TAB 1

Techniques to Build Your Professional Skills and Your Reputation

A) The Legal Profession, Pro Bono and Community Service

B) How to Conduct Yourself When Your Client Has the Office Next to Yours—A Guide for Corporate Counsel

C) The Most Common Mistakes Lawyers Make—And How to Avoid or Minimize Them
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TAB 1A

The Legal Profession, Pro Bono and Community Service

The Honourable R. Roy McMurtry
Chief Justice of Ontario

3rd Annual, The New Lawyer Experience

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THE LAW SOCIETY OF UPPER CANADA

3rd ANNUAL NEW LAWYER EXPERIENCE

THE LEGAL PROFESSION, PRO BONO AND COMMUNITY SERVICE

REMARKS BY

THE HONOURABLE R. ROY McMURTRY

CHIEF JUSTICE OF ONTARIO

SEPTEMBER 22, 2004

I AM PLEASED TO HAVE BEEN INVITED TO PARTICIPATE IN THE 3RD ANNUAL NEW LAWYER EXPERIENCE. I WOULD ALSO LIKE TO CONGRATULATE THE LAW SOCIETY OF UPPER CANADA FOR INITIATING THIS PROGRAM AS IT IS SO IMPORTANT AND RELEVANT TO THE STRENGTHENING OF PROFESSIONALISM.

IT HAS BEEN A LONG-TIME SINCE I COULD CHARACTERIZE MYSELF AS A YOUNG LAWYER BUT I DO HAVE VIVID MEMORIES OF MY EARLY DAYS IN THE PROFESSION. AT A YOUNG IMPRESSIONABLE AGE, ONE'S EARLIER EXPERIENCES TEND TO BE MORE DEEPLY

ENTRENCHED IN ONE'S PSYCHE THAN MUCH OF WHAT OCCURS LATER ON.

I DO RECALL THAT I WAS CALLED TO THE BAR IN A MUCH SIMPLER AGE. THE RANKS OF OUR PROFESSION WERE MUCH SMALLER AND THERE WAS UNDOUBTEDLY LESS OF THE OFTEN FEROCIOUS COMPETITION THAN I HEAR ABOUT FROM TIME TO TIME IN MORE RECENT YEARS. THE LARGEST LAW FIRM IN CANADA IN THE YEAR OF MY CALL WAS ABOUT 25 LAWYERS. THE CONCEPT OF BILLABLE HOURS WAS LARGELY UNKNOWN AND IT WAS, I REPEAT, A MUCH SIMPLER AGE. HOWEVER, I DO RECALL THAT THE CONCEPT OF THE PROFESSION AS A HELPING PROFESSION WAS PERHAPS MORE DEEPLY ENTRENCHED THAN TODAY WITH THE RESULT THAT THE LEVEL OF JOB SATISFACTION MAY HAVE BEEN SOMEWHAT GREATER.

CERTAINLY, I DO SENSE A TENSION THAT EXISTS BETWEEN THE TRADITIONAL FEATURES OF THE PRACTICE OF LAW AS THEY RELATE TO PUBLIC SERVICE AND THE DICTATES OF MODERN BUSINESS PRACTICES WHICH REQUIRE LAWYERS OF TODAY TO SERIOUSLY ADDRESS COST FACTORS AND "BOTTOM LINE" CONSIDERATIONS ON A DAILY BASIS. AS A RESULT, MANY LEGAL

OBSERVERS HAVE EXPRESSED THEIR CONCERN THAT AN UNDUE EMPHASIS ON ECONOMIC FACTORS HAS LED IN RECENT TIMES TO A LESSENING OF SENSITIVITY TO AND THE IMPORTANCE OF THE OLD ETHICS AND CULTURE OF PUBLIC SERVICE.

I BELIEVE THAT THESE CONCERNS ARE MORE THAN SIMPLY A NOSTALGIC HANKERING FOR A RETURN TO THE "GOOD OLD DAYS" OF LEGAL PRACTICE WHICH MAY NOT HAVE ALWAYS BEEN PARTICULARLY GOOD FOR THE CONSUMER.

IN ANY EVENT, SOME OF THE MORE SCEPTICAL IN OUR PROFESSION HAVE SUGGESTED TO ME THAT MY ANXIETY MAY SIMPLY BE A LAST DESPERATE EFFORT TO KEEP ALIVE THE FLAME OF PROFESSIONALISM IN THE FACE OF OVERWHELMING EVIDENCE THAT LAW IS MOVING IN THE DIRECTION OF A BUSINESS AND THAT THE IDEALISM AND SELFLESSNESS OF PROFESSIONALISM IS SIMPLY DYING OUT.

I DO NOT AGREE AS I STILL STRONGLY BELIEVE THAT ANY LAWYER'S CAREER THAT DOES NOT INCLUDE A SIGNIFICANT COMPONENT OF PUBLIC SERVICE COULD LEAD TO A REAL DEGREE OF DISSATISFACTION.

INDEED IPSOS REED SURVEY PRESENTED AT THE ANNUAL CBA MEETING IN WINNIPEG THIS YEAR FOUND THAT LAWYERS WERE MORE DISSATISFIED THAN OTHER PROFESSIONALS. IT CONCLUDED THAT LAWYERS WHO FEEL MISERABLE IN THEIR JOBS ARE FAR FROM AN ENDANGERED SPECIES.

MANY OF THE CAUSES OF DISSATISFACTION ARE OBVIOUSLY RELATED TO LONG HOURS, LITTLE TIME FOR ONE'S FAMILIES AND OUTSIDE INTERESTS. WHILE THE REMUNERATION MAY OFTEN BE GENEROUS, THERE IS OFTEN A FEELING THAT THE WORK IS GENERALLY NOT PARTICULARLY RELEVANT TO SOCIETY AS A WHOLE.

I RECENTLY ENCOUNTERED A BOOK BY FORMER DEAN ANTHONY KRONNAN OF THE YALE LAW SCHOOL TITLED, "*THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION*". IT HAS CAUSED A GREAT DEAL OF CONTROVERSY IN THE UNITED STATES AS IT CONTRASTS THE PURPORTED IDEALISM, PUBLIC SPIRIT AND WISDOM OF THE AUTHOR'S EARLY YEARS WITH THE SCENE HE OBSERVED AS HEAD OF ONE OF THE NATION'S FINEST LAW SCHOOLS AND I QUOTE:

> THIS BOOK IS ABOUT A CRISIS IN THE AMERICAN LEGAL PROFESSION. THE MESSAGE IS THAT THE PROFESSION NOW STANDS IN DANGER OF LOSING ITS SOUL. THE CRISIS IS IN ESSENCE A CRISIS OF MORALE. IT IS THE PRODUCT OF GROWING DOUBTS ABOUT THE CAPACITY OF A LAWYER'S LIFE TO OFFER FULFILLMENT TO THE PERSON WHO TAKES IT UP. DISGUISED BY THE MATERIAL WELL-BEING OF LAWYERS, IS A SPIRITUAL CRISIS THAT STANDS AT THE HEART OF THEIR PROFESSIONAL PRIDE.

THE AUTHOR REGRETS THE FACT THAT THE BEST GRADUATES USUALLY GRAVITATE TO VERY LARGE AND "IMPERSONAL LAW FIRMS" WHERE IN HIS WORDS "THEY ARE PUT IN A CORNER AND TIME CHARGING IS THE RULE". HE REGRETS THE "GROWING ASCENDANCY OF THE ECONOMIC VIEW OF LAW AND A DECLINE OF ITS SELF IMAGE AS A HELPING PROFESSION".

NOW CANADA IS NOT THE UNITED STATES AND OUR CULTURE HAS GENERALLY AVOIDED THE EXTREMES WHICH ONLY TOO OFTEN CHARACTERIZE MANY OF THE ATTITUDES OF OUR FRIENDS SOUTH OF THE BORDER. HOWEVER, THE CONCERNS OF THE FORMER DEAN OF THE YALE LAW SCHOOL SHOULD BE A WAKE-UP CALL FOR THE LEGAL PROFESSION IN CANADA PARTICULARLY AS HIS CONCERNS HAVE BECOME A COMMON THEME OF LEGAL ARTICLES THAT HAVE BEEN PUBLISHED ON A REGULAR BASIS IN THE UNITED STATES AND ELSEWHERE.

AT THE SAME TIME, I RECOGNIZE THAT LAWYERING TODAY IS PROBABLY OF A HIGHER QUALITY THAN WHEN I WAS CALLED TO THE BAR MORE THAN 40 YEARS AGO. LAWYERS GENERALLY ARE BETTER EDUCATED AND LAW FIRMS ARE CERTAINLY MORE EFFICIENT TODAY. TO SOME EXTENT THIS IS AN INEVITABLE PRODUCT OF NEW TECHNOLOGY AND NEW APPROACHES TO OFFICE MANAGEMENT. CERTAINLY, YOUNG LAWYERS GENERALLY MAKE MORE MONEY THAN IN MY EARLY YEARS AT THE BAR. NEVERTHELESS, MY READING INDICATES THAT THROUGHOUT THE ENGLISH SPEAKING WORLD THERE ARE MANY DISSATISFIED YOUNG LAWYERS.

I PRACTICED LAW AS BOTH A CIVIL AND CRIMINAL LITIGATION LAWYER FOR 17 YEARS BEFORE I ENTERED THE UNCERTAIN WORLD OF POLITICS. THEY WERE VERY HAPPY YEARS PARTICULARLY AS I CELEBRATED MY FIRST DECADE IN PRACTICE WITH THE ARRIVAL OF OUR SIXTH CHILD.

