment, to do and so on.

### **iii. Be Calm, Be Patient, Be Clear**

Do not let the difficult client turn you into the difficult lawyer, or the unhappy lawyer, or the depressed lawyer (or worse, the yelling lawyer, the drinking lawyer or the swearing lawyer). It will require more patience than usual to deal with this client. If you find you are becoming the difficult lawyer, perhaps it is time to transfer the file to another lawyer.

Be explicit, and be very clear with the client, about everything. The more information given to the client in writing, the less likely there will be misunderstandings. It is also advisable to give the client this information early on in the retainer. Included are examples of information given to clients early on, to help avoid conflict in the retainer (see schedules attached, Administrative Information for New Clients and Billing information for New Clients, which clients are asked to read in the reception area before they meet with lawyers in this law firm).



Be clear with the client about the expectations you have of the client regarding the client's treatment of you and treatment of your staff.

Be sure the client understands whom to deal with on which issues (for example, who to call to get certain information, when they need to speak to the lawyer, when they can deal with staff). Many difficult clients want to deal only with lawyers, which is expensive, not very efficient and not often necessary (see Managing Expectations, below).

#### **iv. Include your Staff in the Plan for the Client**

Make sure the staff understands the risks of acting for a difficult client, so they can behave in ways that minimize those risks. Usually, the staff will easily be able to identify the difficult client. The staff may have identified this client as a difficult client before the lawyer. Make sure the staff is dealing with this client the same way that the lawyer is, especially in terms of documenting contacts, instructions or information.

Also, difficult clients are often much more difficult with the staff than they are with the lawyers. Trust your staff and believe them when they describe the client's behaviour. Deal directly and promptly with the client about bad or inappropriate treatment of the staff, to ensure that the client understands what the staff's role is in their retainer, and more importantly, to ensure that the behaviour is not repeated. . Never let the difficult client treat your staff poorly or abusively. No client is more important than your staff. Institute a zero tolerance policy on abusive behaviour towards staff.

#### **v. The Lawyer's Job is Managing Expectations**

Often clients are difficult for lawyers to deal with, at least in part, because they have unrealistic expectations about the services you will provide, or the outcomes you can achieve for them. Some clients' expectations or goals are totally outside the realm of what legal services could ever achieve. It is important to identify, as early as possible, what the client's expectations are in retaining a lawyer to deal with this particular issue. Consider asking the client to reduce their expectations to writing, or at least, have a frank, early discussion with the client about their expectations.

Clients' unrealistic expectations take many forms, but fall into the following general categories:

- expectations about service;
- expectations about time to conclude;
- expectations about result;
- expectations about cost.



Many difficult clients have very high service expectations. If the client has service expectations which are impossible to meet (e.g., phone calls always returned by the lawyer within 15 minutes, or performing all of the work for free) be clear from the outset that you cannot provide that level of service or that kind of service, and that perhaps the client should find a lawyer who can (good luck to them). If the client has service expectations which are unrealistic, or very expensive (dealing only with the lawyer, or having all work done only by the most senior lawyer) be clear with the client as to whether or not you can meet that expectation, or whether another kind of service will be provided. It is especially important to bill clients with high service expectations frequently and regularly, so they can understand the cost of those expectations.

Clients who are unlikely to be successful in achieving their goals need to be told that clearly and explicitly from the start of the retainer, or at the earliest possible moment in the retainer. It is far more important to be honest with the client who cannot achieve their goal, than it is with the client who can.

Clients are far more interested in honest and clear information about the cost of legal services than at any time in the past. The introduction of technology to the billing process has also changed clients' expectations and their tolerance. The difficult client is also a client who is likely to be unhappy about fees. Again, it is advantageous to ensure this client is billed frequently and regularly, and is provided with as much detail as possible.

**b. Know When to Fold - Ending your relationship with the Difficult Client**

It is not possible to satisfy all clients. In some lawyer-client relationships, there comes a time when the client no longer has confidence in the lawyer's advice or strategy, and that is the time to suggest that the client find another lawyer. With the difficult client, this may occur due to the client's unhappiness with the results. Know when to leave the file. If you cannot make the client satisfied with the progress of the work you are doing, or with the service you are giving, it may be time to let another lawyer try. If you are transferring an active file, you need to ensure that the client is not disadvantaged, and that all material needed to allow the client to move forward with the matter is released (even if the client owes the lawyer money).



