Dispute Resolution Strategies in Family Law Matters

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Case Management and the effective, orderly and expeditious discharge of the business of the Court

- In accordance with s 21B of the *Family Law Act*, the Chief Justice of the Family Court "is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Court". The Chief Justice and I share the view that fulfilling that statutory responsibility requires him to use his best endeavours to ensure that judges of the Court work cooperatively together and in partnership with the profession to further the main purpose of the Family Law Rules. That purpose is "to ensure that each case is resolved in a just and timely manner at a cost to the parties and the court that is reasonable in the circumstances of the case": rule 1.04.

  In the context of a similar legislative provision, the positive obligation on judges was referred to by the Supreme Court of Victoria in *Yara Australia Pty Ltd & Ors v Oswal* [2013] VSCA 337; 41 VR 302 at [9], in the following terms;

  - "The court is obliged to give effect to the overarching purpose of the Act 'to facilitate the just, efficient, timely and cost effective resolution of the real issues in dispute'. The court is directed to further the overarching purpose by having regard to the objects and matters articulated in s 9 of the [Victorian] Act which include the efficient use of judicial and

administrative resources and dealing with the proceeding in a manner proportionate to the complexity and importance of the issues and amount in dispute".

- The obligation on parties practitioners was stated by the same Court in the following terms;
  - "The overarching obligations apply to any person who is a party, any legal practitioner, legal representative or law practice acting for or on behalf of a party. The overarching obligations do not override any duty or obligation of a legal practitioner arising under common law or statute to the extent that such duties and obligations and the overarching obligations can operate consistently. But a legal practitioner or law practice engaged by or on behalf of a client in connection with a civil proceeding 'must comply with the overarching obligations despite any obligation … to act in accordance with the instructions or wishes of the client'. A legal practitioner is not required to comply with any instruction or wish of a client which is inconsistent with the overarching obligations, and must not cause the client to contravene the overarching obligations. To the extent that there is an inconsistency between a legal practitioner's duty to a client and their overarching obligations, the obligation prevails. (*Yara Australia Pty Ltd & Ors v Oswal* at [10]."

  - Significantly, in the area of Family Law, parties and practitioners are under an ongoing obligation to continue to explore "options for settlement, identifying the issues as soon as possible, and seeking resolution of them." (Family Law Rules; Part 1 of Schedule 1 clause (6)(e)).

Dispute Resolution and Access to Justice.

- In *Hryniak v Mauldin* [2014] CSC 7 at [1]-[2], the Canadian Supreme Court noted the common problem of ensuring access to justice, as it impacts upon Courts across the common law world, in the following terms:

Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted.

…

Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

- In that context, the Court further said:

There is growing support for alternative adjudication of disputes and a developing consensus that the traditional balance struck by extensive pre-trial processes and the conventional trial no longer reflects the modern reality and needs to be re-adjusted. …

And while going to trial has long been seen as a last resort, other dispute resolution mechanisms such as mediation and settlement are more likely to produce fair and just results when adjudication remains a realistic alternative.

- Writing extra-judicially, Judge Hugh Landerkin and Mr Andrew Pirie have spoken of "a cultural sea change" occurring in our Court systems and, specifically, that:

Courts everywhere now appreciate the positive influences that conflict analysis and management can have on their processes.[1]

- In the area of family law, I'm not sure that we are experiencing a cultural "sea change", but we certainly have a rising tide.

[1] Judge Hugh Landerkin and Andrew Pirie, "Judicial Dispute Resolution 2001: A Space Odyssey or Modern Reality Check", paper presented at the Asia Pacific Mediation Conference, University of South Australia, 29 November–1 December 2001, cited in Valerie Danielson, "Judicial Dispute Resolution, An Examination of the Court of Queen's Bench Judicial Dispute Resolution Program" (2007), Masters Thesis, Osgoode Hall Law School, York University, p.30, fn.93.

- Practitioners and the public are increasingly recognising that the cost of litigation – both financial and emotional – can be overwhelming. Tragically, it is frequently the case that, in family law proceedings, children are adversely impacted by those costs.
- The impact of litigation was emphatically stated by the Hon Kenneth Hayne AC QC, when he said:

> *[It] is as well to state some obvious and well-accepted propositions about why we should want to restrict litigiousness. Restricting litigiousness, or at least limiting the amount of contested litigation, must be one of the fundamental aims of any developed legal system. Anyone who has had direct experience of litigation knows all too well the costs that it exacts from the participants. Those costs are not limited to time and money. The costs in time and money are real and obvious, but the emotional cost of litigation for those who participate in it is often equally pressing.*
>
> *…*
>
> *The costs of litigation are not borne by only the immediate participants in the process. …It is a cost that falls on society as a whole, and society, rightly, expects that the justice system will be conducted as efficiently as possible.*[2]

Collaboration as an alternative to litigation.

