TAB 14

Are You Having Fun Yet?

(Reducing stress in a family law practice)

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Family law lawyers work with people who have very significant needs and, who, for the most part are going through the most difficult period in their lives. The clients have, to a very considerable extent, lost their objectivity, have frequently been treated badly by their partner and often have very complicated agendas for what they wish to accomplish. They are frequently damaged by the breakup of their relationship and they are often incapacitated by grief, anger or the need for revenge. Thus, it is not hard to see that working with these type of clients will cause an inevitable strain on their lawyers.

Thus, in order to practice successfully and, in order to practice for the long haul, family lawyers, in particular, need to find ways to reduce stress in their daily practice and their lives.

There are no shortage of books that tell you how to avoid stress in your daily life. This paper attempts to combine some of those well-known suggestions but deals with these suggestions in a specific way related to family law.

1. **Interview the client**

It is not uncommon for the client to tell the lawyer on a first interview that he or she is seeking a family law lawyer and has been told by friends to have a number of interviews until they find the appropriate lawyer. The family lawyer needs to turn the tables somewhat and make it clear that the first interview is a mutual interview. That is, while the client interviews the lawyer, the lawyer needs to interview the client. The lawyer needs to get sufficient information from the client in order to determine whether the lawyer wants to act for the client. Accordingly, considerations as to urgency, the lawyer's skill level for the problem at hand, the nature of the problem and the personality

of the client and the client's ability to fund the proceedings are all serious factors that need to be taken into account. In particular, just as the client needs to feel comfortable with the lawyer, the lawyer needs to be comfortable with the client. There is a general reluctance to turn away work and, in particular, turn away a client that is already in your office. You need to overcome that reluctance. There are often early warning signals in your office at the first interview which should make your antenna go up. When the client asks if they have to disclose off-shore accounts, when a client suggests ways that they can secrete assets, when a client suggests that they want revenge or a scorched earth policy etc., are all signals that you may not want this client. Hope springs eternal and there is always the rescuer personality lawyer that thinks they can change the client and make them better. Ours is a helping profession but, you cannot help everyone and, to try and help everyone is to fail to help yourself. If the hairs on the back of your neck go up while you are conducting a first interview with a client, you need to conclude the interview by indicating that, while the client has had a chance to interview you, you have done the same thing and you have concluded that it is not an appropriate fit. You need not make any further explanation than that. You should always have available a list of other family lawyers whom you recommend and you should share that list with the client if you are not willing to take on the retainer.

There are other tried and true methods of avoiding the confrontation with the client in the first place. You can have your secretary or law clerk screen clients on a telephone interview by taking minimal information and getting a feel for the client. The longer office personnel do this task, the better they get at it and, in our office in particular, we have found it a useful way of reducing the stress of rejecting clients in person.

2. **Fire the client**

This stress reducing tip is not so dramatically different than the first one above. Collaborative lawyers in particular are fond of pointing out that it is the client's file and the client's life that is under discussion and under litigation and the client has the right to direct his or her file. While I am significantly empathic to the rise in practice in collaborative law, I am not always so sure that this is the right approach. Client's who are in a non-objective state of mind and in the trauma of separation can do terrible things to their partner and to their lawyer. When a client will consistently not follow your advice, then get rid of the client. You will only have a fight later on about your account anyway and spending all of your time arguing with your own client is very stressful, hardly productive, usually non-billable and very far from satisfying. You need to have a social contract with clients at the outset that makes it clear that while you are willing to listen carefully to what the client wants, in the end result, there must be a meeting of minds about how the case is to progress and to be dealt with and, when that meeting of the minds is no longer in place, either party has the right to leave the other.

3. **Your Opponent**

Well, having chosen your client, the issue becomes can you choose your opponent. The answer is, only partially but, it is an important consideration. To be perfectly frank, I maintain a list of lawyers with whom I choose not to do business. If the request for a retainer indicates that the other side has already chosen one of these lawyers, I decline the retainer. I explain to the client that there is no point matching up lawyers who do not get along or who cannot work well together. This approach, of course, is not possible if you are the first lawyer retained and the other party goes out to retain one of the lawyers on your "no go" list. In these situations, I bring the client back in and explain the problem and ask if they wish to change counsel and recommend that they seriously consider such a course of action. Rarely does the client wish to do so and you have to grin and bear it. In those cases, I immediately try and get the other side to mediate

because I believe the presence of a third party who is an experienced lawyer will calm the troubled waters. It is always useful to maintain the list of lawyers with whom you do not wish to do business because, once in a while, you will get a call from a client who appears to be absolutely impossible and who has an impossible problem and no money. You can then quickly refer to the lawyers on your list and recommend them to this hapless client.