A GREAT DEAL OF MY PERSONAL SATISFACTION WAS BASED ON THE FACT THAT AS WELL AS ENJOYING MY FAMILY, I WAS ABLE TO COMMIT A SIGNIFICANT PORTION OF MY TIME TO PRO BONO LEGAL ASSISTANCE WORK AND TO COMMUNITY SERVICE. THE FEE FOR SERVICE LEGAL AID PLAN DID NOT ARRIVE FOR NINE YEARS AFTER I WAS CALLED TO THE BAR AND PRO BONO CRIMINAL DEFENCE WORK WAS QUITE COMMON IN THE PROFESSION. IN TORONTO, THE PRO BONO CRIMINAL LEGAL AID WAS ADMINISTERED BY ONE LADY IN THE SHERIFF'S OFFICE. WHILE STILL A LAW STUDENT, I WAS ABLE TO PERSUADE HELEN GRINNELL THAT MY REPRESENTATION OF SOMEONE IN CUSTODY AFTER CHARGED WITH A SERIOUS OFFENCE WOULD NOT BE TOO MUCH OF A DISASTER.

IT WAS CLEARLY A VERY UNSATISFACTORY SITUATION AS MANY ACCUSED PERSONS DID NOT HAVE ANY LEGAL REPRESENTATION WHATSOEVER. HOWEVER, THESE OPPORTUNITIES MADE ME FEEL

THAT I WAS SUPPORTING THE FINEST TRADITIONS OF THE BAR IN PROVIDING HELP TO THE OFTEN POOR AND FRIENDLESS.

IN MY EARLY YEARS AT THE BAR, I WAS ABLE TO TAKE ON A LARGE NUMBER OF PRO BONO CASES INCLUDING THE MOST SERIOUS OF CRIMINAL CASES. HOWEVER, IT WAS LESS OF AN INTERFERENCE WITH MY FEE PAYING CASES THAN IT WOULD BE IN LATER YEARS AS THE MOST SERIOUS OF CRIMINAL CASES SELDOM LASTED MORE THAN A WEEK.

MANY LAWYERS ALSO WOULD SERVE ON THE WEEKLY CIVIL LEGAL AID PANELS THAT WERE HELD AT THE OLD CITY HALL. IT WAS SIMPLY ASSUMED THAT OUR PROFESSION WAS A HELPING PROFESSION AND THAT PRO BONO WORK WAS PART OF OUR PROFESSIONAL RESPONSIBILITY.

I AM NOT SUGGESTING FOR ONE MOMENT THAT THE PRO BONO TRADITION EVER DISAPPEARED AND I KNOW THAT MOST LAWYERS HAVE PROVIDED PRO BONO SERVICES FROM TIME TO TIME ON AN *AD HOC* BASIS. HOWEVER, THIS HAS BECOME MORE DIFFICULT, DARE I SAY, BY THE TYRANNY OF THE BILLABLE HOURS REGIMES. TO DESCRIBE THE BILLABLE HOURS CONCEPT AS SUCH MAY BE A

LITTLE EXTRAVAGANT GIVEN THE CHALLENGES OF MODERN DAY LAW FIRM ADMINISTRATION. HOWEVER, I AM NOT CONVINCED THAT THE PUBLIC HAS ALWAYS BEEN WELL SERVED BY THIS MODERN DAY REALITY.

THE ISSUE OF GENERAL COMMITMENT TO PRO BONO WORK HAS ALSO BEEN COMPLICATED BY THE FACT THAT ONTARIO HAS ONE OF THE WORLD'S BEST LEGAL AID PROGRAMS INCLUDING A HIGHLY DEVELOPED LEGAL AID CLINIC SYSTEM. WHILE SOMETHING TO BE PROUD OF, IT UNFORTUNATELY HAS PRODUCED AN ATTITUDE THAT GOVERNMENT FUNDED LEGAL AID SHOULD PROVIDE ALL OF THE NECESSARY LEGAL RESOURCES NEEDED BY THE NEEDY IN OUR SOCIETY.

THE REALITY IS, OF COURSE, THAT THERE WILL NEVER BE ADEQUATE GOVERNMENT FUNDING TO MEET ALL OF THE LEGITIMATE NEEDS IN OUR COMMUNITIES. PRO BONO LAW ONTARIO WAS THEREFORE INCORPORATED ALMOST THREE YEARS AGO TO ADDRESS THESE MANY UNMET NEEDS. THE STRATEGY OF PBLO IS TO PARTNER WITH EXISTING SOCIAL SERVICE AGENCIES AND LEGAL AID CLINICS. I AM ENCOURAGED BY THE FACT THAT MANY LAWYERS HAVE COMMITTED TIME TO THESE INITIATIVES.

PBLO'S PROJECT DEVELOPMENT STRATEGY IS ALSO TO TARGET SPECIFIC POPULATIONS – UNITED BY DEMOGRAPHIC FACTORS SUCH AS ETHNIC BACKGROUND, GEOGRAPHIC LOCATION, AGE, LEARNING DISABILITIES OR HIV+, FOR EXAMPLE, – AND MOBILIZE MEMBERS OF THE PRIVATE BAR TO PROVIDE TAILORED PRO BONO LEGAL SERVICES TO FILL GAPS IN EXISTING SERVICES. PBLO DEVELOPS ITS PROJECTS ACCORDING TO TWO GUIDING PRINCIPLES:

1. THE PROJECTS SHOULD ALL COMPLIMENT, BUT NEVER DUPLICATE, SERVICES OFFERED BY LEGAL AID ONTARIO.
2. THE PROJECTS SHOULD ALL BE COMMUNITY BASED AND COMMUNITY DRIVEN.

WHENEVER POSSIBLE, PBLO HAS INVOLVED THE ACTIVE PARTICIPATION OF SPECIALITY AND COMMUNITY LEGAL CLINICS. IN FACT, OF PBLO'S 33 LAW FIRM, REGIONAL AND GOVERNMENT INITIATIVES, 16 HAVE SPECIALITY AND COMMUNITY CLINICS AS ACTIVE PARTNERS OR CONSULTANTS.

ONE SIGNIFICANT OUTCOME OF PBLO'S PROJECT DEVELOPMENT STRATEGY IS THE TELEJUSTICE INITIATIVE BEING DEVELOPED IN

PARTNERSHIP WITH THE MINISTRY OF THE ATTORNEY GENERAL OF ONTARIO'S OFFICE AND NISHNAWBE ASKI LEGAL SERVICES TO PROVIDE LEGAL EDUCATION AND SUMMARY ADVICE TO REMOTE COMMUNITIES ACROSS NORTHWEST ONTARIO.

THE MAJOR CHALLENGE HOWEVER IS FOR LAW FIRMS TO AGREE THAT PRO BONO SERVICES SHOULD BECOME PART OF THE MAINSTREAM OF THE FIRM'S PRACTICE. TO EXPECT YOUNG, GENERALLY OVERWORKED LAWYERS, TO FIND ADDITIONAL HOURS FOR VOLUNTEER WORK IS UNREALISTIC. AS A RESULT, A NUMBER OF LAW FIRMS HAVE AGREED THAT PRO BONO WORK BE COUNTED AS BILLABLE HOURS. THIS IS A CONTINUING CHALLENGE HOWEVER AS THE FINANCIAL BOTTOM LINE MENTALITY HAS BECOME FIRMLY ENTRENCHED IN OUR LEGAL CULTURE.

I AM PLEASED TO NOTE THAT ONTARIO LAW SCHOOLS ARE ENCOURAGING THEIR STUDENTS TO SEEK OUT LAW FIRMS WITH A PRO BONO STRUCTURE. LARGE CORPORATIONS ARE ALSO BEGINNING TO DEMONSTRATE A PARTICULAR INTEREST IN WHAT THEIR CLIENTS GIVE BACK TO THE COMMUNITY.

RECENTLY, THE ATTORNEY GENERAL OF ONTARIO, THE HONOURABLE MICHAEL BRYANT ANNOUNCED THAT THE 1300 LAWYERS EMPLOYED BY HIS MINISTRY WILL BE SEEKING OPPORTUNITY TO BE ENGAGED IN PRO BONO WORK.

THE UNITED STATES PRO BONO EXPERIENCE HAS A SOMEWHAT LONGER HISTORY PARTLY BY REASON OF THE UNAVAILABILITY OF ADEQUATELY FUNDED LEGAL AID PLANS. MAJOR LAW FIRMS HAVE HIGHLY STRUCTURED PRO BONO PROGRAMS IN WHICH THE HOURS VOLUNTEERED ARE COUNTED AS BILLABLE HOURS. IT HAS GENERALLY BEEN A "WIN-WIN" SITUATION AS IT HAS STRENGTHENED THE MORALE OF THE FIRM AS WELL AS ATTRACTING FAVOURABLE PUBLICITY. FOR EXAMPLE, PRO BONO NEWSLETTERS ARE DISTRIBUTED ON A REGULAR BASIS. SOME FIRMS HAVE EVEN ADOPTED INNER-CITY SCHOOLS WHERE BOTH THE LAWYERS AND THE NON-LEGAL STAFF PROVIDE NON-LEGAL SERVICES SUCH AS LITERARY PROGRAMS AND GENERAL MENTORING.

MY OWN WORK AS THE CHAIR OF THE TORONTO MAYOR'S ADVISORY PANEL ON COMMUNITY SAFETY HAS DRAMATICALLY DEMONSTRATED TO ME THE TREMENDOUS NEEDS IN MANY OF

TORONTO'S COMMUNITIES. IF WE DO NOT PAY MORE ATTENTION TO OUR VULNERABLE YOUTH, WE WILL INDEED INHERIT A WHIRLWIND.

I AM OPTIMISTIC ABOUT THE FUTURE OF PRO BONO IN ONTARIO BUT BELIEVE THAT IT WILL REQUIRE A GREAT DEAL OF LEADERSHIP FROM THE YOUNGER MEMBERS OF THE BAR.

AS I CONCLUDE I WOULD LIKE TO SPEAK BRIEFLY ABOUT ANOTHER AREA OF PUBLIC SERVICE WHICH HAS TRADITIONALLY BEEN WELL SERVED BY THE LEGAL PROFESSION, NAMELY THE FASCINATING IF SOMETIMES WACKY WORLD OF POLITICS.