#### **4. Categories of Difficult Clients**

##### **a. Angry/Hostile**

This client is unhappy before they retain a lawyer, and will continue to be unhappy. They usually cannot get at the person who is making them unhappy (the other side of the case), in order to tell them about it, but they can get to their own lawyer. As a result, often the angry/hostile clients will visit this anger on their own lawyer (and on the staff). This is known, in psychological circles, as transference. This is very unpleasant for the recipient of this anger, and is not an appropriate basis for a professional relationship.

If you could help this client reach the stage where they are not angry, the client may no longer be a difficult client. However, it may not be possible to get the client to the stage where they are not angry. Besides, that is the job of a therapist. And in certain of these situations, recommending the client see a therapist is the right course. But it is possible to get the client to understand that the lawyer is not the proper place for the outlet of this anger, that the lawyer works for the client and that the lawyer will not tolerate that treatment. Be clear about this the first time the client expresses that anger to you, or you will not easily be able to prevent it in the future.

This client requires a clear firm hand from the start. Be clear with the client about what level of expressed anger is acceptable for you (it may be "none"). Be clear about the treatment of your staff. This client seems to particularly visit their anger on those weaker (your staff). If you tolerate this client's outbursts, they will continue, and likely increase. You cannot change the fact that they are angry or hostile, but you can require that they not visit that behaviour on you or on your staff. Remind this client that this is a business relationship and that you work for them.

##### **b. Vengeful/with a Mission**

This client is a variant of the angry/hostile client. This client has come to you to accomplish a specific purpose, which purpose may have very little to do with the legal issues you were consulted about. They may actually be angry/hostile, but may not show this behaviour at all to the lawyer. The client is often focused on this purpose and quite tenacious. They have a strong personal sense of justice (and injustice) and will want to feel that your work for them has produced justice. They are also result-oriented in a way that may skew your ability to help them. If the lawyer is unable to achieve the specific result the client seeks, there will be trouble.

Often, they look for a lawyer who will share their definition of justice and the feeling that they have been wronged. This is a dangerous path for a lawyer to follow, even if you agree



that the client has been wronged. Lawyers should not be personally invested in the outcome of a client's case. Yet the vengeful/with a mission client will specifically seek a lawyer who is not indifferent about the outcome. They want a lawyer who "believes" in their cause.

Be very cautious in even agreeing to act for this client. This retainer is fraught with problems. Some vengeful/with a mission clients want to take steps that are problematic for the lawyer, highly inappropriate or even illegal. Some vengeful/with a mission clients are also secretive/deceitful/dishonest clients (see below). Remember that lawyers can be taken advantage of by unscrupulous clients. This is another retainer in which it is advisable to reduce to writing all instructions given (from both sides).

Also, although this client wants "justice", they are often unwilling to pay for the kind of service required to satisfy their definition of justice. Be sure to bill this client regularly and frequently.

### **c. Over-Involved/Obsessed**

This client is related to the vengeful/with a mission client. This client may be focussing all their time and energies on the legal matter you are helping them with, often to the exclusion of all other matters in their lives. They are often needy, dependant and want a lot of attention. They want to see and read everything possible about their case. They are obsessed with collecting the paper their case produces, and often have binders or file folders full of material about their case. Ensure that they get copies of everything possible regarding their legal matter. The lawyer might also provide them with the legal research (the actual cases) if there is research done for their matter. This client may do their own research, as well.

