DIVERSITY and LAWYER/CLIENT RELATIONSHIPS

Plaintiff personal injury work is always interesting. Clients come from all walks of life, reflecting the rich diversity of our culture. What they all have in common is the experience of having their lives suddenly disrupted by injuries. Our tort system is especially well equipped to address these losses because it is tailored to treat each plaintiff as a unique individual. In personal injury claims, plaintiffs’ physical and emotional traumas and their reaction to adverse events can only be fully understood in the context of their overall lives.

With the pressures of a busy practice, the challenge for plaintiff counsel is to understand our clients as unique individuals. It can be tempting to churn through cases, focusing on the type of injury rather than the person. We may believe we know what is best for our clients and conclude that our task is to manage the case and the client’s job is to listen to what we say and heed our advice. With some clients, that may be all that is required. But problems often arise, for example in situations where the client doesn’t fit into the mold, or where there is a high level of distrust in “the system”, or where injuries have an impact on the client that far exceeds what would normally be expected, or where we confront unfamiliar and uncomfortable issues involving gender, race, culture, or disability.

We all know that counsel/client relationships are important. The Law Society of BC reports that it receives approximately 1,200 complaints per year. On its website, the LSBC highlights the qualities it expects in terms of ethics and competence. The first two bullets in a list of six are:

- be honest and courteous; and
- keep clients informed, respond promptly to phone calls or letters and work in a timely fashion.

This article is based on a recently published qualitative study entitled Best Practice in Provider/Parent Interaction (Best Practices) which examined best practices in relationships between healthcare providers and parents of children who had complex, chronic, life-threatening conditions.

Before launching into the subject matter, it is useful to note that there is at least one obvious difference between the medical setting and the legal setting: an adverse outcome in medicine is more likely to be an “act of God” whereas in law, adverse outcomes can to some extent be avoided (a claim can be settled), and where they do occur, adverse outcomes arise from human action (judicial decisions).

Having said that, there are significant similarities: parents dealing with severely ill children share characteristics with plaintiffs dealing with serious and debilitating injuries. In both settings, professional intervention is engaged to assist the patient / client in addressing (redressing) profound losses. The study noted that in the medical setting, parents who have positive experiences with healthcare providers are able to carry memories that are healing. Similarly, in the legal setting, plaintiffs who have positive relationships with their counsel and in our courts are more likely to see our legal system in a positive light, as valuable and worthwhile.

1 Bettie Davies, Rose Steele, Guenther Krueger, Susan Albersheim, Jennifer Baird, Michelle Bifirie, Susan Cadell, Gweneth Doane, Deepshikha Garga, Harold Siden, Caron Strahlendorf, and Yuan Zhao, “Best Practice in Provider/Parent Interaction” (2016) Qualitative Health Research I-15.
There appear to be relatively few studies that break down the dynamics in professional relationships to identify best practices. While we may intuitively sense that certain behaviours and attitudes are more helpful than others, the principles outlined in *Best Practices* are particularly valuable in that they are based on the application of rigorous and extensive research. So what does this article say about those professionals who are most effective in building positive relationships in a stressful and pressured healthcare setting?

First, those healthcare providers who excelled reflected “a deep respect for the intrinsic worth of all persons.” They “shared a broad perspective of the human condition with all of its complexities (e.g. birth, strife, death) and their interrelatedness. [They] derived this worldview from exposure to diverse opinions and lifestyles gained through living in or traveling to other cities or countries, from personal experiences with trauma or grief, and from early mentors.” These individuals “valued social justice and so they provided equitable care to all, regardless of how different parents were from themselves. [They] also recognized that persons are part of larger wholes (families, cultures) and that everyone is both affected by and affects these larger wholes.”

The best healthcare providers saw their role as more than simply “doing their job”. They sought to heal the whole person and recognized that by doing so, they were contributing to the well-being of families and their communities. They tried to get to know the parents as people. While some healthcare providers were concerned about taking time away from their other duties to engage with patients, the best healthcare providers *made time* for personal interaction.

The study identified eight “connecting behaviours” that helped build rapport with parents:

1. **Building trust.** They had an attitude of “I’m here for you”. They “deliberately introduced themselves in a friendly, humble, and timely way without rushing and focused on getting to know the parents”. They were straightforward, didn’t keep secrets, admitted their mistakes, and were transparent about what they knew and didn’t know.

2. **Listening.** The best healthcare providers paid attention not only to what the parents said, but to their body language and to what parents didn’t say. When parents had a worldview that differed from that of the healthcare provider, this was recognized and respected. The authors wrote: “Recognizing the power differential between parents and healthcare providers was a potential barrier to authentic engagement, [the best healthcare providers] made a conscious effort to involve parents in the care and to collaborate with them in decision making.”