WHEN I ENTERED THE PRACTICE OF LAW, THE IDEA OF EVER ENTERING POLITICS HAD SIMPLY NEVER ENTERED MY MIND. IN FACT, I HAD BEEN EDUCATED BY MY LAWYER FATHER TO BELIEVE THAT IN HIS WORDS "THE LAW IS A JEALOUS MISTRESS" AND LEFT LITTLE TIME FOR ANY OTHER INTERESTS WITH THE EXCEPTION, OF COURSE, OF FAMILY. INDEED, I HAD BEEN CALLED TO THE BAR FOR MORE THAN SEVEN YEARS BEFORE I FIRST VENTURED INTO A MEETING OF ANY POLITICAL PARTY.

I WON'T BORE YOU WITH THE CIRCUMSTANCES THAT CONSPIRED TO LEAD ME TO SEEK ELECTION TO THE PROVINCIAL LEGISLATURE. IN ANY EVENT, MY PARTNERS THOUGHT ME TO BE MORE THAN A LITTLE CRAZY FROM A FINANCIAL POINT OF VIEW AND OTHERS SIMPLY BELIEVED THAT POLITICS WAS A "MUGS GAME".

I HAVE NEVER THOUGHT OF MY POLITICAL SERVICE AS A GREAT PERSONAL SACRIFICE BECAUSE MY DECADE IN THE ONTARIO LEGISLATURE WAS A VERY REWARDING PROFESSIONAL EXPERIENCE, IF NOT FROM A FINANCIAL STANDPOINT. I WAS PARTICULARLY FORTUNATE TO HAVE BEEN THE ATTORNEY GENERAL DURING A VERY EXCITING DECADE THAT INCLUDED MAJOR LAW REFORMS INCLUDING THE CREATION OF A BILINGUAL COURT SYSTEM AND THE PATRIATION OF THE CONSTITUTION WITH AN ENTRENCHED *CHARTER OF RIGHTS*.

TODAY, LAWYERS SERVE AS OUR PREMIER, ATTORNEY GENERAL AND MAYOR. FOR ALMOST ALL OF THE PAST 60 YEARS, OUR ONTARIO PREMIERS HAVE BEEN LAWYERS AS HAVE OUR NATION'S PRIME MINISTERS. NEVERTHELESS, I SENSE A LESSENING OF ENTHUSIASM ABOUT PARTICIPATION IN THE POLITICAL PROCESS BY LAWYERS AND INDEED BY MEMBERS OF THE PUBLIC GENERALLY.

IT IS VERY UNHEALTHY FOR OUR DEMOCRATIC SOCIETY THAT THE PUBLIC'S TRUST IN POLITICS AND POLITICIANS HAS DECREASED SOMEWHAT DRAMATICALLY IN RECENT YEARS. VOTER TURNOUT AT ELECTION TIME HAS THEREFORE NOT SURPRISINGLY DECREASED. CANADA IS AMONGST THE MINORITY OF NATIONS THAT ENJOYS GENUINELY FREE ELECTIONS. WHAT WE TAKE FOR GRANTED IS ONLY A DISTANT DREAM IN MANY COUNTRIES OF THE WORLD.

WHILE LAWYERS STILL PLAY MAJOR ROLES IN THE POLITICAL PROCESS, IT SHOULD NEVER BE FORGOTTEN THAT THE UNIQUE DIMENSIONS OF A LEGAL EDUCATION PROVIDE VALUABLE TOOLS FOR MAKING A CONTRIBUTION TO OUR POLITICAL SYSTEM.

YOUR EDUCATION AND YOUR INDIVIDUAL ACCOMPLISHMENTS MAKE YOU UNIQUELY QUALIFIED TO BOTH PURSUE INTERESTING CAREERS AND TO MAKE A CONTRIBUTION TO THE BROAD COMMUNITY.

AS LAWYERS, YOU HAVE BEEN GIVEN THE INTELLECTUAL EQUIPMENT TO INFLUENCE THIS COUNTRY'S IMPROVEMENT.

INDIFFERENCE IS THEREFORE INTOLERABLE. LAWYERS ARE UNIQUELY QUALIFIED TO MAKE A SPECIAL CONTRIBUTION TO THE DEBATES RELATED TO THE PUBLIC ISSUES OF THE DAY. IN THIS CONTEXT, I AM REMINDED OF THE WORDS OF THE GREAT JURIST, OLIVER WENDELL HOLMES, WHO A HUNDRED YEARS AGO URGED LAWYERS TO MAKE A PASSIONATE COMMITMENT TO THE COMMUNITIES IN WHICH THEY LIVE AND WORK STATING AND I QUOTE: "YOU SHOULD TAKE PART IN THE ACTIONS AND PASSIONS OF YOUR TIME OR YOU WILL BE AT RISK, AT PERIL OF BEING JUDGED NOT TO HAVE LIVED AT ALL".

I REALIZE THAT I MAY HAVE OFFERED RELATIVELY LITTLE OF PRACTICAL ADVICE AS YOU PURSUE YOUR LEGAL CAREERS. BECOMING ESTABLISHED IN YOUR LAW FIRMS AND INDIVIDUAL PRACTICES IF, OF COURSE, A DEMANDING AND OFTEN AN ALL-CONSUMING COMMITMENT. HOWEVER, YOU WILL HAVE OPPORTUNITIES TO MAKE A SPECIAL CONTRIBUTION TO YOUR COMMUNITIES AND IN DOING SO I AM CONVINCED THAT YOU WILL SIGNIFICANTLY ENRICH YOUR LIVES AND THE LIVES OF MANY OTHERS.

TAB 1B

How to Conduct Yourself When Your Client Has the Office Next to Yours—A Guide for Corporate Counsel

Michael R. Doody
Vice-President and General Counsel
Thomson Canada Limited and *The Globe and Mail*

3rd Annual, The New Lawyer Experience

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How to Conduct Yourself
When Your Client has the Office Next to Yours –
A Guide for Corporate Counsel

Sept.22, 2004

Michael Doody
V.P. and General Counsel -- The Globe and Mail, and Thomson Canada Limited

Technical knowledge (of relevant legal principles) is of course a necessary foundation, but:

-- know the business, know the business, know the business

-- know what senior management wants

-- "substance" almost always trumps "form" – related to this is exercising judgment to determine the relatively few times where you actually draw a line in the sand

-- find specific external counsel who are expert in particular legal subjects unserviced by your internal department, who you can rely on to give you practical advice in those areas, on short notice

-- be willing to commit yourself to a course of action

-- seek risk-management, not risk-eradication

-- use a practical, supportive approach internally: be a facilitator, not a nay-sayer (but the infrequent line-in-the-sand, even with your own company, is ok)

-- get the business people to trust you, by using this practical, supportive approach

-- remember that solicitor-client privilege protects the company, but sometimes has to be prominently flagged

-- be a member of the Canadian Corporate Counsel Association (www.cancorpcounsel.org/ccca/)

TAB 1C

The Most Common Mistakes Lawyers Make—And How to Avoid or Minimize Them

Rory Cattanach
Wildeboer Rand Thomson Apps & Dellelce LLP

Karen B. Groulx
Fraser Milner Casgrain LLP

Lorne Sabsay
Cohen, Sabsay LLP

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TAB 1C – PART 1

How to Spot Issues Outside of Your Discipline

Rory Cattanach
Wildeboer Rand Thomson Apps & Dellelce LLP

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HOW TO SPOT ISSUES OUTSIDE OF YOUR DISCIPLINE

RORY CATTANACH

□ Identify the Issues

- Try to identify the important issues in a transaction.
- Common examples are tax, securities law, real estate and litigation.
- Talk to specialists in areas outside of your expertise.

□ Develop Your General Knowledge

- Read as much as you can on what is going on generally in the legal world.
- Attend conferences such as the Six Minute series run by the Law Society.
- Read The Lawyers Weekly or the Law Times.
- Read the newspaper.
- Review the websites of the big firms.

□ Develop Relationships with Lawyers Outside Your Discipline

- Develop a circle of "experts" in various fields whom you can call upon to bounce ideas off of.
- Retain these experts as needed to deal with issues in their disciplines.

Don't Let Your Client Bully You

- If you think there are issues that need to be addressed outside your discipline, don't let your client talk you out of it.
- Shortcuts often turn into dead ends.
- Find a balance between protecting your client and overlawyering a file.

Know Your Limitations

- Recognize your limitations.
- As a lawyer, some clients expect you to know everything about the law. Don't be afraid to admit that you don't know everything.

Don't Dabble

- A little bit of knowledge is dangerous.
- Work within your areas of expertise.

Don't Accept Work You Cannot Do

- You are in this for the long haul.
- Do not accept work outside of your areas of expertise. If you do, you are not helping either your client or yourself.
- Protect your reputation by doing the work you are good at.

□ Use Your Common Sense

- When trying to identify issues outside of your discipline, use your common sense.
- Look at the transaction from 30,000 feet.
- Think outside the box.

TAB 1C – PART 2

What To Do When The Other Side is "Difficult"— Barrister's Perspective

Karen B. Groulx
Fraser Milner Casgrain LLP

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What To Do When The Other Side is "Difficult" - Barristers Perspective

"Many cases have been won by courtesy and lost by rudeness." (Lord Denning)

Loss of Civility and Professionalism.

In recent years there have been concerns expressed about a decline in the professionalism and civility of members of the Bar towards each other, and on occasion, towards clients.

> *The changes that have taken place in the legal profession in the last decade or so to some extent reflect those in society as a whole, where competition and other pressures are reflected in a lack of civility. In order for the system as a whole to survive, all of us have to ensure that the growing phenomenon of 'road rage' on our highways is not reflected in adversarial rage in our courtrooms.* (Justice Colin Campbell, "Reflections" (1999), 18 Adv. Soc. J. 3.)

At times we all ask the following questions:

- Why does the practice of law seem to take so much energy and effort?
- Why does the adversarial approach draw some counsel to personal attacks and practices that, while they might fall under the "sharp" category, are clearly teetering on the edge…
- Why is it that some counsel seem to prefer litigation by ambush or that they lay blame everywhere else but their own doorstep?