The over-involved/obsessed client may be extremely well organized and have all the material regarding their case in an easy to access system. Or, they may be disorganized and the material may be virtually inaccessible. The over-involved/obsessive client will often provide copious written material to the lawyer, with the expectation that the lawyer will read it all. If an unreasonable (or impossible) amount of material is provided, try to get the client to identify what portion of it is essential for the lawyer to read (either by suggesting you can read a fixed percentage of it (40% of it, say) or you can spend a fixed amount of time (for example, 1 hour) reading it). Also, try to get the client to organize the material in whatever format is helpful to you (order of importance, chronological order, pleadings separate from correspondence, lawyers' letters separate from other correspondence). Remind the client that they pay for the time taken by the lawyer to organize material that is not organized, so it is in their interest to organize it first. Also, the over-involved/obsessive client likes it when the lawyer gives them homework related to the case, as it helps them to feel connected to the work that the lawyer is doing.



Like other difficult clients, the over-involved/obsessed client should be billed regularly and frequently, so that they have realistic expectations about the cost of their matter and the affect that their particular style of dealing with it has on that cost.

**c.       Dependant**

This client has spent much of their life being dependent on others, in one form or another, and intends to continue that level of dependency with the lawyer. In part, this client is unwilling to take responsibility for their own lives and for their own decisions. This client will have surrounded themselves with others who are quite willing to be the decision-maker for them, and as a result, may have become even more dependant, and nearly incapable of making their own decisions.

Often the client merely transfers this dependency from someone else to the lawyer. This is not the right place for the lawyer to be. The lawyer's role is not to be the decision-maker, but rather to be the advisor about the choices available to the client. The dependant client will steadfastly refuse to make a decision, insisting that the lawyer do it.

It may suit some lawyers to be the decision-maker for the client, but it is a path fraught with problems and is not a path the lawyer should follow. When the results of the decision do not please the client, the lawyer will be blamed. Lawyers becoming the decision-maker for a dependant client is a no win situation.

Encourage the client to involve a trusted advisor (other than the lawyer) in the process. Encourage the dependant client to come to meetings with you accompanied by the trusted advisor. Let the advisor be the person the client depends on. If that person helps the client to reach decisions then the lawyer is better protected and better able to perform the proper role.

The dependant client will be dependant throughout the retainer, and often difficult to advise and keep focused. This client requires a fair bit of patience on the part of the lawyer. Also this client requires that much of the lawyer's dealings with the client, including advice, be reduced to writing so that the client can consider the recommendations in an unhurried atmosphere and in a context where they can consult other trusted advisors. It is also good practice to confirm this client's instructions in writing.

**d.       Secretive/Deceitful/Dishonest**

This client's behaviour may run through a spectrum of behaviour, in which the client may exhibit only one aspect of the behaviour, or may move through the various phases. Secretive behaviour may be that which is that is merely suspicious (but unproven). The results of



deceitful behaviour may be reparable. However, dishonest behaviour may require the lawyer to end the retainer. Often the lawyer will not identify the behaviour or the severity of this behaviour until the client has moved fully into the dishonest category.

The client who is only secretive may have misunderstood the importance of openness and honesty in the lawyer-client relationship. Or, this client may have something to hide. The lawyer's level of concern about secretive behaviour will vary directly with the nature of the retainer. But the lawyer should never allow the client's inclination towards secrecy to prevent the lawyer from asking all the questions needed to properly do the work.

If the client has actually been deceitful or dishonest with the lawyer, this is a good reason to end the retainer. Once the lawyer learns of the deceit or dishonesty, it is unlikely the lawyer can feel confident in the future with that client. The outcome of dishonesty on the part of the client is an easier circumstance to handle than the secretive or deceitful client. It may be that the lawyer can continue to act for the secretive or deceitful client. But the lawyer needs to be very careful about being involved under circumstances where you cannot be confident that the client is telling you everything you need to know in order to properly do your job. Lawyers have run into difficulty when they have been taken advantage of by unscrupulous clients.

#### **f. Depressed**

The client who is depressed is not merely someone who is sad or unhappy; this is someone with clinical depression who has become withdrawn, passive, lethargic, unable to engage, perhaps even paralyzed in their day-to-day lives. Clinical depression can lead to an inability to perform even the most normal of tasks (e.g., returning phone calls). This client will be difficult because they may not be able to engage with the legal process sufficiently to properly instruct a lawyer. This is most problematic for the client who is involved in litigation, and who must respond to court documents in a time frame. However, the depressed client can also be a problem for lawyers in situations that do not involve litigation.

