



Self-Represented

Information and Tips from a lawyer to non-lawyers

How to succeed without a lawyer and save thousands of dollars

www.selft-represented.com

Tel: (416) 465-9955

Fax (416) 465-8114



PROVEN METHODS TO MANAGE STRESS AND OVERCOME FEAR OF COURTS, JUDGES, LAWYERS AND LITIGANTS

The psychological factor and psychological dynamics that are present in every legal process are perhaps the most overlooked areas in the whole legal spectrum. Lawyers are trained to concentrate their resources on the legalistic aspects of the dispute, which involve mostly legal rights and obligations. Unfortunately, Law Schools and continuing legal education programs offer very little training on the psychological aspects of a legal dispute.

You may have a strong case from the strict legalistic point of view, but what is the use if ultimately you are left with emotional scars that may take years to heal.

The subject of the psychological effects of legal disputes is a study in itself. It is a complex area that involves a variety of topics, issues and concerns. For example, in the area of stress caused to children by the experience of preparing and giving evidence in court, some writers feel that there is little research to support the assertion that children do in fact suffer some form of trauma from this experience.

In my experience, I know for fact that not only children but also adults find the legal process, especially testifying, a difficult and stressful experience. This article is devoted to the specific issues of stress management and overcoming fear of courts, judges, lawyers and litigants.

I have yet to meet anyone who has not experienced some sort of fear when being involved with the law, whether as an accused, a plaintiff, a defendant or even a disinterested witness. In many cases, even the contemplation of initiating a legal step as simple as seeking legal advice regarding a family or other dispute can trigger fear which is often unexplained or ambiguous.

For the more serious cases, the first reaction to the emergence of a sudden legal problem or dispute is disbelief, shock, numbness. If you are named as a defendant in a law suit, you know you have been sued, but the mind blocks the reality of the situation. It is even possible to be defiant, or even cheerful, and to go about your activities as if nothing has happened. Sometimes the initial reaction may be total indifference. On occasion people would come to my office with a Statement of Claim hidden in their briefcase. The interview would proceed as if they have a minor problem which will go away if they just do

nothing. I was oblivious to the fact that they were being sued until, upon meticulous questioning, they would reluctantly reveal that they had received some papers. The mind denies what it cannot process.

In these kinds of situations, it has been my experience that, at this initial stage, all clients want is for someone to sympathize with their side of the story, the injustice of the situation and be furious with them. They do not want me to tell them how they should handle their legal problem.

As in dealing with any terrible event in one's life, at this stage one should do nothing, other than absorb the impact. The best course of action is to avoid making any major decisions during this initial period, until the shock evaporates and reality sets in. Also avoid coming to any quick or generalized conclusions about the merits of your case, like "Oh, my God, I'm going to lose everything!" The worst thing to do is to threaten your adversary with violence or engage in some other self-destructive behaviour.

Initial shock is normal and understandable. At this stage most litigants are liable to draw strange conclusions and behave in odd ways. When in shock, the safest way is to do or say absolutely nothing.

Following closely the heels of shock comes fear, the ghost that lies in wait to attack the mind at four in the morning. At this stage, fear is also a normal and appropriate reaction. It comes in all kinds of specific concerns, such as "what will I tell my wife, when she finds out that I am being sued?" "How is my bank going to react?" "How would I be able to pay for all these damages if I lose the case?" "What if I am found guilty?", and, "How I'm I going to handle my self during cross-examination?"

Fear is a survival mechanism, alerting the body to looming danger in much the same way that fever alerts us to illness. There is a clear distinction between generalized fear and specific fear. The former is counter-productive and paralyzing; the latter is useful and productive.

Lurking behind the worry of being engulfed in a lawsuit or endless legal dispute lie the following darker, more primitive fears: The fears of being deprived of one's livelihood, safety net, love and affection from those close to him or her, losing self-esteem and the respect of others and losing the ability to pursue one's calling, depending on one's circumstances and stature in life. Witnesses in particular tend to fear the prospect of having to speak before a hostile audience. Their fear is associated with the fear of public speaking which is the second highest fear people are known to have, after the fear of death. All these fears are directly linked to our needs.