Reasons Behind This Trend?

A major force behind this trend appears to be the social and cultural context in which many lawyers now operate:

- A general deterioration of civility and respect for one another in society in general;
- Many, competitive law firms competing for many of the same clients;
- Increasing pressures to meet and exceed spiking levels of billable hours;
- Influence of technology on the pace of the legal practice and response to clients' demands;
- Clients' desire for the "pit-bull" style of lawyer, counsel that will win at all costs - The style of litigation lawyer often portrayed on television or in the movies;
- Larger anonymous Legal Bars or Law Societies. Generally it is easier to be uncivil or difficult with counsel that you do not know personally and will likely not deal with again; and
- Less time and/or emphasis on proper mentorship for junior lawyers.

Dealing with difficult opposing counsel -- Ways to rise above it all

- Be clear in all of your communications. Use written communications as much as possible delivered via e-mail, faxes, letters and if necessary, hold face-to-face meetings to diffuse tension.[1]

- Be attentive to detail in your written communications. Be clear and to-the-point.

- Deal with any credibility problems or perceptions of non-credibility, especially any involving your own client, if possible.

- Try and anticipate the concerns, assumptions and objectives of your opponent and deal with each in turn in a non-judgemental and non-threatening way.

- Foster a reputation of respect through your dealings with your partners, associates, staff, opposing counsel and court officials through courteous behaviour and honesty.

- Never assume that there is no need or point in talking. Starting a dialogue can be the most important step in resolving a dispute or problem.

- Listen to what your opponent has to say. If your opponent knows that you are listening and hearing their point of view, they are less likely to be hostile.

- Make concessions where appropriate and where it will not harm your client's position to do so.

How to handle difficult counsel in settlement negotiations

- Have you ever had a case that both you and your client wanted to settle, but where you could not make a settlement happen?

- Does it ever appear that the other lawyer is being difficult and uncooperative?

Fortunately, there are techniques and options available to assist in overcoming obstacles posed by the difficult lawyer in negotiations, in Court, or in discovery.

In analysing why settlement negotiations are not going well, examine whether you are the difficult lawyer. Sometimes your perception of the other side as being difficult is clouded by your own bias, ego, overinvolvement in the case, or belief in the client's cause or perspective. With respect to this latter point, it is important to remember that your client has retained you to provide objective professional advice to either defend or bring a claim and/or settle the matters in dispute. You do not do your client any service if your objectivity becomes clouded by your client's insistence that you must believe in their

[1] David J. Bilinsky, "Dealing with Difficult Opposing Counsel -- Reducing the Toll, Law Practice Quarterly, June 2002, American Bar Association

cause or perspective without questioning the client or asking to see the documents that support or oppose your client's position. Sometimes proper representation means advising the client that they have no case.

On the assumption that you are not the one preventing settlement, the next step is to try and analyze the problem.

Sometimes opposing counsel wants to settle but the opposing party does not. Some people do not know how to compromise -- it is not in their nature. They view giving up something as losing. Often such people see everything in moral absolutes - he or she has caused me hardship and they should have to pay. Often such individuals are genuinely unable to see any other point of view but their own. Settling a case with such a person is extremely difficult and, at times, impossible. Sometimes it may seem as though you are dealing with a difficult counsel but in reality the opposing counsel has a very difficult client he or she cannot control. In these circumstances, your own client might have useful information that might shed some light on why the opposing party appears so recalcitrant. Sometimes the reason for intransigence has nothing to do with the case at hand, but is an issue that must be taken into account before any dispute can be resolved.

Sometimes opposing counsel claims that their client wants to settle, but continues to file lengthy and costly motions with the apparent tactic of reducing their opponent's resolve to fight. There are counsel who are known to use such tactics as countless court proceedings, motions and other delay tactics in the hopes that such tactics will ultimately permit their client to succeed against the party with fewer financial resources to defend or pursue their claim.

In other cases opposing counsel is ignorant of important legal issues that must be considered to reach a resolution such as, for example, tax consequences flowing from a deal. There are also opposing counsel who are lazy or overloaded and wait to the last possible moment to assess their client's case or to get serious about talking settlement. Quite often this person is also missing important or essential facts and/or ignoring relevant law, compounding the problem. This kind of problem only becomes exacerbated where counsel's erroneous views of the case bolster the client's confidence and views that their case has merit.

What do you do to resolve the problem and reach a settlement or resolution

- Get the parties talking to each other. In some situations it is perfectly appropriate for the parties to talk to each other. Whether the party should actually attempt to negotiate the terms of their settlement depend on many factors. The parties may perhaps agree on a better process for

reaching a discussion. The parties could, for example, agree to have a four way meeting or to insist the recalcitrant lawyer prepare a response to a pending offer.

- Get the parties in the same room together. If the parties want to settle but their lawyer is standing in the way, figure out a way to lessen that lawyer's control over the client.

- Use opportunities when the parties are together to suggest that they discuss possible resolution. For example, following discoveries when opposing counsel arrives, take the opportunity to raise the issue.

- Provide some hospitality. Some times a few good sandwiches and coffee will be enough to encourage the other side to stay and talk!

- Try establishing some rapport with the opposing party and their counsel. Address the opposing counsel directly and respectfully. Try to control both your and your client's behaviour and keep the criticisms and complaints to a minimum. Try to address the other side's real concerns.

- Make the best effort to get their position in writing. Ensure that you communicate a detailed offer in writing. If you get the parties in a room and they are able to reach a settlement of the issues, put it in writing and have the parties sign the minutes of settlement, even if they are handwritten before they leave the room. Once the parties leave the room, the impetus for settlement will be lost and you will probably never get them to sign a settlement agreement, after the fact, despite the apparent settlement reached verbally the day before.

- Try mediation and select the appropriate mediator who is equipped to deal with both difficult counsel and difficult clients and who will have the respect and "ear" of all concerned.

Take the battle to the Courts

- Sometimes you have to show the other side that they have under-estimated the strength of your case.

- Sometimes opposing counsel over estimates his or her own abilities or the strength of their client's case. After you win a round or two, settlement negotiations can sometimes be renewed. This approach worked recently for me without even having to argue the matter in Court. Following the delivery of a detailed affidavit attaching some useful e-mails and other incriminating documents, the opposing party capitulated, and agreed to compromise their previously uncompromising position.

- Keep detailed records and correspondence which can be used in a motion or in response to a motion brought by opposing counsel, to help keep procedural manoeuvres in check and which can help to support the credibility of your position when opposing counsel claims that you have not responded or that you are somehow responsible for certain things not being done.

- Recognize that some cases will not settle no matter what you do. Try to recognize when those cases arise. Be prepared to walk away from settlement efforts, conduct discoveries and proceed with the litigation. It may be just what the other lawyer needs to bring them around to seeing the merit to further discussions.[2]

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[2] Linda J. Ravdin, "Coping with a difficult lawyer in settlement negotiations", The Compleat Lawyer, Spring 1996, Volume 13, No. 2, American Bar Association

General Strategies for Dealing with Difficult Counsel.

1. Be Prepared - Know Your Case and Have a Strategy

- Reduces the potential for conflict and disagreement if both sides are adequately prepared and ready to proceed;

- Reduces the length of the case and costs to the client and provides the client with a realistic assessment as to the strength and weaknesses of their case;

- Enables counsel to confidently pursue a line of questioning or object to opposing counsel's improper questioning;

- Enables counsel to clearly delineate what is and what is not relevant to the action; and

- Enables counsel to get their client to really hear what they may not want to hear -- that their case is not as strong as they had previously believed and to consider settlement as another means of resolving the dispute

2. Arm Yourself with the Applicable Rules and Guidelines

- *Rule 31.06* of the *Rules of Civil Procedure*, an important rule for counsel to know and fully understand, governs the scope of the examination for discovery.

- *Rule 31.06(1)* provides that a person must answer any proper question to the best of his or her knowledge, information or belief relating to any matter in issue or made discoverable by subrules (2) to (4), and no question on an examination for discovery may be objected to on the ground that:

  (a) The information sought is evidence;

  (b) The question constitutes cross-examination, unless the question is directed solely to the credibility of the witness; or

  (c) The question constitutes cross-examination on the affidavit of documents of the party being examined.

- The examination must relate "to any matter in issue" in the action as raised in the pleadings and particulars.

- *Rule 34.14* does impose sanctions for counsel who acts improperly during discovery. However, make sure that your opponent's conduct is completely over the line before you react strongly by stopping the examination. The conduct of counsel must also go beyond legitimate disagreement over the propriety of the questions. Before *Rule 34.14* is engaged a type of misconduct is required such as to render the examination futile without the intervention of the Court. A legitimate disagreement between counsel as to the propriety of particular questions is insufficient. [*Hall* v. *Youngson* (1989), 39 C.P.C. (2d) 149 (Master); *Kingsberg Developments* v. *MacLean* (1985), 3 C.P.C. (2d) 241 (Master)]

- Where counsel for a party regularly interjected at discovery, refused to allow the witness to answer proper questions and did not allow the witness to give evidence on their own behalf, the

Court held that the conduct violated *Rule 34.14* and imposed cost sanctions. [*Rothbart* v. *Fainman* (1998), 21 C.P.C. (4th) 80 (Ont. Ct. Gen. Div.)]

- If you believe that the other party is obstructing your discovery or making too many unnecessary objections, try to complete your examination as thoroughly as you can. When finished, state for the record that you will bring a motion to compel answers to the refused questions.

