

The “Complete Lawyer” – Family Law

Prepared For: Legal Education Society of Alberta
Complete Lawyer

Presented by:
Robert G. Harvie QC
Huckvale LLP
Lethbridge, Alberta

For Presentation in:
Lethbridge – May 6, 2016

THE "COMPLETE LAWYER" – FAMILY LAW

This paper is not aimed at the "seasoned family lawyer", but, rather, is aimed at the "dabbler" or the lawyer who professes no desire at all to engage in family practice, but who will either come across a family law question in the context of their practice in other areas, or will need to know a few things in areas of practice that may be impacted by family law.

To begin with – before discussing any legal matters – you need to understand the rather unique challenge that a family law issue raises. This is not like other areas of practice. While all legal matters engender a certain degree of anxiety and tension for clients – family law is a whole different animal. Family law issues require a heightened attention to "client management".

CLIENT MANAGEMENT

The *Holmes and Rahe Stress Scale*, created to predict levels of stress and potential impact on physical well being lists a scale of "life events" with the level of stress encountered for those life events. The top 10 "Life Stress" Events and Associated Scores were as follows:

<u>Life Event</u>	<u>Stress Score</u>
Death of a Spouse	100
Divorce	73
Marital Separation	65
Imprisonment	63
Death of a Close Family Member	63

As is apparent, Divorce is found to be less stressful only than the death of a spouse – and exceeds the stress encountered in being imprisoned or experiencing the death of a child or parent. This is a major difficulty for most people. And they are NOT at their best.

Too often, lawyers assume their clients are rational and considered in providing instructions and receiving advice. This is a mistake. Assuming that your client will remember or understand advice during a relationship breakdown is a dangerous assumption for both the lawyer and the client.

During high stress events, the human mind is prone to engaging its "fight or flight" reflex – and this engagement of the *amygdala* portion of the brain actually interferes with the functioning of the cerebral cortex – the "thinking" part of the brain.

The net result is that clients will make decisions out of anger or fear, which may be irrational and contrary to their own self-interests – and as such, lawyers encountering clients need to understand this possibility and tailor their advice and their instructions accordingly.

As such, when encountering a client with a family law difficulty, I would provide the following advice:

(a) Do not allow "empathy" to make your client's problem YOUR problem:

A client will be upset, angry, and distraught – and human nature is to want to make them feel better. This may lead to promises of outcomes or entitlements that cannot be delivered. Next thing you know, you're being reported to the law society or sued because you "promised" them an outcome.

Family law is incredibly "equity" driven. The discretion of the court in most areas, from parenting, to support issues, to division of assets generally results in very broad and largely unpredictable outcomes. When you provide an opinion to a client, be wary of "making them feel better", and do your best to either advise them quite generally – making it clear there are no guarantees, or better yet, advice generally regarding the considerations that are taken into account, without providing even a range of outcomes. You can be quite certain a client given a range during a meeting, will leave with a perception of a "guarantee" of the most positive possible outcome you discuss (see "getting sued" above).

Worse yet, do not get emotionally embroiled in the client's problem. The amygdala exists in lawyers as well as clients, and too often I have seen good lawyers, lose perspective and their ability to provide prudent advice because their own anger and empathy kick in and they charge off on their white horse to do battle. Do not do this. You will negatively impact the quality of your advice, and, potentially your own emotional and physical health.

b) Confirm Retainers and Instructions in Writing

Following upon the foregoing, assuming your client may have diminished capacity to understand or recall advice or agreements regarding fees, always, always confirm advice, instructions, and retainers in writing.

This will benefit your client and yourself, removing misunderstandings due to excessive emotional reaction to a major life stress event, and will greatly assist you in avoiding disputes over fees or instructions.

Should you find yourself before a Law Society hearing panel, without written confirmation of your qualified opinion, or your understanding regarding instructions, with a client who is adamant about their memory of your meeting – you will thank me for this advice.