3. **Empathizing.** The best healthcare providers “identified with the parent’s journey while acknowledging that the journey belonged to the family, not to themselves.” Distinctions were drawn between sympathy (to another) and empathy (with another), and between being busy (which was a hindrance) and taking the time to be connected.

4. **Suspending judgment.** There is no doubt that good judgment is a critically important attribute in both medicine and law. Yet the best healthcare providers recognized the need to accept the
parents for who they were in order to genuinely connect with them.

5. Pacing. The best healthcare providers individually tailored the rate and amount of information to help parents understand and absorb complex medical events. In the same way, it is important for plaintiff counsel to tailor information about litigation issues so that clients have adequate time and opportunity to understand the issues. They also shared information authentically, respecting the parents’ insights and values, so that parents could effectively engage in the decision-making process.

6. Maintaining hope. The authors wrote: “At the core, [the best healthcare providers] maintained hope by suspending judgment of parents’ hopes and ‘meeting parents where they were at,’ even if those hopes were not in line with [their] views.” To the extent that hope is directed to recovery, counsel can support this. It may be helpful, for example, to tell our clients that we can hope for the best and plan for the worst. Their focus should be on hope and working towards recovery whereas our focus will be on building their safety net. To the extent that hope is based on unrealistic expectations of success in litigation, however, plaintiff counsel’s professional obligation is to educate the client regarding the potential of an adverse outcome.

7. Focusing on the positive. The authors wrote: “Planning with parents and actively involving them in their child’s care decreased uncertainty for the moment and gave parents something to look forward to.” The personal injury equivalent would be to focus on the benefits of rehabilitation and fully supporting our clients’ efforts to recover.

8. Showing kindness. The best healthcare providers noticed a parent’s need or desire and responded ‘in the moment’ by doing something that was out of their usual pattern of care. The authors noted that such sensitive and spontaneous actions “touched parents in a heartfelt way and empowered, reassured, and/or comforted them.”

When it came time to draw up a care plan, the best healthcare providers “did not respond in a routine or standard way. They took the salient features of what mattered most to parents and then, after careful thought, [they] shaped their direct care activities according to the situation in that moment.” Within the broad parameters of litigation, personal injury counsel also have room to individualize communication and conduct of the litigation.

The personal features of the healthcare providers who were most effective in their work were identified as follows:

a) They were knowledgeable, not only in their area of discipline, but also about a wide variety of general topics, such as cultural practices, spiritual issues, farming, music and local sports teams, so they could readily relate to children, parents and family members from a wide variety of backgrounds.
b) They were aware of their own strengths and limitations and cognizant of how their presence was impacting their patients and other staff.

c) They were flexible, open-minded, and curious, willing to consider requests that were unusual, try new approaches, and relinquish a degree of control (something that other healthcare providers found difficult to do).

d) They learned from past experiences. In describing the reflective learning style of the best healthcare providers, the authors wrote: “Maturational learning, a more personal form of learning, was dependent not on age but on the extent to which [the best healthcare providers] were self-reflective.” Expanding on the concept of reflection, the authors wrote: “Reflection was closely related to knowledge, self-awareness, open-mindedness, and curiosity, characteristics that enabled [the best healthcare providers] to make sense of a situation and their responses (both actions and emotions), engage in introspection, critically appraise their actions and knowledge, and learn from their experiences.”

e) They took care of themselves. They “consciously engaged in self-care to replenish their energy so they could both maintain their commitment to authentic engagement at work and enjoy their personal lives.” What was particularly interesting is that these individuals were much less likely to experience burnout. The authors wrote: “Positive results for [those who practiced best care] included “increased learning, increased satisfaction with their work, and little if any burnout”… “Positive outcomes generated a cyclical pattern: they reinforced [the healthcare providers’] worldview, values, and commitment to authentic engagement, which in turn allowed them to continue engaging in best practice interactions with families.”

Concluding thoughts

The practice of law has traditionally been seen as exercising power through persuasion. Skilled advocates are trained in the art of cross-examination. We focus our energies on advancing arguments, replies and rebuttals. Yet to be effective advocates, we also need to understand our clients. And to truly give our clients a voice, whether in our offices or in the courts, we must take the time to learn what is important to them and appreciate how their values and cultures inform their life experiences.

The authors of Best Practice wrote: “All too often, healthcare providers engage in monologues that do not allow for dialogue but [those who engaged in best practices] were committed to engaging with parents as fellow human beings, person to person…. It is clear from our study that being a successful professional is not just a matter of what you do, but it is also how and why you do it...”

As with medicine, being a successful personal injury lawyer is not only a matter of what we do, but how we relate to our clients and the extent to which we embrace the principles of fairness and justice which form the basis of our laws in our relationships with our own clients.