Other Helpful Hints

One or more of these general techniques may be effective when dealing with difficult counsel:

1. Resist the temptation to respond in kind - that is usually the least helpful response and often serves only to exacerbate the situation;

2. Tell your ill-mannered colleague (in a courteous way, of course) that you disagree with their position, the reason(s) that you disagree, with reference to the issues set out in the pleadings, and if possible move on;

3. Have lunch/coffee with opposing counsel. Getting to know the other side and establishing a rapport will help smooth the way, even on contentious files;

4. Write the offending lawyer an appropriate but polite letter, detailing their boorish behaviour, thus creating a record of their conduct; and

5. In drastic cases, report the lawyer's behaviour to the appropriate Bar or Law Society committee.

6. Consult with a trusted associate who was aware of the difficult persons behaviour and reputation, and whose advice you trust. In talking through solutions with a neutral third party (who has some knowledge or experience with the offending party) can assist in reaching a solution.

7. Correspond in writing only where possible, to protect yourself and your client's interest. Avoid investing too much energy into the situation. This engaging emotionally (while difficult) is a useful skill in dealing with all kinds of obnoxious people. Also, refocus your energy by thoroughly preparing your case and ensuring you do the best job possible for your client.[3]

8. Do not let the difficult client turn you into the difficult lawyer or worse, the yelling or swearing lawyer.

Karen B. Groulx, B.A. LL.B. LL.M.

Fraser Milner Casgrain, LLP

September 17, 2004

[3] Nancy Payeur, Regional Director, Interlock: "Dealing with difficult people: Clients, Counsel and Colleagues, The Law Society of British Columbia, Bencher's Bulletin, 2004: No. 1 January - February

TAB 1C – PART 3

A Guide for Criminal Counsel

Lorne Sabsay
Cohen, Sabsay LLP

3rd Annual, The New Lawyer Experience

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

Continuing Legal Education

The Most Common Mistakes Lawyers Make – And How to Avoid or Minimize Them (Panel)

"A Guide for Criminal Counsel"

By Lorne Sabsay

"Do nothing which is of no use".

- Miyamoto Musashi

A paper devoted to all of the mistakes lawyers make could fill many volumes. It would be impossible to catalogue them all here. Making mistakes is part of how we learn to be better lawyers. On the other hand, we can not allow our clients to pay for our mistakes.

What I have attempted to do is make some notes about those mistakes which appear to be some of the most common and irritating to criminal defence lawyers. Like trial preparation itself, however, being forewarned is to be forearmed. By being aware of some of these more common mistakes, you will hopefully avoid them, and in so doing, make the learning process that much less painful.

Mistake: Getting "just the gist" of the Crown's case

Disclosure is one of the most important elements in the preparation of a criminal defence. Too often, inexperienced counsel is caught by surprise in a

trial because he or she missed a detail in the disclosure. This happens when counsel only engage in a cursory review of disclosure to get the gist of the evidence against their clients. In my experience, an extremely detailed review of the disclosure material provided by the Crown is essential to the successful defence of any trial.

It is not enough to simply read the disclosure on the night before trial. Proper preparation for trial requires a detailed review of the disclosure provided well in advance of the trial. In fact, you will never know whether you have the whole disclosure picture unless you review it far enough ahead of time that you can recognize any deficiencies or notable omissions.

My own practice is to review the disclosure as soon as I get it. I often make notes of the disclosure because the process of reading it, thinking about it, and physically making a note of it helps me to thoroughly understand it.

This is especially important in the case of police officers' notes. Many of these are very difficult to read. By making your own notes you will know well in advance of trial whether or not they reveal details requiring elucidation through additional disclosure requests. You don't want to find out one week before trial that you can't read the notes and it's too late to order a typed version or if they refer to a piece of evidence you should have asked be disclosed many months before. If the notes are illegible, you can request a legible copy. If one word is illegible you can contact the officer to explain the word to you. If the notes refer to photographs you have not been provided with, you can request them.

There are few things worse than to have your client's evidence called into question by some fact recorded as a detail buried in disclosure you obtained months before trial but never made a note of.

Mistake: Preparing a witness examination "script"

This is actually only a partial mistake. I find it quite useful to set out a series of questions in order to organize my approach to an examination or cross examination. The mistake occurs in never departing from those questions as if they are part of a script.

You never truly know how a witness is going to respond to any given question. If you have had the opportunity to conduct a cross examination of a particular witness at a preliminary hearing you will have a much better idea. But even this is not a sure fire guide to the testimony of the same witness at trial. In fact, it is sometimes better if an adverse witness does testify in a manner inconsistent with their preliminary hearing evidence as this may reflect poorly on their credibility.

The important point is to listen carefully to what the witness says in the witness box. An answer may point you in a wholly different direction than the one you anticipated when preparing your notes. You may discover evidence which is helpful to your case that is worth pursuing only in the context of the trial as it unfolds (but not as you envisioned it prior to trial).

You may receive a better answer than you expected and may wish to stop asking any further questions at all for fear of diluting the excellent point you just

made. You may also wish to avoid giving the witness an opportunity to backtrack from testimony which was helpful to your case.

If you blindly follow a script you may not have the flexibility to realize that you should have changed direction and put your success in jeopardy by continuing to ask questions which are no longer relevant or useful, given the witness' unanticipated answer(s).

Mistake: "I will fight every Crown on every issue or die trying."

On the one hand, you do have the duty as counsel to advance your client's interests zealously. But to fight every issue as if the verdict or sentence depended upon it will not advance your client's case. You might feel that as a new lawyer, you want to establish an early reputation as a lean mean fighting legal machine. The reality, however, is that such counsel may often be viewed as intransigent, unreasonable and inexperienced.

If you know that the Crown has ample proof with respect to one element of their case—e.g. continuity—there is little point in litigating this issue. If a reasonable offer is made with respect to sentence in the face of a strong Crown case and a client who is willing to admit guilt, there is little to be gained by refusing to consider a reasonable offer just to show how tough you are.

It ought to go without saying, as well, that this issue goes hand in hand with civility. Even if the circumstances call for an out and out battle on just about every issue (e.g. most impaired driving trials), your approach to your adversary should still be a civil one.

Always remember that the Crown Attorney you are fighting with today may be the same lawyer you are asking for a consent bail release from tomorrow. The Crown you are intransigent with today may be the same Crown you need to work out a deal with for a different client tomorrow.

There will obviously be many occasions when it will be appropriate to take a "no quarter" attitude and to demand "the strict proof thereof" on every issue. This will never be every case however. Sometimes your client's best interests lie in negotiation, not in flogging a dead horse. You must know that it is neither necessary, nor helpful, to battle each and every issue, whether or not it advances your client's position. Your legal moves must have purpose, not just showy bombast. As the great swordsman Miyamoto Musashi said, "Do nothing which is of no use".

<u>Mistake: I will read my prepared submissions ... no matter what</u>

I was once in court awaiting the start of my trial when I observed another lawyer finishing his. At the close of the Crown's case in an impaired driving/over 80 trial the defence lawyer was making submissions about the violation of his client's right to consult counsel in private. Partway through the lawyer's submissions the trial Judge smiled and stated, "I agree counsel, the breath test results will be excluded. What do you have to say about the impaired?" The lawyer continued to read from his submissions concerning the violation of his client's privacy rights. The judge once again, but without smiling, repeated that the over 80 charge would obviously be dismissed but there still remained the

issue of the impaired driving charge which was unaffected by the privacy issue. The counsel continued with his submissions about his client's right to counsel in private. Ultimately, his client was convicted of impaired driving.

Just like the cross examination of a witness, submissions to trial Judges must not be carved in stone. You must be able to "depart from the script" in order to answer the Judge's questions or address his or her concerns. Some Judges will simply sit passively and listen to what you have to say. Others, however, will have specific concerns they wish you to address. You do your client no favours by continuing on with submissions in which the trial Judge has no apparent interest. Once again, you must be flexible. In preparing your final submissions you will want to know how to address all of the relevant issues. But if it appears that only half of those issues are determinative in the Judge's mind, then you will want to concentrate on only half the issues.

Mistake: A trial is a trial is a trial. A judge is a judge is a judge.

If you learn nothing else in this panel, learn this: "Know Thy Judge". If you are going to practise criminal law then you will frequently appear before a broad variety of judges. They are not all the same. Some prefer that you be very quick and very "to the point". Others prefer expansive erudite elucidations of the law.

There is no point in making lengthy submissions about the history of the jurisprudence relevant to the case at bar with the kind of judge who simply wants to know why your client's evidence should be believed, or raise a reasonable doubt. On the other hand, some judges will appreciate knowing how your

submissions accord with another related decision released by the Supreme Court last month.

The same is true for your general approach to the trial. Some judges are very content to have you thoroughly discredit a witness through a lengthy and punishing cross examination. Others are prone watch the clock (and the voluminous court docket for that day) and may want you to hurry up and "get to the point". If you want to be successful, it is very important that you adapt your approach to that of the presiding jurist.

Mistake: "Oh No! Look at all that evidence they've got against my guy!"

Just because potentially devastating evidence is brought to your attention through the disclosure process, does not mean it's time to pack it in. Quite apart from the obvious possibility that the witness whose statement you are reading is lying, other pieces of evidence may never see the light of judicial day.

Admissibility of evidence is obviously just as important as the content of the evidence. This is particularly true with respect to alleged confessions or statements of your client. In some cases, the "confession" is the only evidence the Crown has which could lead to a conviction. But to be admissible, the confession must be voluntary. Moreover, the police might have breached your client's Charter rights in obtaining the statement. It is important not to panic but to stay current in terms of your evidence law. Not every piece of evidence proffered by the Crown is necessarily admissible.

If you stay current in evidence law you will be able to spot the difficulties the Crown will have in getting that evidence into the trial before you spot the difficulties for your client if it does get in.

Mistake: "Counsel, wasn't that case overruled by the Court of Appeal two months ago?"

There are few things worse than thinking you've got the decisive point won with a decision on "all fours" with your case only to hear these words from the Court. Now what do you do?

It is essential that you keep current in the law. For criminal law, Alan Gold's weekly "NetLetter", available through QuickLaw, is an excellent way to keep on top of the law. Obviously reading publications such as "The Lawyers Weekly" will also be helpful. When you do your own legal research, be sure to update the law just prior to arguing your case. If using Quicklaw, you should go back and check on your cases in the "Quickcite" section just before you go to court to make sure that the case you relied on hasn't been overruled or distinguished in some way that renders the case no longer valid or pertinent.

