

High conflict personalities and legal disputes

BY RACHEL NORTHCOTT - SEP 02, 2022 8:30 AM AEST

SNAPSHOT

- Costly disputes that drag on for years are often driven by high conflict personalities which present a significant risk to the lawyers involved.
- Lawyers and other professionals can become targets of high conflict personalities.
- There are skills to effectively deal with high conflict personalities and defuse these incendiary disputes.

We generally assume that legal disputes centre around issues, and the more difficult the issues are, the more intractable the dispute.

However, in much litigation, the legal questions are long settled and the issues in question are not necessarily complex. While some matters that end up in the courtroom may involve important questions of law which require judicial resolution, many matters that proceed to a final hearing are driven not by the complexity of the issues at stake, but by a high level of conflict between the parties.

Bill Eddy, co-founder of the High Conflict Institute, conducted research into complex, highly emotional legal matters and concluded that high conflict disputes were driven not by esoteric legal issues or convoluted factual backgrounds, but by the personalities of the parties. Specifically, in many cases, by the personality of only one of the parties who he described as a high conflict personality.

Disputes involving high conflict personalities require a high level of awareness, and very careful handling. The professionals involved may not be aware that the conflict is being driven by personality characteristics of at least one of the participants, or they may not know how to address this. This can lead to an escalation in cost and complexity which is out of proportion to the issues involved, creating a substantial burden on the judicial system, the parties, and their legal representatives.

Without the right knowledge, skills and techniques, the risk to the lawyers involved increases substantially and it can be very difficult to calm or finalise these types of disputes. If the outcome is not desirable, a disgruntled client may take action against the lawyer, who may in turn become involved in a high conflict dispute.

Recognising a high conflict client

A lawyer is focused on providing advice to assist their clients and gaining the best possible outcome. As a first step towards this goal, a lawyer must gain an understanding of the client and their interests. Identifying a high conflict personality can assist in achieving the desired outcome.

If you can identify a high conflict client before your dealings with them escalate, you can often defuse a situation before it gets worse and manage the risk of conflict. There are certain characteristics, attributes or behaviours that may signal a high conflict client.

Four key characteristics that can foreshadow, and exacerbate, conflict in a matter are:

- all or nothing thinking;
- unmanaged emotions;
- extreme behaviours; and
- blaming others.

High conflict people can become fixated with a 'target of blame'. The target may be a family member, intimate partner, spouse or ex-spouse, or a person or organisation in a position of apparent authority, such as an employer, government department, or legal practitioner. This was seen in recent litigation in the ACT Supreme Court where a disgruntled, unsuccessful litigant in a family law matter commenced proceedings against not only his own representative (Legal Aid ACT), but also the solicitor and barrister on the other side, the family consultant, the

independent children's lawyer and the Judge (see: *Eastlund (a pseudonym) v Orezykowski*; *Eastlund (a pseudonym) v Anor* [2022] ACTSC 68; *Eastlund (a pseudonym) v Legal Aid ACT*; *Eastlund (a pseudonym) v Neville*; *Eastlund (a pseudonym) v Haddock* [2022] ACTSC 106 and *Eastlund (a pseudonym) v Westlake (a pseudonym)* [2022] ACTSC 52 (23 March 2022)).

Communicating with a high conflict client

When this occurs, it can be helpful to remember the **CARS** method when communicating with the client, as a simple and effective way to de-escalate and calm a conflict:

Connect with empathy, attention and respect

Analyse alternatives or options

Respond to misinformation or hostility

Set limits on high conflict behaviour

It is important to recognise when you are dealing with a high conflict client and take appropriate measures to control the situation and prevent issues from escalating.

Conclusion

High conflict people often drive disputes which may drag on for years and exact a huge toll on the parties and professionals involved. By remaining aware of this dynamic, you can arm yourself with the right communication skills to handle the situation properly, minimise the risk to yourself and the client and gain the best possible outcome.

For more on dealing with difficult people, the Resolution Institute offers an online webinar called 'Strategies for Managing High Conflict Clients', available at:

<https://www.resolution.institute/resources/mediation-resources/strategies-for-managing-high-conflict-clients>.

Rachel Northcott is a claims solicitor at Lawcover.
