

Internecine conflict and a “bridge over troubled waters”

By Emily Morrow

Two of my favourite words come to mind in connection with internecine (internal) conflicts between members of the same law firm or other office. These words are pernicious (“having a harmful effect in a gradual or subtle way”) and ubiquitous (“found everywhere”).

The ubiquitous part is likely a given considering human nature and the inherent stresses of practising of law. The pernicious part is, however, often optional depending on how conflict is approached. Is conflict natural, positive and the result of a robustly diverse workforce, or is it negative, destructive and to be avoided?

Some years ago, I had a memorably poignant discussion with a partner in a law firm. We were discussing how he could best build his professional profile externally within the legal community. I said, “Tell me a bit about how well you get along with your professional colleagues outside of the firm.” He turned to me with a very pained expression and said, “I don’t worry about getting along with the lawyers out there on the street. I get along with them really well. I worry mostly about getting along with the people in the offices down the hall from me in my firm.” It was one of those starkly honest replies to an innocuous question. And, it was remarkably sad because this individual had been a partner for many years in the firm and spent the majority of his waking hours working there.

Effect of the marketplace

During periods of relatively high unemployment when employees are deemed to be a fungible commodity, employers frequently resolve a conflict by encouraging one or both of the affected employee(s) to leave. However, when there are few high-quality, experienced professionals in the marketplace, employers are more likely to seek ways to retain employees and avoid recruitment costs, severance pay, loss of productivity and training that accompany employee turnover.

Interestingly, New Zealand may find itself gradually moving into a period of undersupply of highly qualified lawyers. See, for example, “New Zealand Trained Lawyers Heading Overseas Again” (*NZ Lawyer*, 25 February 2015). Accordingly, sacking one or more conflict-prone lawyers may prove to be a less than ideal strategy, especially if they are otherwise highly skilled and productive. That said, how can a firm best address workplace conflict?

Internecine conflict between “John” and “Tom”

Let’s take a typical example. John and Tom are partners in the same practice group. They are both successful, highly productive and profitable professionals. However, they have a history of conflict that goes back to an instance in



When I began to work with John and Tom, they never had face-to-face conversations and relied primarily on terse email exchanges. When I insisted they meet with me together in the same room, this was something that they had not done for years. I asked them just one question: “On a scale of 1 to 10, how motivated are you to get this history of conflict behind you?” There was stunned silence after which they both quietly replied, “10.”

which they disagreed over the supervision and management of the practice group. The conflict between them “simmered” along, and then often “erupts” when they work together on a time-sensitive, stressful project.

Although everyone knows the conflict exists, John and Tom have never discussed it with each other. Instead, they frequently vilify the other to various third parties. This results in inefficiency, reduced work quality and general misery for John, Tom and everyone with whom they interact (including their families). When the conflict becomes particularly intense, John develops migraine headaches and Tom has

debilitating back spasms, causing them both to lose time from work. Their team members often feel caught in the middle and experience considerable “ripple effect” stress. The managing partner does not know what to do, and the HR manager, who has tried unsuccessfully to intervene, usually gets caught in the cross-fire.

The approach

Sometimes I get invited to intervene after a particularly visible and intense “blow up” within an office. To be honest, it can feel like going where angels fear to tread. Here’s what I often do:

First, I have individual discussions with each of the affected professionals. I focus on remaining neutral, listening actively, and asking factual questions. I try very hard not to get sucked into the emotional reactivity.

When one individual complains to me about the other’s behaviour, I encourage him/her to examine his/her own behaviour and how it might contribute to the conflict. I suggest that one cannot change another’s behaviour, that one can only change one’s own behaviour, and that such a personal change can dramatically improve a relationship. In essence, I hold up a mirror (metaphorically speaking) and encourage each individual to look into it and begin to assume some accountability for his/her own thinking and behaviour. This can present as a refreshing “blinding glimpse of the obvious”.

Next, I identify the likely work style and temperament differences between the “feuding” parties. I compile a fact-based list of work style similarities and differences. The list may note whether an individual tends to be an extrovert or introvert, his/her preferred learning style (oral, written, hands-on etc), whether he/she seeks closure or prefers opening new options, his/her tendency to focus on details or the big picture, whether he/she is logical or more emotional in approach etc. The list is unique to each intervention and detailed. Thereafter, I discuss the list in a neutral way with each party and ask them to verify its accuracy, correcting it where necessary.

Here is what I intentionally don’t do. I don’t try to determine the veracity of either individual’s recollection of the facts. I don’t involve third parties in trying to determine what happened and why. I don’t take a position on whether one party is right or wrong or whether someone is more aggrieved than someone else.

I do point out, however, that vilifying the other is likely to be a complete waste of time. Although it may be satisfying short term, it will predictably be a pyrrhic victory. I make it clear I have no interest in having such a discussion. Further, what occurred in the past is in the past, and what is occurring at the present time and will occur in the future needs to be the focus of our

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search of Coke's chambers to hunt for seditious materials. Some of the leading legal lights of the day had their chambers searched as well. This should make senior lawyers today glad they practise in the current era and not back then!