Mistake: "My client will pay me when he gets off/out."

The reality is that this virtually never happens. If the money is not in your trust account when you finish the trial, you will likely never get paid. This is so whether you win, lose, or get a mistrial. You must, must, must, get your retainer up front. This applies equally to clients who are in custody as it does to clients

who are out. The only real difference is that the ones on the inside (of jail) can be even more convincing, owing to their obvious increased desperation.

Unless you truly want to do the case *pro bono* then you must ensure that you are properly retained well before the actual date of trial. This is often the mistake most frequently made by criminal lawyers. It is also the one they regret the most.

TAB 1C – PART 4

Dealing with the Difficult Client

Carole Curtis
Barristers & Solicitors

3rd Annual, The New Lawyer Experience

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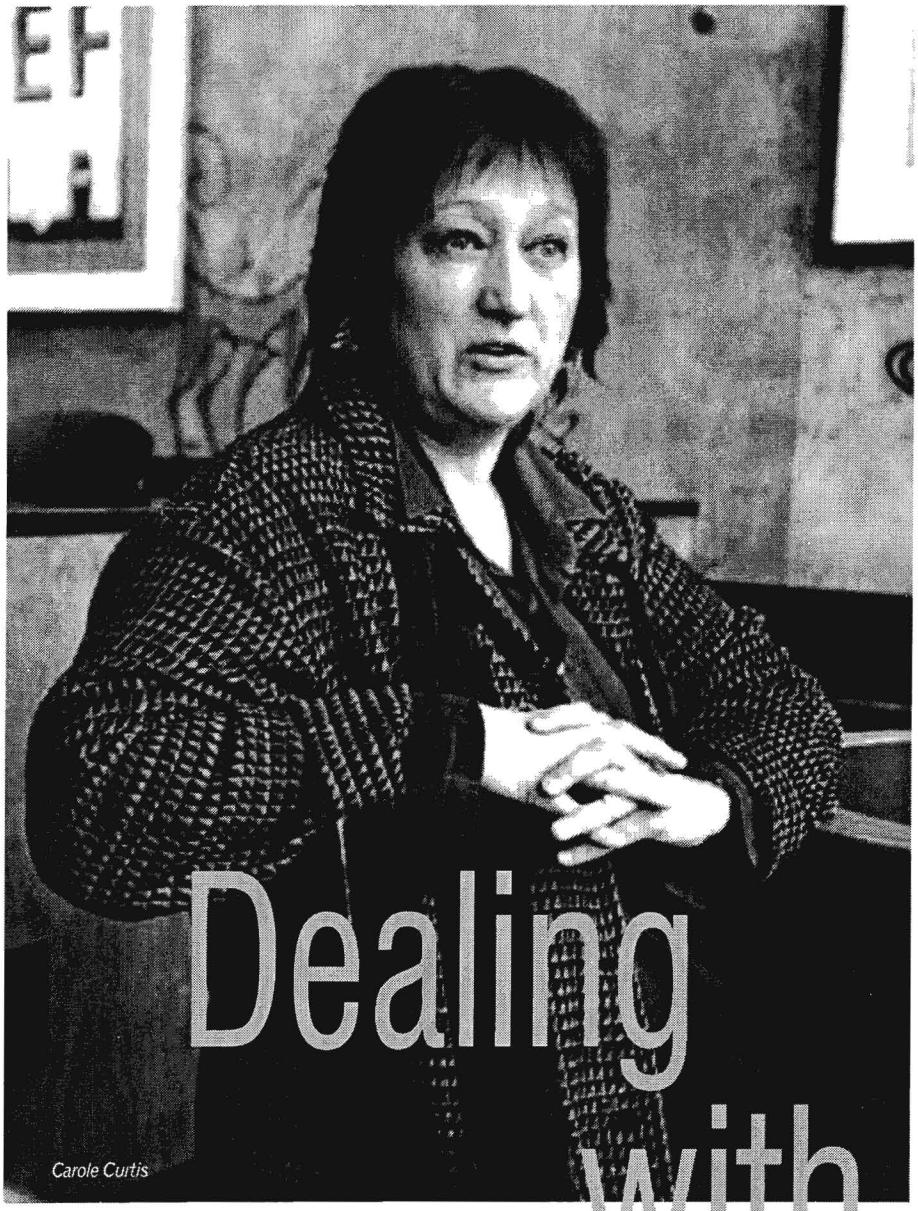
The Law Society of Upper Canada | Barreau du Haut-Canada

Continuing Legal Education



Dealing with difficult clients

The following is excerpted from a paper "Dealing with the difficult client" prepared by Toronto lawyer Carole Curtis, B.A., LL.B.

The full text of this paper, as well as a copy of the ***Client Billing and Administrative Information*** *documents used in Ms. Curtis's law practice are available on the practicePRO Web site www.practicepro.ca/difficultclients.*

How to deal with the difficult client during the retainer: Five tips to stay sane and stay in practice

1. 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.

2. 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".[1] 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.

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) and TimeMatters (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.
>
> *– Dan Pinnington, Director, practicePRO*

3. 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).

[1] *Katherine Barber, ed., The Canadian Oxford Dictionary, Toronto: Oxford University Press. 1998. p. 409.*

Many difficult clients want to deal only with lawyers, which is expensive, not very efficient and not often necessary (see Managing Expectations, below).

4. 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 then 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.

5. 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 that 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.

Dealing with the difficult client: Topics covered

Other topics covered in this paper and available in full on the practicePRO Web site at www.practicepro.ca/difficultclients are:

- Why should the lawyer be concerned about the difficult client?
- The basic three steps of your involvement with the difficult client:
  a. Whether or not to act for the difficult client
  b. How to deal with the difficult client during the retainer (this section is reproduced in its entirety in this issue of LawPRO Magazine)
  c. Know when to fold – Ending your relationship with the difficult client
- Categories of difficult clients
  a. Angry/hostile
  b. Vengeful/with a mission
  c. Over-involved/obsessive
  d. Dependant
  e. Secretive/deceitful/dishonest
  f. Depressed
  g. Mentally ill
  h. The difficult client with the difficult case
  i. The client who is unwilling to accept/follow/believe any of the lawyer's advice

Dealing with the Difficult Client

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Dealing with the Difficult Client

Carole Curtis

1. Introduction

2. Why Should the Lawyer be Concerned about the Difficult Client?

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

    a. Whether or not to Act for the Difficult Client

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

        i. Understand your role
        ii. Protect Yourself Throughout
        iii. Be Calm, Be Patient, Be Clear
        iv. Include your Staff in the Plan for the Client
        v. The Lawyer's Job in Managing Expectations

    c. Know When to Fold – Ending your relationship with the Difficult Client

4. Categories of Difficult Clients

    a. Angry/Hostile
    b. Vengeful/with a mission
    c. Over-Involved/Obsessive
    d. Dependant
    e. Secretive/Deceitful/Dishonest
    f. Depressed
    g. Mentally Ill
    h. The Difficult Client with the Difficult Case
    i. The Client who is Unwilling to Accept/Follow/Believe any of the lawyer's Advice

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".[1] 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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[1] 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) and TimeMatters (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 then 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 that 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).

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1 October 2003

BILLING INFORMATION FOR NEW CLIENTS

AREAS OF PRACTICE

1. The major area of practice for our firm is family law. Each of us has experience working with family law problems, which experience is applied on a team basis for your benefit. The services of others in the law firm are available by way of assistance to us, in order to handle your case quickly and economically. Although one lawyer may generally have responsibility for the conduct of any negotiations or legal proceedings on your file (this is called "carriage" of your case), we will delegate, where appropriate, work to be done on your file to other staff members, including the other lawyers. The people we will be relying on will be the other lawyers in the firm, and our clerks and support staff. This will enable us to handle your case quicker, in some instances, and cheaper. This may mean that more than one lawyer is working on your file. Carole Curtis will not do the day-to-day work on your file. One of the other lawyers (Valda Blenman or Victoria Starr) will do that. The purpose of this work style is to ensure that your work is done as quickly, as efficiently and as cheaply as possible. That is what our clients want.

2. Our firm also deals with wills and estates, and particularly estate litigation. The time of a separation or especially, a remarriage, is a good time to prepare a new will.

FEES

3. Our fees are based on the following elements:

   (a) The time spent on your behalf, and the service which is performed;

   (b) The complexities of the issues, and your potential

emotional and monetary exposure;

(c) The results accomplished, and the extent to which the expertise of this firm contributed to a successful outcome;

(d) The degree and type of resistance encountered; and,

(e) The extent to which any work needs to be performed on an emergency basis.

4. None of these elements is capable of a precise arithmetic assessment, and no such assessment is attempted, except in a general way with respect to the time spent. A standard hourly rate, as set out below, is applied to convert the time into a monetary figure. Any amount that exceeds the number of hours multiplied by the standard rates is the result of the weighing of the other elements mentioned.

5. Standard hourly rates are charged by us for the work done by the lawyers and our law clerks, and for the time spent on your case. Records are kept (in our computer time-keeping system) by us to the nearest one tenth of an hour, for all activity on your case, including conferences, telephone calls, voicemail, e-mail, preparing correspondence and memoranda, drafting documents, research and travel time. Each hour billed to you is based on actual work done on your particular case. Our time-keeping software has an actual timer feature, and we are finding that our time-keeping for our clients is more precise and more detailed than ever.

6. Our absence from the office on your behalf is charged at the usual hourly rate. Travel time includes attending at court, settlement conferences, meetings, or consultations on your behalf. We will minimize travel expenses and courthouse time, if any, wherever we are able. However, as you will be charged for our travelling time (in addition to the counsel fee), it may be worthwhile to consider whether a Toronto lawyer is desirable for you if your litigation is taking place in another community.

