

Best path forward: a practical approach to high conflict

By AdvocateDaily.com Staff



A lawyer's job often involves finding a resolution for parties who can't agree, Markham family law lawyer [Cheryl Suann Williams](#) writes in *The Lawyer's Daily*.

While conflict negatively impacts any legal dispute, the job of family law lawyers becomes more arduous when spouses or common-law partners can't settle because their legal issues involve precious concerns — family, home and financial well-being — and are stressful, personal and emotional, says Williams, managing partner of [Williams Family Lawyers](#).

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

Williams offers the following practical tips to family law lawyers and those in other practice areas:

Remember your professional duties

Often when dealing with a difficult opposing counsel or self-represented litigant, it's easy to be drawn into the conflict, but the *Rules of Professional Conduct* should prevail in all interactions, she writes.

Protect your reputation

Despite recent success with the collaborative law process, where parties agree to a resolution-based approach outside of the court system, people shopping for a lawyer are often looking for a 'shark,' Williams writes.

"However, the lawyer with the arrogant shark attitude may not necessarily be the best lawyer especially if they wish an amicable, timely and cost-effective resolution," she says. "When potential new clients question me about whether I can be the 'shark' they desire, I advise them that that is incompatible with my style of practice and suggest that they seek another lawyer.

"I think it is wise to be true to myself and focus on the long-term view of my reputation in the legal profession."

Avoid the dramatics

Williams says we've all watched TV dramas where the charismatic lawyer claims victory by pummeling his opponent on the witness stand and the client gets away with inappropriate behaviour in front of a judge.

"In reality, this behaviour may be expected from the client, but has no place in the courtroom or interaction with opposing counsel," she writes. "The lawyer's reputation follows them into the courtroom as well and a well-respected lawyer is of more benefit to the client."

It's prudent for lawyers to be cautious about information offered by clients when drafting pleadings and court documents, Williams writes.

"First, judges do not have time to read each detail and allegation that a client wishes to advance and outlandish allegations weaken what could otherwise be a valid claim," she says. "When I am solicitor-of-record, the pleadings and court documents must reflect my style of practice and not what is merely regurgitated by my client."

Be careful of what you put in writing

When dealing with a challenging situation that must be responded to in writing, Williams says she often waits until her emotions are in check and, before sending, will have her law clerk or a colleague review the correspondence.

“While technology has provided many advantages, emails can be a particularly dangerous way of communicating: they are often written quickly without being proofread and, therefore, open up a much greater ability to be taken out of context,” she writes.

“As well, email correspondence encourages an immediate response often when one is not required. Our need to be hyper-efficient — 'off my desk and onto yours' — is frequently not a good thing. It is very easy to hit the send button when emailing and regret it moments later.”

Do not enable your client’s bad behaviour

People with combative personalities are often the driving force in prolonged and costly litigation battles, but lawyers shouldn’t encourage or enable the behaviour, Williams says.

“If we are drawn into the conflict, we can no longer remain objective in advising our clients, which, in turn, may necessitate removal from the case,” she writes.

Diffuse the conflict

Williams says she’s discovered that one of the best ways to neutralize a high-conflict situation is to diffuse it, either by lowering her voice during an outburst or injecting an unexpected shot of humour.

“Lowering your voice is the antithesis of what is expected when someone has just shouted at you,” she writes. “Humour has a way of disarming people — it’s the proverbial curveball. It also puts the other person off guard when a remark that was intended to be derogatory or to provoke did not have its intended effect.

“I have learned to be more selective, pick my battles and determine what, if anything, I will respond to and allow to stress me.”