4. <u>Be careful what you write</u>

Nothing can be more stressful than to begin your day by finding an angry letter on your desk from the lawyer on the other side accusing either you or your client of heinous acts. It requires you to contact the client and create a response. Usually the response is just as angry and so the spiral of inappropriate correspondence continues. There is absolutely no point in this business of demonising the other side. It is also inappropriate to impute motives to other persons. For every Bernardo there is a Humolka. I am sure that each of us thinks that our client is in the right on most of our matrimonial cases and the other side is in the wrong. The fact is that in the vast majority of cases, both parties are in the wrong and both bear some of the responsibility for the breakup of the marriage and the problems that have ensued. The scales are not always equally balanced and, from time to time, some parties are capable of considerably inappropriate behaviour. Nevertheless, writing nasty letters never solved anything and all it does is encourage the recipient to respond in kind. If you are in the habit of writing such letters, you need to turn over a new leaf and embark upon writing conciliatory letters. You will be amazed to find how much more you achieve with a conciliatory letter than you do with an angry one. If, collectively, we all agreed to stop writing nasty letters, how much easier would our day be. Writing letters as a paper trail is a useless device. Whenever lawyers attempt to lay down a paper trail for later use on a motion, they are only going to be met with a letter back that denies all of the allegations. Use letters to try and create a constructive atmosphere and to make constructive suggestions. You might bear in mind that since it

is the invariable practice of lawyers to copy their clients with all correspondence, that your correspondence is being read by the other party. Trying to inflame the other side does little to advance your client's case and does much to hurt it.

5. Get a Life

If you are going to practice family law for the long haul, you need to expand your horizons. If you devote all of your time solely to the practice, you will have short changed yourself, your family and your colleagues. This work is too draining to be your only activity. You need to compartmentalize your practice so that it is only part of your life and you need to make sure that you have created time for other things, such as your family, hobbies and vacation and volunteer work. The Out of the Cold programme in Toronto for example, has provided a major outlet for hundreds of lawyers who wish to help in their community in a different way than through the practice of law. It has opened their eyes to the misfortune of others but, more importantly, given them an opportunity to do some very satisfying work that does not involve drafting and arguing. Whether you are a sole practitioner or in a larger practice, you need to find ways to have your practice covered by another person for a brief period of time so that you can take vacations on a timely basis. You need to get away from these clients and you need to get away from your practice and you need to do so regularly. Taking a break from your practice will make you a better lawyer and, will bring you back to the practice refreshed. If you have been practising for some time, you need to consider a more drastic approach and, that is, taking three to six months off. A sabbatical or mini-sabbatical is possible to arrange as long as it is done with careful planning. My own sabbatical was planned a year in advance and I have little doubt that I would not be practising today had I not taken nine months off some years ago in order to recharge my batteries. There are lots of opportunities for volunteer work, teaching, travel and study and all of these are useful devices for helping you continue your practice for as long as you wish to do so.

6. The electronic age

Lawyers practised for hundreds of years successfully without using electronic devices, including the phone, the fax machine, e-mail and the Blackberry. We all recognize that these modern electronic and computer inventions have made work easier, but they have also made work more urgent. The greater the ability of the client to create urgency, the greater the stress for the lawyer. Fifteen years ago, lawyers received letters, had a chance to reflect on the letter, draft a response, review the response and then forward it. The post office would take two or three days to deliver the mail and, quite often, the problem that generated the correspondence in the first place was solved by the time this process was undertaken and completed. Life has significantly changed. There are now irresistible impulses to send every piece of correspondence by fax, thereby creating an expectation that you will get an immediate response. The time for reflection is lost and the problem, generally, still exists by the time the faxes are exchanged, thereby furthering the lawyer involvement and increasing the stress. However, the latest electronic developments, being e-mail and Blackberry, are inimical to a stress free life. I suggest that you ought to discourage your clients from doing business with you by e-mail. If e-mail is permitted, it means that you work a 24 hour day since e-mails will come and go round the clock, particularly if your client is an insomniac. The e-mail carries with it a sense of urgency and you will be tempted to make a response when you are not ready to do so. Unless you type as well as your secretary, you will waste significant time trying to compose answers. You will forget to keep a paper copy of every e-mail and your file will be incomplete. In my view, no good can come of doing business by e-mails. I use e-mail for messages, exchanging humour and conducting conferences on outside projects. I strongly discourage clients from communicating with me by e-mail and they do not seem to mind. I suggest you consider the advantages of doing business in more traditional fashion.