In terms of what we can learn today from the challenges of assimilating a new form of technology into the way law is practised, Judge Harvey says that looking beneath the content to the way in which it is disseminated is vital. In this respect, there are many parallels that can be drawn between the advent of the printing press and the new information technologies of the 20th and 21st centuries:

"There are two major elements to every communications medium: the content layer, in which lawyers are interested; and the medium layer that sits underneath the content, which lawyers don't often think about. With a new technology, we need to understand how the medium works.

"The printing press had several defining qualities


that differentiated it from manuscript culture, including the volume of material it was capable of producing, its ability to 'fix' text and its wide powers of dissemination. If we fast forward to the digital era, the dissemination available is potentially limitless. Instead of printing 100 copies, just one copy can now go out to millions. Also, the document doesn't 'die', nor is the information in linear form. While printed text goes from start to finish, online documents have hyperlinks and can take you anywhere."

His Honour says that the current "digital paradigm" we face is "highly different" from anything that has gone before:

"Now, we have amazing technology with properties that many of us don't understand. It's going to change things drastically. The concern I have when we are making laws about technologies (like the Harmful Digital Communications Bill) is that we can't just think about the content layer, we also have to understand the underlying qualities – otherwise

the 'law of unintended consequences' can come into play."

An example of this might be the question of whether digital information is "property" for the purposes of theft (a point on which our Court of Appeal has ruled in the negative). While it may seem like a straightforward solution to amend the definition of property in the *Crimes Act* to capture digital information, that would have the (probably unintended) consequence of converting what is currently a copyright infringement into a crime. Judge Harvey is currently working these theories into a new book, which he has tentatively entitled *Collisions in the Digital Paradigm: Law and Rule-Making in the Internet Age*. Watch this space!

Judge Harvey's new book costs £70 and is available from Hart Publishing in Oxford, United Kingdom – please visit www.hartpub.co.uk/BookDetails.aspx?ISBN=9781849466684 for more details. 

attention. Sometimes, the individuals find this disappointing, because they have a strong desire to be "right" and feel exonerated. If that occurs, I point out that being "right" could be like winning the battle and losing the war.

At some point, the individuals often realise that neither of them is right or wrong, but that they have fundamental differences, many of which are attributable to basic temperamental predispositions. It's not personal; it's just the way it is.

After this realisation, the hostility and anxiety usually rapidly diminish in much the same way a balloon deflates when pricked with a sharp pin. As each individual gains greater personal insight, empathy and communication improve.

Finally, I meet with both parties together to discuss their work style differences. We focus on better understanding the other, tailoring one's own behaviour to accommodate the other and avoiding inadvertently creating future conflicts. I often suggest the individuals identify a project on which they can work together and practice their new behavioural patterns.

As they collaborate, I encourage them to discuss what is working, what is problematic and how to fine tune the interaction going forward, while I hold each personally accountable for the success of his/her own efforts.

The intervention

Let's go back to John and Tom. When I began to work with them, they avoided passing each other in the hallway, never had face-to-face conversations, minimised their telephone communication and relied primarily on terse email exchanges. The chronic conflict was increasingly disruptive.

As a first step, I insisted they meet with me in person, together in the same room, something

that they had not done for years. I told them the meeting would be brief but essential to my involvement. Begrudgingly, they joined me in the boardroom, where they could sit a safe distance from each other.

I said, "I have just one question for each of you. On a scale of 1 to 10, with 10 being highly motivated, where would you put your level of motivation to get this history of conflict behind you?" There was stunned silence after which I looked directly at John. A moment later he said very quietly, "10." I then turned to Tom and, casting his eyes down, he said, "10." I stood up and said, "Okay, we have our work cut out here, but we also have a pathway to success," and walked out of the room.

Thereafter, we had a series of individual meetings and began to develop a strategy. After speaking with each individually, it became clear to me that John was a strongly extroverted individual, who spoke his mind candidly and believed in immediate and forceful interventions with team members. He was blunt, honest, usually right but could be undiplomatic.

Tom on the other hand, was a real introvert who believed that "less is more", and that saying direct things to other people was bad manners and highly unprofessional. These temperament and stylistic differences caused the initial team management disagreement that became the basis of their long term conflict.

What came out of these discussions was an agreement by Tom and John that, although they would likely never be friends, they wanted to develop an appropriately collegial professional relationship. We began to articulate exactly what that meant for them.

Next, we identified a project on which they could collaborate, each having a separate but important role to play. Initially, I facilitated the

discussions between the two of them about this work, but gradually they got to the point where they could handle this on their own.

I also told them I would be checking in with their team members to see how things were going to keep them "honest". The feedback I got was that things were noticeably calmer. Gradually, the sharp edges of their relationship began to smooth out and soften.

Several years later, Tom and John continue to work reasonably well together. They have to keep intentionally working on it, but they now have some useful tools to do so.

The benefits of this type of conflict intervention can be dramatic and enduring. Although the individuals seldom become close personal friends, they usually discover their differences are complimentary and that, by collaborating, they can produce a superior work product.

Indeed, while building a bridge over troubled waters, the outcome can be such that the whole ends up being greater than the prior sum of its parts. It's worth the effort and it's good for business.

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