7. These are our present rates:

Carole Curtis	$00.00 per hour
Valda I. Blenman	$00.00 per hour
Victoria A. Starr	$00.00 per hour

Law clerks	$00.00 per hour (Pauline Lee, Bernice Daigle $00.00 per hour)

8. Where the lawyers consult on your file (in person or electronically), you are billed for the time of the lawyers involved. Consultation between lawyers takes place to decide work assignments on larger matters, to delegate tasks, to determine strategy and to consult on legal issues. This consultation is an important part of the progress of your case, and in many ways, is the work we do for you.

9. If there is a court case in your file, services performed in court and settlement conferences are charged on the basis of a counsel fee, calculated by the day rather than by the hour. This method attempts to account, in part, for our unavailability to other clients during these periods, and for the need to set aside fixed blocks of time for a court appearance. Where the attendance is for part of a day only, the fee is portioned accordingly. These rates are based on the average court day being approximately 5 hours. If the court day is significantly longer than this, the rate will be increased. These are our counsel fees (in York County):

Carole Curtis	$0,000.00 per day
Valda I. Blenman	$0,000.00 per day
Victoria A. Starr	$0,000.00 per day

10. If your appointment is for a consultation only, in order for you to receive advice on a limited number of issues, or, for example, for a second opinion, you will be billed a flat rate consultation fee, payable on the conclusion of the consultation. The consultation is not meant to deal with your whole legal problem. These rates are reduced rates, and apply only if the fee is paid at the time of the consultation. The rates are calculated on the basis of the average amount of time spent by the lawyers on consultations in the most recent year. The consultation rates do not apply if you retain the law firm to perform work on your behalf, nor do they apply if you return for a second meeting. In that case, you will be billed at our usual hourly rates. These are our usual consultation rates:

Carole Curtis	$00.00
Valda I. Blenman	$00.00
Victoria A. Starr	$00.00

11. We have sometimes increased our hourly rates and our counsel fees to meet rising costs and to reflect our increased expertise. This retainer is subject to our

right to make similar adjustments if circumstances should change again. Unless you are advised otherwise, our fees will be increased annually by no more than 10%.

12. If our work for you includes the drafting of a contract (a separation agreement, marriage contract, minutes of settlement or other family law contract), we charge a flat rate for the contract itself (which does not include the negotiations around the contract). The rate for the contract ranges from $0,000.00 to $0,000.00. The choice of rate is influenced, in part, by the number of and complexity of the issues involved, your financial exposure, and the amount of original drafting required.

EXPERTS

13. It is increasingly necessary for us to consult outside experts to assist in the presentation and preparation of your case. The two most obvious examples of this are health care professionals (for example, a social worker, psychologist, or psychiatrist), or financial professionals (for example, an accountant, a business valuator, or an actuary for pension valuations).

14. The health care professionals we use are also available to help us help you through this difficult time, and they can assist by making referrals to outside resources where family or individual counselling is appropriate, and you request such a service.

15. Accountants are sometimes necessary to assist in obtaining and processing financial information necessary to prepare and present claims for support and for property. The introduction of the Child Support Guidelines in 1997 has resulted in an increase in our use of accountants to determine the payor's income (particularly for self-employed payors).

16. It is to be understood that we are permitted to obtain this assistance for you, at prevailing rates, at our discretion. Generally, our clients deal directly with the expert, and make payment arrangements with the expert personally. This direct contact also has the benefit of avoiding duplication, and reducing cost.

DISBURSEMENTS

17. Disbursements are out-of-pocket expenses covering such items as couriers, printing and photocopying ($.25 per page), long distance telephone calls, facsimile transmissions ($.50 per page to send, $.75 per page to receive), postage, court filing fees, parking (at court, or at other meetings), paralegal services (to make filings at the court offices) and transcripts of examinations, and could include fees for accountants and other outside experts (if we incur those fees). Attached is a copy of the fee schedule charged by the Superior Court of Justice, for the issuing and filing of documents in that court. These items are shown separately on our accounts, and are charged to you at cost, in addition to the fee.

18. The firm uses an on-line service for legal research. This means that it is no longer necessary to physically go to a law library to do legal research in most of the cases which require it. As a result, the availability of this online service has reduced costs for our clients. Not all our cases need legal research. The disbursement cost of legal research done online is $00 per hour, charged to you as a disbursement, in addition to the lawyer's hourly fee for the time spent.

RETAINER

19. The retainer is an amount paid to our firm in trust, for deposit to your credit, on the understanding that it will be used to satisfy our accounts for legal services, and disbursements, at the time accounts are delivered. The retainer is a source of payment for your accounts. You are expected to provide and replace the retainer when requested, as it is spent, so that we continue to have enough money in trust to cover the work we have done, and the next step which needs to be done. Until you provide us with a retainer, or replace it when it is exhausted, we will not work on your file.

20. You are responsible for the fees and disbursements not covered by the initial or replacement retainer. Of course, any unused portion of the retainer will be refunded to you at the end of our work for you.

21. The retainer is not a flat fee or an estimate of the cost of your work. The amount of the retainer is arbitrary to some extent, and should not be taken as an estimate of the cost of the completion of the work in your particular case. At this point, before the issues are clarified, and before we know the degree of resistance to be offered, we cannot predict the amount of work to be done, nor the time needed to complete it.

22. If we are to start negotiations on your behalf, our usual retainer is $000.00. If we are to begin litigation on your behalf, our usual retainer is $0,000.00 to $00,000.00, depending on the urgency of the situation and the complexity of the case. If your case is already in litigation, our retainer may be more, particularly if there is much to be done, or the matter is urgent.

COST OF LEGAL SERVICES

23. Clients usually want to know "what will this all cost?" That's a reasonable question. But, it is not possible to accurately estimate costs in advance in family law cases. Many important factors which influence the cost are unknown to us, and even outside our control, including the reaction and tactics of the other side, how many different issues there will be in your case, how much time it will take to resolve all the issues, how complicated the case is, new issues which may come up, and whether we can settle this case without going to court. Unlike other areas of law, the legal issues in a family law case may change during the time we work for you (new issues may arise, and existing issues may become more complex). In fact, family law may be the only area of law where the legal issues in the case evolve during our representation of you, as the facts in the case keep changing. We see it as our job to close your file as quickly and economically as possible, consistent with protecting your interests.

24. If you have concerns about our inability to provide an estimate for you, please advise us now, so that there is no future confusion.

ACCOUNTS

25. We prepare interim accounts on a regular basis, usually on the 15th and 30th of the month, for fees and disbursements. If your case is very active, particularly if we are in court for you, you may get accounts from us weekly. This is, in part, an effort to ensure that you have a good understanding of what the case is costing you at all times. For most people, the cost of the case will be an influencing factor in decision-making about the next step to take, and the kind of response to make to the other side; in our experience, it should be. The amount of fees on the interim accounts is usually based on time spent, but where appropriate, could include an additional charge based on the other elements referred to above.

26. We send accounts by e-mail, if that is possible. If we cannot send your accounts to you this way, please let us know.

27. We accept payment of fees and disbursements by VISA, and you may consider that as an alternative in settling your outstanding accounts with us, or in providing or replacing the retainer.

INTEREST

28. The accounts are due to be paid when they are sent. If the account is not paid within 30 days, interest will be charged on the outstanding balance at the rate permitted in the *Solicitors Act* (and shown on the account, from the date of the account till the date of payment).

PROGRESS OF YOUR CASE

29. We will keep you informed of all developments in your case. We forward to you copies of all relevant correspondence between lawyers, pleadings, and any other court documents, and reports. We will send you copies of this material by e-mail, if possible, and if not, then we can send you paper copies of this material. **It is important to keep this material**, and, it is to your advantage to maintain it in an organized format. If you need additional paper copies of correspondence or pleadings, we can make them available to you at our usual rates for printing and photocopying, and any other work involved. We suggest you keep the correspondence in one file and the pleadings and other court documents in another file, and all of the documents in chronological order.

ENDING OUR WORK FOR YOU

30. At any time, you may fire us by giving us written notice to stop all work on your behalf, and paying any balance owing. If the law firm is shown on court documents as your lawyers, then it is not as simple as just telling us to stop all work on your behalf. The court records must be formally changed, in writing. Usually we can file a document which you sign, telling the court and the other side that we are not your lawyers any longer.

31. Subject, always, to our obligation to ensure proper standards of professional conduct, we can also end the solicitor-client relationship. If this should happen, we will do so in writing, and we will assist in the transfer of your file, if appropriate.

32. You should be aware of some of the circumstances that may cause us to end the retainer:

(a) we cannot get instructions from you;
(b) you lose confidence in our ability or advice;
(c) a conflict of interest arises;
(d) we cannot accept your instructions for ethical reasons;
(e) you mislead us in a material matter or you lie to us;
(f) the retainer has not been provided or replaced;
(g) our accounts remain unpaid for 30 days, and no mutually agreeable arrangements have been made.

33. If it is necessary for us to take legal steps either to end our representation of you or to collect our accounts, you will be charged for the time involved.

CONFLICT AND FAMILY LAW

34. It is important for you to understand that the amount of money spent on legal fees in a family law case is **directly** related to the level of conflict in your case, and the way in which that conflict is resolved. It is the lawyer's job to resolve the dispute on your behalf, and on your instructions. Responsible lawyers do not create disputes. The level of conflict in your case will be a direct reflection of the level of conflict in your relationship with your former partner. Our job is to assist you in resolving that conflict, not in making it worse. You must have realistic expectations, however, about the impact the lawyer can have in a case with very high levels of conflict, whether those levels of conflict originate with your former partner, or the lawyer representing your former partner.

1 October 2003

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Barristers & Solicitors

Valda I. Blenman, B.A., LL.B.
Victoria A. Starr, B.A., LL.B.

260 Richmond Street West
Suite 506
Toronto, Ontario M5V 1W5

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Facsimile (416) 340-2432

1 October 2003

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BUSINESS HOURS AND APPOINTMENTS

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2. Technology has changed both the ways in which we get instructions from our clients, and how we serve our clients. It is not necessary, as it may have been, for our clients to make frequent visits to our office, and we try to minimize the number of appointments that are needed. We encourage you to use voicemail, e-mail and fax to communicate with us as much as possible.