7. Delegate details

One of the greatest causes of stress is the attempt by the lawyer to do everything. Interview the client, complete the financial statement, gather the necessary backup documentation, telephone the other side when the cheque is late, make arrangements for access, gather in the expert opinions and medical documents, view the Visa statements and the bank records and, generally carry out of the tasks needed to operate a family law practice. You have to get this off this particular train. You need to learn how to delegate all of the tasks in your office that can be delegated to other persons. Where you have a junior lawyer, so much the better but, even without a junior lawyer, many of the tasks that lawyers attempt to do can be delegated to a well trained secretary or law clerk. There are many advantages to such delegation. If your secretary carries out law clerk functions, then they can be billed as a law clerk, making your secretary more productive and increasing your bottom line. Even if the work cannot be billed for you need to reserve your billable time for the most important tasks such as negotiating, court appearances and counselling clients. You do not need to get caught up with the minutia of your practice. There is a tendency to allow the minutia to take over one's life. You need to be alert to this problem and to carefully consider all the alternatives way that you can carry out the task that need to be done. A prime consideration is whether you should hire another person such as an articling student, a law clerk or an additional secretary. You need to consider what it is that you can pass on to these people and whether you can make it billable and, therefore productive and, less capable of producing stress. You need to hire personnel for your office that are capable of being trained to carry out law clerk like functions so the good part of the work being done by you can be done more productively by others. This will give you more time to think, to plan, to vacation and to enjoy a more stress free life.

8. Checklist

Always work with a checklist. If it were possible to work with one file at a time or one client at a time, life would obviously be less stressful. However, we recognize that that is virtually never possible and, hence, the stress caused by running simultaneous files. Therefore, the need for a careful checklist. It is too easy in this business to forget an important item. As well, we need to remember, given the way the family law system works with case management conferences, motions and settlement conferences and 4-way meetings, etc., there are a wide variety of opportunities for a case to settle. Sometimes cases settle at the most unexpected times and it is at those times that you urgently require a checklist to make sure that you have covered all of the items that are applicable to that particular file.

The best way to create a check list is to list all of the items that would be covered in a separation agreement and add to them the items that particularly relate to that particular file. Then, when the opportunity for settlement arises, you will not forget to deal with the contents, a particular visa card debt, a life insurance policy, a spousal RRSP or a host of other particular matters that need to be dealt with as part of an overall settlement. All of these special and general items need to be recorded in the checklist. The checklist needs to be stapled inside the front cover of a file and needs to be available whenever the file is dealt with.

9. Go to Lunch

One of my wife's continual complaints is that whenever we get together for social events with colleagues, all of the lawyers begin to talk law to the exclusion of all other topics. We need to find a way to discuss other more important things and we need to learn more about our colleagues as human beings as opposed to just lawyers. Try phoning a colleague and taking him/her out to lunch on the understanding that you will not talk business and will not talk law. Many of you have wonderful experiences to share and

many insights about life, travel, hobbies and the like. We need to get to know each other better. One of the things that I think the senior bar has recognized by having formed close relationships is that it is much harder to hang up or get into a fight with a lawyer over a file when you have to break bread together. I encourage you to get together with your colleagues on social occasions devoted to social occasions and use that opportunity to develop relationships, friendships and expand your horizons. It is particularly useful in a busy week to take time out to meet with a colleague and get away from the telephones, clients, faxes, e-mails and Blackberries.

10. <u>Mediate and arbitrate</u>

Have you ever waited for a special motion, only to find that the court has lost the file? Have you tried to file an Answer and learn that you are 10 minutes late and you need a consent or a court order for filing a late document? Have you shown up in court to find that the continuing record is missing some documents? Has a judge refused to hear your motion because your factum was not filed or has gone missing? Do you have trouble getting your witnesses to cooperate because they cannot meet the timetable set by the court for when they are to give evidence? Are you worried that the particular judge that is going to hear your motion or your trial isn't quite what you would like? Does your client want confidentiality and does she/he want a speedy disposition by someone who is knowledgeable? Then why not consider mediation/arbitration. The rise of mediation/arbitration as a dispute resolution method in the last five years has been dramatic. In Toronto alone there are more than 50 arbitrators that do comprehensive mediation/arbitration in matrimonial cases. They can help you resolve custody, access, financial and property matters. They can set a timetable, give directions, hear motions, convene meetings, promote settlement and issue binding awards. They can do so on a timetable that is expeditious and is suitable to both you and your clients. The process is confidential and you get a knowledgeable person to give you a considerable amount of neutral evaluation at the same time that the mediation/arbitration process is being undertaken.

Although there is some question about whether a mediator can also be an arbitrator, the Toronto experience seems to prove that this kind of process works well and is ideally suited for the resolution of matrimonial disputes. Talk to your colleagues who have engaged in this process and they will tell you that it remarkably reduces the stress that a trial or a motion would otherwise cause and the results are always more satisfactory for the clients. When the results are more satisfactory to the clients, they will be likely more satisfied to the lawyers. They are the only area in family law in which I see clients continually say "thank you".

Conclusion:

There is nothing in this paper that is particularly new and nothing that you won't find in most books about how to avoid stress. We are, however, collectively too busy as a group to pay attention to the things that we need to watch. We do, however, practice in an area that is prone to burn out and prone to high degrees of stress. I hope that some of these hints were worth repeating and bringing to your attention.

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