Similar to the angry/hostile client, the best step is to try to get the client some professional help so that they can move away from being depressed, and become better able to instruct their lawyer. If you could help this client reach the stage where they are not depressed, the client may no longer be a difficult client. However, it may not be possible to get the client to the stage where they are not depressed. And clearly, this is the job of a therapist.

If this client will not get help and wants to continue to be your client, you must document carefully the recommendations and advice you give the client. Put your advice in writing, and ask the client for clear written instructions. If you cannot get written instructions from the client, confirm the client's instructions to you in writing. If you cannot get any instructions, you may need to close the file, telling the client, in writing, that you will not take any further



steps on their behalf and that you will close the file in 30 days, absent specific instructions to proceed. It is advisable to be specific with the client about the consequences of this step, if there are consequences for the client.

**g. Mentally Ill**

The client who may be mentally ill is a particular challenge for the lawyer. Do not confuse a mental illness with the ability to instruct counsel. There are clients with mental illness who are capable of instructing lawyers. The lawyer must be satisfied that the client can properly instruct counsel. But the test for taking those instructions must be broad enough to ensure that clients are not denied access to lawyers merely because they are difficult, change their positions, or are hard to follow. This client may be less predictable than other clients and may change their instructions often, even regularly. As a result, the lawyer should confirm those instructions in writing and should ensure the instructions are fresh and still valid before acting on those instructions.

**h. The Difficult Client with the Difficult Case**

The difficult client with the difficult case is usually also the client who has totally unrealistic expectations about their case. Those unrealistic expectations may be about the outcome of the case, but this client often has unrealistic expectations that touch every aspect of the case, including the cost, the length of time involved, the importance of their case, and the kind of service the lawyer can provide. This client needs to hear, right from the first meeting, what the likely outcome will be. It is always advisable, also, to put bad news in writing, particularly to this client. This client may also need to hear that information repeatedly.

**h. The Client who is Unwilling to Accept/Follow/Believe the Lawyer's Advice**

To some extent, almost all clients fall into this category. In fact, clients often come to lawyers to determine the consequences of actions they have already taken or paths they have already decided to take. Many clients are just unwilling to follow or accept the advice their lawyers give. Sometimes this makes them difficult clients, and sometimes it does not.

Be clear with these clients about exactly what your advice is. Reduce it to writing, including, where possible, the likely outcome of following the advice and the outcome of rejecting the advice. If they choose not to follow it, at least they do so knowing the consequences.

There are lawyers who will refuse to act, or to continue to act for the client who does not follow their advice. This seems too rigid a position to adopt as a general rule. The better



