

## Preserving relationships — preserving the future

It's been written that "lawyers like to eat their young." The May, 1996 issue of the *CBA National* featured an article about challenges facing today's practitioners: stress, burn-out, depression, alcoholism and substance abuse. The statistics are quite significant: one of three Canadian lawyers in a surveyed group suffered from depression or substance abuse. The CBA's President, Mr. Gordon Proudfoot, stated: "The typical lawyer is tired, edgy and depressed as civility between counsel ... is becoming the exception ..." The CBA Lawyers' Wellness Program case statement documents the impact of these pressures on the profession: "... [H]ealth and well-being have fallen secondary ... the result is workaholicism, stress, depression, erosion of family life, sexual harassment ... Every practising lawyer knows of another who has fallen victim ..."

I refer to this material to emphasize that the Law Society is trying to address these issues through programs that are designed to assist, not punish, members. Lawyers may view the Law Society as "cops, tough cops, not ... counsellors" (as reported in the same issue of the *National*), but the Ombudsperson program is one of several the Society supports to provide positive assistance for lawyers. An actual Ombudsperson case illustrates the point. The facts are changed to the extent necessary to protect identities.

A group of co-workers attended a social function. They worked in an environment where there was significant racial tension between two groups — A and B. Alcohol flowed freely during this function. A Group A lawyer made a series of statements about Group B people. For illustrative purposes only, here are possible examples: "Group B people are ALWAYS: (the reader can insert the adjective(s)) — dirty, fat, lazy, stupid, bald, poor, illiterate, in trouble, etc. Therefore, Group B people are (reader selects again) rejected, sick, poor, downtrodden, disadvantaged, teased, powerless, in jail, etc." During those statements, a co-worker, who was a member of Group B, was singled out by the lawyer as an example.

The Group B member was shocked, upset, angry, humiliated and hurt by what appeared to be thoughtless, insensitive and racist remarks. The member perceived that, of all people, a lawyer of respected standing in the community should exercise better judgement. A formal complaint to the Law Society was contemplated; Group B was very angry. Another lawyer suggested the non-adversarial services of the Ombudsperson, an option the Group B person pursued.

It became clear, after a few phone calls and time for the Group B member to reflect, that the main interest was *not* discipline. The Group B member wanted the lawyer

to understand the impact of the comments. The Group B person agreed to delay the formal complaint to the Law Society. I was authorized to explore mediation and was advised that an apology, and an opportunity for a private meeting, would go a long way toward resolving this matter.



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I contacted the Group A lawyer. Here was the critical turning point. Would the lawyer deny the comments, suggest the Group B member "blew everything out of proportion," or simply express the classic refusal "there is nothing to resolve"? Such reactions often lead to formal complaints.

The Group A lawyer was surprised at the Group B person's reaction because the lawyer's comments had been intended to show empathy and understanding of Group B issues. The lawyer expressed an immediate desire to apologize, and did so in writing. I conveyed the apology to the Group B member; it was accepted immediately and with immense relief.

The lawyer also expressed relief. Both parties said to me that they wanted to speak with one another but did not know how to break the ice. A "cold war" might have gone on for some time. Once the apology was accepted, each had a face-saving way to schedule a meeting, discuss the impact of their experiences in private, and put this matter behind them. Both wanted to have a positive and cooperative working relationship. Neither wanted to escalate tension between the racial groups.

This case illustrates how quickly the pressures of day-to-day practice can combine with poorly worded, although well intentioned, comments to create a formula for pain, tension and misunderstanding. Helpful factors in the resolution of this case were: 1) a referral to my services, which may not have occurred if the referring lawyer thought I was an "enforcer," a "tough cop;" 2) the mutual desire of the parties to preserve the relationship and put it on a healthier footing; and 3) the Group A lawyer giving mediation a chance.

In our lean economic times, the pressures of practice can easily lead to similar scenarios. Fortunately, this case was readily resolved and, on a cost analysis basis, involved less than a few hours of Ombudsperson time. But for timely and private resolution, what might the level of racial tension now be in this working community? Give the Ombudsperson service a chance — be open to mediation and to in-firm education. Education is painless and can help everyone better understand the realities of today's "boundaries." □