3. Our preferred way of communicating on your file will be electronic mail. We are moving away from paper files to storing all file material, where possible, electronically. As a result, your file will predominantly be stored in electronic format, and the correspondence on your file will be sent in electronic format, whenever possible. If you have e-mail that you can rely on for private, confidential communications, we will use e-mail to communicate with you, including sending you letters, accounts and copies of the material we send and receive on your file. If we cannot use your e-mail address for these purposes, please let us know. Unless we hear otherwise from you, we are assuming that we can use e-mail to send you this material and that you check your email regularly.

4. Although we would encourage you to use e-mail as the primary method of communicating with us, we remind you that for urgent contact, the telephone is preferable. You can learn from the telephone whether the lawyer is in the office to help you that day, a

feature not available through e-mail. And if the lawyer is not there, someone else in the firm may be able to help you.

5. You may be asked to provide the lawyer with written material, in the course of our work for you. This is often an efficient way to get historical or detailed information from you in order to prepare court documents. The written material you provide will be extremely helpful, may be able to be used in several aspects of your case, and will result in greater efficiency for us and reduced legal fees for you. We prefer to get this material in electronic format (by e-mail), and if you can provide it to us this way, it will save you money.

6. You can reach the members of the firm at the following electronic addresses:

The law firm, generally
mail@zzz.com

Carole Curtis Family Law Lawyer
zzz@zzz.com

Pauline Lee Law Clerk, Assistant to Carole Curtis
paulinelee@zzz.com

Antonina Riserbato Law Clerk, Assistant to Pauline Lee
antoninariserbato@zzz.com

Valda I. Blenman Family Law Lawyer
valdablenman@zzz.com

Terry Chalmers Law Clerk, Assistant to Valda Blenman
terrychalmers@zzz.com

Victoria Starr Family Law Lawyer
victoriastarr@zzz.com

Helen Pereira Law Clerk, Assistant to Victoria Starr
helenpereira@zzz.com

Dilshad Chunara Bookkeeper
dilshadchunara@zzz.com

Bernice Daigle Law Clerk
bernicedaigle@zzz.com

7. If you don't currently own an answering machine at home or have a voice-mail system, we suggest that you get one now. We need to be able to reach you promptly, and if it is difficult or time-consuming to reach you by telephone, it may even cost you more money in legal fees. If you are not reachable through electronic mail and don't currently own a fax machine, but may be getting a fax machine soon, now is a good time to get one. We have found that we can serve our clients who do not have electronic mail, but who do have fax machines, faster and cheaper, particularly with regard to the drafting of documents. It may also result in fewer trips to our office for you to review material, or give us instructions. It will also reduce the cost to you of couriers, which are sometimes needed when time lines are short.

8. The lawyers accept appointments with a starting time as follows:

Carole Curtis between the hours of 2:15 p.m. and 4:30 p.m.
Valda I. Blenman between the hours of 10:00 a.m. and 3:30 p.m.
Victoria Starr between the hours of 10:00 a.m. and 3:30 p.m.

9. In special circumstances, appointments may be available with the lawyers outside normal business hours (that is, after 5:00 p.m.). However, those appointments are the exception. As these appointment times are popular, they are often the first appointments to be booked, and may not be available in the same week that you request such an appointment.

10. The lawyers are not available for consultation without appointments. Please don't "drop in" hoping to see the lawyer.

11. Weekend and holiday appointments are not generally available.

12. Certain aspects of family law are crisis-oriented, and on occasion, lawyers are called to court on short notice, or are required to stay in court longer than they expected. Consequently, on occasion, appointments may have to be rescheduled or even cancelled on short notice. Every effort will be made to provide you with as much notice as possible, should that be necessary. If you are booking an appointment with a lawyer on a day that is a court day for the lawyer, it is a good idea to confirm the appointment with the assistant that day.

TELEPHONE CALLS

13. This firm returns all telephone calls and wherever possible, on the same day. Except for emergencies, calls are usually returned in the order they are received. The lawyers' assistants deal with as many of the telephone calls as possible, so that the lawyers are free to perform work that only the lawyers can do. This is in your financial interest, so that your legal fees are kept as reasonable as possible.

14. This firm has a voicemail system. You can leave a detailed confidential message. The person you intend to contact will listen directly to your message (the lawyers retrieve and deal with all their own messages). Also, you can learn the lawyer's availability to help you from their phone greeting (e.g., "I'm in court today and will return calls tomorrow"). You will also be offered an option to connect to someone else, usually the lawyer's own assistant.

15. Voicemail has changed the way business is conducted. It allows us to actually conduct business in messages, sometimes even "back and forth". We hope you will use our system this way to ensure the smooth and prompt progress of your case.

16. It is very helpful to us, and it is in your financial interest, that you leave the purpose of your call with any message. For example, if you are looking for a status report, the assistant can probably give you the information you need. But the assistants are not lawyers, and cannot give legal advice.

17. The lawyers in this firm are litigation lawyers, which means they are often in court. When they are in court, and particularly, when they are involved in a trial, it is not possible for the lawyers themselves to return telephone calls. An assistant will deal with your enquiries during these times.

18. Lawyers charge for the time they spend. You will be charged for all your contact with the lawyers, including telephone calls, voicemail and e-mail. Your call may be directed first to an assistant. If the purpose of your telephone call is to obtain specific information or provide information (for example, have we received a certain document yet from the other side?), that contact can be with the lawyer's assistant.

19. There is a cost to you for every contact you have with the lawyer, so it is in your financial interest to make your contact with the lawyers valuable to both you and the firm. You should think of telephone calls with a lawyer as though they were long distance calls, for which you are billed by the minute. Where possible, minimize the contact you have with the lawyers, unless the purpose of your contact can only be satisfied by a discussion with the lawyer.

20. Organize yourself before you phone, and ensure you have all the information you need available for the telephone call. Also, consider taking notes during your meetings and telephone calls with the lawyers. This is common sense, and good business.

PERSONNEL

21. This is a list of the professional and support staff in the law firm, their extension/voice mail numbers and their job titles:

Carole Curtis	222	Family Law Lawyer

Pauline Lee	333	Law Clerk, Assistant to Carole Curtis
Valda I. Blenman	444	Family Law Lawyer
Terry Chalmers	555	Law Clerk, Assistant to Valda Blenman
Victoria Starr 666	Family Law Lawyer	
Helen Pereira	777	Law Clerk, Assistant to Victoria Starr
Dilshad Chunara	888	Bookkeeper
Pauline Curtis	200	Clerk
Bernice Daigle	200	Law Clerk

ACCOUNTS

22. If you have questions about your accounts, (either regarding fees or disbursements) please direct all inquiries first to the assistant of the lawyer involved, or to the bookkeeper.

23. The more work you do for yourself, the less work you will need done by the lawyer. If you can save time for the lawyer, it will save you money in fees.

24. Anytime you are giving the lawyer a collection of documents (court documents or financial documents, for example) it is in your financial interest to put those documents in chronological order first, and to prepare an index or list of the material you are giving us. If you do this, it will reduce the work needed by us to organize the material. It is the first thing we will do when we receive the documents.

25. Come to your meetings and any telephone calls with the lawyer prepared, possibly with a list of questions or subject areas you need to have covered.

WHAT IS THE LAWYER'S JOB

26. Your lawyer will help you by providing leadership to you in a difficult time. This leadership means providing direction to you, to help you to identify and eliminate the risks and dangers in your situation, as well as to help you understand your options and opportunities. It means working with you to design a plan to help you make progress and achieve success in the areas of your life where you are looking for legal advice. You will be the one to make the decisions. One of the goals of this leadership is to help you experience ever-increasing confidence and independence, so you can look more optimistically at the path that you will take through personal difficulties to a more positive future.

THE CONDUCT OF YOUR CASE

27. Most of our clients do not want their case to go to court. Most would like to negotiate a settlement. That is not always possible. It is not in your interest to negotiate on an open-ended basis, as that does not always accomplish a cost-efficient resolution. Some long negotiations end up costing more than it would've cost to simply start the court case. Our firm will negotiate for you for a period of three months after we have given the other side our financial information. If no progress is being made (and particularly if we have not received the other side's financial disclosure) we will start a court case. This is a tactical decision (when to start the court case) and it is a decision that the lawyers make. We will also decide, in consultation with you, which lawyer attends court.

FILE TRANSFERS

28. If you are transferring your file to us from another lawyer, it will be necessary for us to review the correspondence and documentation provided and ensure that it is complete and organized. You will be billed for this time spent, and for any time spent organizing the material received. You can minimize this expense by making sure that the material from your previous lawyer is put in chronological order.

29. If you are transferring your file to another lawyer from us, you need to remember that **you will have already been sent copies of all letters and court documents during our work for you. You should keep them organized**, as this may make such a transfer to another lawyer quicker and cheaper. If you have not kept the copies we sent you, we will provide electronic copies of the correspondence between solicitors and electronic copies of any court documents (again), and as well, the originals of any of your personal documentation. You will be billed for the time involved in preparing the file for transfer. If we have to make additional paper copies of material we have already sent you, you will be billed for that, as well.

CONFIDENTIALITY

30. All information you provide to our office is completely private and confidential. All the details of your case will be handled with the utmost confidentiality and respect for your privacy, by the lawyers and support staff. The privilege of confidentiality between solicitor and client is, in law, a protection which belongs to the client. Therefore, it is up to the client, only, whether or not that confidentiality is to be waived.

31. Please remember this when your family members or friends request information directly from your lawyer. We are frequently contacted by new partners, or other family members who want to discuss your case. You have to give your lawyer specific instructions to permit that discussion to take place. Also, as the time spent by the lawyer will be time spent

on your file, you will be billed for any time spent discussing your case with anyone at your request, or in the context of your file.

October 2003

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mail@carolecurtis.com

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terrychalmers@carolecurtis.com

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