Maslow, a humanistic psychologist, believed that people are not merely controlled by mechanical forces (the stimuli and reinforcement forces of behaviourism) or unconscious instinctual impulses of psychoanalysis.

Maslow focused on human potential, believing the humans strive to reach the highest levels of their capabilities. People seek the frontiers of creativity, and strive to reach the highest levels of consciousness and wisdom. Maslow called these people "self-actualizing" persons.

Maslow set up a hierarchical theory of needs in which all the basic needs are at the bottom, and the needs concerned with a human's highest potential are at the top. The hierarchic theory is often represented as a pyramid, with the larger, lower levels representing the lower needs, and the upper point representing the need for self-actualization. Each level of the pyramid is dependent on the previous level. For example, a person does not feel the second need until the demands of the first have been satisfied. Maslow Hierarchy of Needs is rephrased and summarized as follows:

1. **Physiological Needs.** Biological needs such as oxygen, food, water, warmth/coolness, protection from storms and so forth. These needs are the strongest because if deprived, the person could or would die.
2. **Safety Needs.** Felt by adults during emergencies, periods of disorganization in the social structure (such as widespread rioting). Felt more frequently by children who often display signs of insecurity and their need to be safe.
3. **Love, Affection and Belongingness Needs.** The needs to escape loneliness and alienation and give (and receive) love, affection and the sense of belonging.
4. **Esteem Needs.** Need for a stable, firmly based, high level of self-respect, and respect from others in order to feel satisfied, self-confident and valuable. If these needs are not met, the person feels inferior, weak, helpless and worthless.
5. **Self-actualization Needs.** Maslow describes self-actualization as a person's need to be and do that which the person was born to do. It is his "calling". "A musician must make music, an artist must paint, and a poet must write." If these needs are not met, the person feels restlessness, on edge, tense, and lacking something. Lower needs may also produce a restless feeling, but here is it much easier to find the cause. If a person is hungry, unsafe, not loved or accepted, or lacking self-esteem the cause is apparent. It is not always clear what a person wants when there is a need for self-actualization.

Fears then of losing substantial sums of money (which form the material foundation of our biological existence), or the love of others, being left lonely, being embarrassed or ridiculed, or losing the respect of others may be intertwined. The task is to break down these convoluted fears into manageable parts and to confront only one specific fear at a time. Instead of worrying that a particular legal problem or legal concern will bring about imaginary setbacks in your life, try to focus calmly on a specific fear at a time, by looking at it not as a giant problem but as a set of discrete issues for which solutions can be found.

I often encountered situations where people are reluctant to take the witness stand, simply because they fear the prospect of having to speak in front of others in an environment that is not always friendly. They have considerable anxiety about the process and their role in it. These fears need to be identified and dealt with in systematic way. Fear of the unknown may be a major source of anxiety. This fear, if known to the opponent can be utilized to the disadvantage of the client. Cases are sometimes settled on this consideration alone.

Overcoming any real or imaginary fear is one step closer to improving the odds in your favour.

The following methods (whether you have a lawyer or are a self-represented litigant) can help you control your stress to manageable level and temper or eliminate your fears:

1. Face your fears. Welcome the opportunity to be interviewed by your lawyer (or the lawyer of the person who would be calling you as his or her witness) as soon as possible after the incident giving rise to the legal dispute. Be ready to discuss all relevant considerations and facts surrounding the subject matter of the dispute. Endeavour to be forthright and direct with your observations and description of the events. Ask questions; seek answers to the issues that concern you, especially the nature of your role in the whole case. Be attentive to the discussion regarding the case, even if you have no interest in the outcome. Be prepared to maintain regular contact with your lawyer to ensure you are kept apprised of the status of the case. If the case involves your attendance in court, visiting the courtroom ahead of time or doing simulated examinations and demonstrations in the lawyer's office may assist you to address the most serious worries you may have. In the context of all this, you should know, however that experienced lawyers adjust their approach to witnesses in light of the circumstances. For example they tend to be more candid with their client's best friend or valued employee than with someone about whom they know nothing or a hostile witness who may be interviewed by others, including the lawyer of their client's opponent.