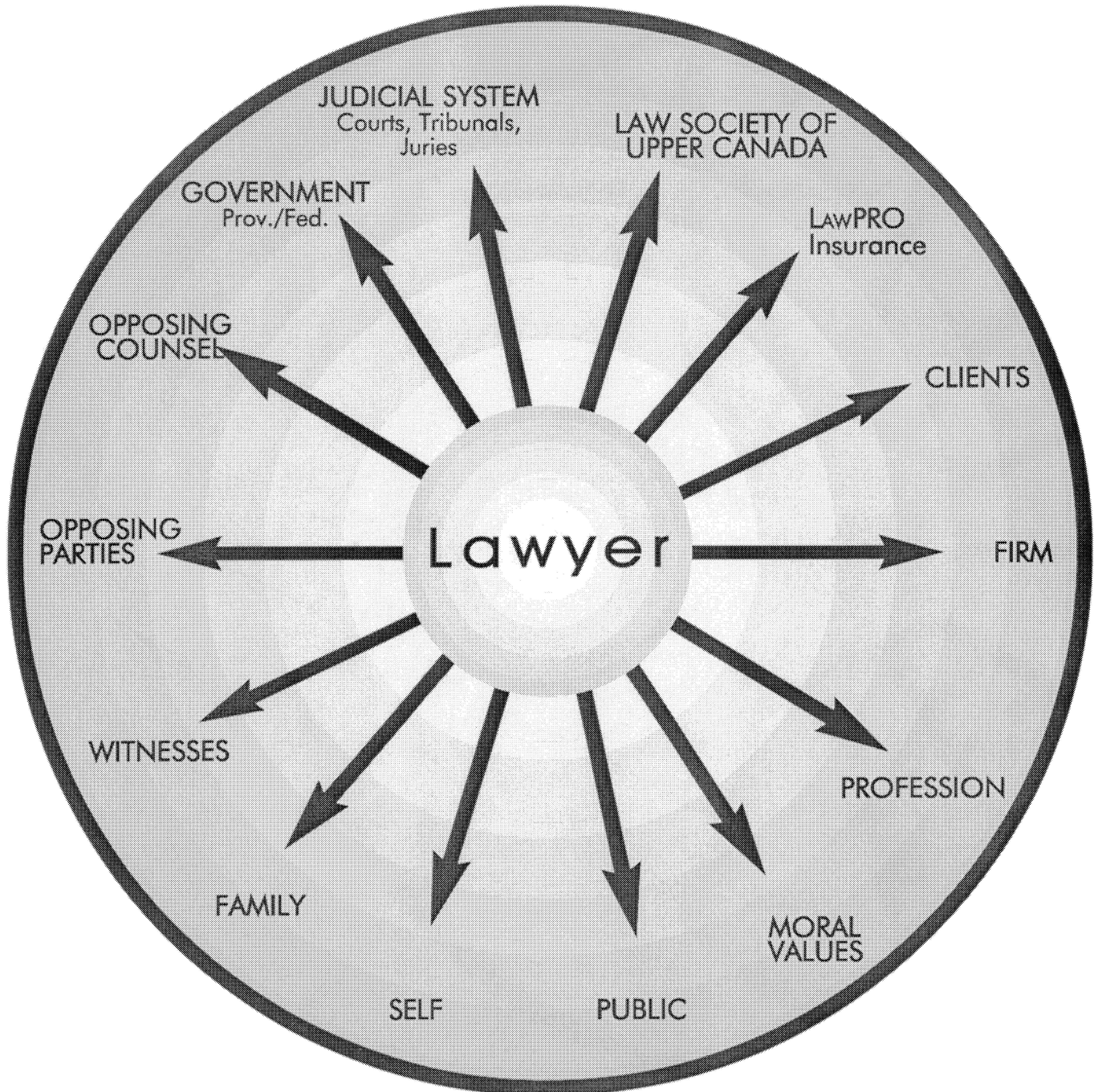
path is to use your judgment about that kind of decision, reserving the decision to end the retainer for client who rejects or ignores advice that has consequences that are very serious. Lawyers may see their role as assisting the client with their legal problem, no matter what decisions the client makes about the conduct of that problem. After all, it is the client who will have to live with the consequences (not the lawyer).

Carole Curtis, B.A., LL.B.,  
Barristers & Solicitors,  
260 Richmond St. W., Suite 506,  
TORONTO, Ont.  
M5V 1W5  
416.340.1850 x 222  
fax 416.340.2432  
carolecurtis@carolecurtis.com

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# Lawyer Accountability





**STATEMENT OF DISCLOSURE REGARDING POTENTIAL  
CONFLICT OF INTEREST SITUATION**

RE:

The parties hereto acknowledge that they have been informed that the solicitor is acting for both parties.

The parties acknowledge that they have been informed that, under this situation, no information received from either of them can be treated by the solicitor as confidential insofar as the other party is concerned.

The parties acknowledge that they have been informed that, in the event that a conflict should develop, the solicitor cannot continue to act for both of them and may have to withdraw completely.

The parties acknowledge that, in the event that a conflict should develop and the solicitor withdraws from acting for one of the parties, he will, if so requested in writing by the other party, withdraw from acting for either party.

The parties acknowledge that they have been informed by the solicitor that it is advisable in all situations for the parties to obtain independent legal representation and notwithstanding such a recommendation the parties have requested that the solicitor act and continue to act for both of them.

DATED at Toronto, this     day of April, 20   .

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Client