2. Keep detailed records of the relevant events and documents. The importance of record keeping cannot be overemphasized, especially in the realm of legal proceedings. If you are a party litigant, failure to keep detailed record of the relevant events and documents may prove fatal to your case, especially if the other side has kept all relevant documents or has a better recollection of the events than you do. Keeping detailed records will help you alleviate your fears and control your anxiety by knowing that you can back up your assertions with specific dates, times, events, circumstances, names and number of participants, witnesses, photographs and other relevant documents. The best way to reduce anxiety is to be positively organized which involves being only organized as you need to be. It is not just having your papers in order; much more important is whether your priorities are in order. It is a question of balance between the details and the big picture. To ensure you are kept fully informed on the progress of your case, be assertive enough to ask

your lawyer to provide you with copies of all relevant documents regarding your case, including pleadings, correspondence, offers from the other side, medical reports and transcripts, if available. Go over these documents carefully as soon as you receive them and if you notice something is not right bring it to the attention of your lawyer immediately.

3. Read books and Articles on topics similar to your case or legal issue that concern you. We live in an information age. Knowledge is power. For example if you are a so called expert witness, your effectiveness in court is directly related to your ability to analyze and apply knowledge and information from other sources, including studies and research of other experts in your field. The admissibility of your testimony depends in part of your qualifications which form a vital part of your believability. Failure to keep your self informed on important developments in your field or judicial comments on cases similar to the ones you are involved in may render your testimony ineffective. If you are involved in a law suit, whether as plaintiff or defendant, knowing how courts have dealt with cases similar to yours will give you a better perspective of the obstacles you may have to face or the relevant issues in order to stay focused and concentrate your efforts toward addressing these issues with your lawyer. By being informed, you would be in a better position to understand and appreciate the steps your lawyer would take from time to time in the litigation process, thereby improving better communications between you and your lawyer.

4. Discuss your fears or concerns with your lawyer. Lawyers are not trained psychoanalysts. They must concentrate their efforts toward advancing your cause and winning your case. In the midst of their busy schedules, they can afford very little time to listen to your complaints unless whatever you have to say has a direct bearing on your case. Regardless, your lawyer should be prepared to listen to your genuine concerns, especially your fears. A good lawyer would take reasonable steps to establish a good working rapport with you, which includes a genuine effort to understand your personality and motivations. The human element is very important in every case. Be prepared to reveal your personal traits, weaknesses and strengths, which must be addressed at the earliest possible stage of the legal process to avoid unpleasant surprise.

5. Try to be objective in evaluating the legal and factual foundations of your case and the case of your opponent. Being objective will enable you to consider all possible outcomes, including the possibility of losing your case. Ask yourself what is the worst that can happen to me? Once you become aware of the worst possible scenario, resolve to deal with it and pay the price, if necessary. Once you go through this process, you will discover that your fear is diminished. If you are directly involved and have a vested interest in the outcome of a legal dispute, it is hard to be objective. If you rely on your lawyer to convince you that your case has some merit, this may not be good enough. In addition to gathering all relevant documents and organizing your case, you must assume an active role in objectively assessing the merits of your case. By this I am not

suggesting that you give up or abandon your cause just because you cannot stand enduring the agony of having to deal with the issues. It would be sufficient if you and your lawyer discuss and analyze the factual and legal foundations of your case and the case of your opponent so that if your case is weak, consideration should be given to an early settlement which will save you a great deal of legal expenses and aggravation.

6. Exercise, eat properly and rest adequately. When you are about to enter a crucial stage of the legal process, such as a trial, proper eating, resting and eating habits will keep you mentally and physically strong, enabling you to handle stress and fear more effectively.

7. Commit yourself to your cause. Lack of commitment to your cause will instil fear in you because you will always feel 'what if I make the wrong move?'. To be committed-indeed, to achieve your legal objectives- you have to believe you can do it. "What if everything goes well?"

Normal fear protects us and provides a warning signal indicating the presence of danger. It is much more preferable to be fearful than be totally fearless. The objective is to reduce fear to manageable levels. Ralph Waldo Emerson once said that fear is ignorance. Gnawing, unreasonable, illogical and neurotic fear comes from lack of awareness. Once we know the truth, fear will vanish.

© Andreas Solomos, Barrister & Solicitor. All rights reserved.