- Lawyers involved in the practice of family law have pioneered the concept of collaborative law. This involves lawyers attempting to find solutions to their client's conflicts in circumstances where they commit to not representing that client if the matter proceeds to litigation. In other words, during the period of collaboration, litigation is taken off the table. The aim of collaborative law practitioners is to strive to work together to reach mutually acceptable negotiated settlements. That approach is interest-based, as opposed to a rights-based, which is a more adversarial approach.[3]

[2] The Hon Kenneth Hayne AC QC, 'Restricting Litigiousness' (Speech, 13th Commonwealth Law Conference, Melbourne, 13 April 2003).
[3] Caroline Counsel, "What is this thing called collaborative law?" Family Matters No. 85 (September 2010)

- It is generally accepted that collaborative law is not appropriate in situations of high conflict, including, in particular, family violence. However, research suggests that there are significant benefits to be derived from effective collaborative dispute resolution.[4]

Insist on compliance with formal pre-action dispute resolution obligations

- If you are involved in family law litigation, unless a specified exemption applies, you are entitled to insist that the other party complies with their pre-action dispute resolution obligations.
- Section 60I of the Act reflects the universally accepted policy objective of parties attempting to resolve parenting disputes without resort to litigation. That section requires parties to make a "genuine effort" to resolve disputes concerning parenting matters by utilising the services of a family dispute resolution practitioner, prior to commencing proceedings under Part VII of the Act. Unless a relevant exemption applies, the Court requires parties to provide a certificate by the relevant family dispute resolution practitioner before documents are accepted for filing.
- In the absence of an applicable exemption, a similar obligation exists in respect to property proceedings. At Schedule 1 of the Rules, clause 3 of Part 1 sets out the following:

> *(1) A person who is considering filing an application to start a case must, before filing the application:*
>
> > *(a) give a copy of these pre-action procedures to the other prospective parties to the case;*
> >
> > *(b) make inquiries about the dispute resolution services available; and*

[4] Anne Barlow et al, "Mapping Paths to Family Justice—a national picture of findings on out of court family dispute resolution" [2013] Fam. Law 306.

(c) invite the other parties to participate in dispute resolution with an identified person or organisation or other person or organisation to be agreed.

…

(2) Each prospective party must:

(a) cooperate for the purpose of agreeing on an appropriate dispute resolution service; and

(b) make a genuine effort to resolve the dispute by participating in dispute resolution.

- Those requirements are limited in the sense that, unlike s 60I and the requirements that exists pursuant to the *Civil Dispute Resolution Act (2011)*, which apply to matters filed in the Federal Court and the general division of the Federal Circuit Court, there is no requirement to file a certificate to notify the Court that the party has complied with the obligation of attending dispute resolution prior to filing.
- However, the Respondent to an application will obviously be aware of whether or not the Applicant has complied with their pre-action obligations. Unless a relevant exemption applies, where an Applicant has failed to comply with those obligations, the Respondent is entitled to request that the matter be adjourned to enable that to take place. Significantly, the Court has power to award costs against a party when those obligations have not been complied with.

Insist on your opponent cooperating to narrow the issues in dispute

- Unlike proceedings commenced in the Federal Court and the Federal Circuit Court, unless interim orders are sought, there is no obligation on a party to file a supporting Affidavit with their Initiating Application. There is a legitimate debate as to whether or not this is a sound procedure.

- Nevertheless, the Rules require the parties to cooperate with a view to narrowing the issues in dispute. Specifically, At Schedule 1, clause 3(4) of Part 1 provides that, where the parties are unable to resolve a matter by dispute resolution, "the proposed applicant must give to the other party written notice of his or her intention to start a case".
- That notice must set out:
  (a) the issues in dispute;
  (b) the orders to be sought if a case is started;
  (c) a genuine offer to resolve the issues; and
  (d) a time within which the proposed respondent is required to reply to the notice.
- In responding to that notice, the Respondent must set out whether the offer is accepted, and if not:
  (a) the issues in dispute;
  (b) the orders to be sought if a case is started;
  (c) a genuine counter-offer to resolve the issues; and
  (d) the nominated time within which the claimant must reply.
- Unfortunately and surprisingly, this obligation is more often than not overlooked by practitioners and officers of the Court. Defining issues at an early stage is imperative. Unless and until issues are defined, the parties' obligation of disclosure can be oppressive and disproportionate to the issues in dispute. Equally, it is literally impossible for issues in dispute to be resolved if they have not been properly defined.
- Again, at the first Court event, parties are entitled to insist that the opposing party complies with this very important obligation of identifying the issues in dispute in the matter.

Set trial budgets

- I have earlier referred to the obligation on parties, practitioners and the Court, pursuant to the main purpose of the Rules, to strive to resolve matters "at a cost to the parties and the Court that is reasonable in the circumstances of the case".
- Interestingly, Rules 3.12 to 3.18 of the Civil Procedure Rules of England and Wales empower the Court to direct parties to confer with a view to agreeing upon a trial budget, in order to prevent litigation costs getting out of hand. The rules also empower the court to make a "cost management order" in which the court will record the extent to which the parties have agreed upon a trial budget and the Court's approval of that budget after, if necessary, making necessary revisions.
- Significantly, pursuant to those rules, there is a positive obligation to make a costs management order unless the Court is satisfied that, without such an order, the litigation "can be conducted justly and at a proportionate cost" consistent with the overarching objective. That objective is similar to that which applies in the Family Court.
- The English/Welsh Rules provide that, when making a case management decision, the Court will have regard to the trial budget and take it into account in considering each application for a procedural order.
- No such power exists in the Family Court, although it is, in my view, something that should be given further consideration. Nonetheless, rule 19 of the Family Law Rules, requires parties to provide a cost disclosure notice to the other party and to the Court at various stages of the proceedings. That notice should record both costs incurred and, also, costs likely to be incurred.
- In my experience, the obligation to file a cost disclosure notice is frequently ignored. Practitioners wishing to keep costs incurred by their client in perspective should have regard to the fact that the Court can order parties to

provide cost disclosure notices at any time. There is no reason why a party could not raise the issue of exorbitant or unpredicted costs as a discretionary consideration in circumstances where the other side is unreasonably litigious.

- There are a number of instances where the Court has exercised its discretion, pursuant to s 114, to restrain a party from wasting the property of the marriage. In that context I'm not aware of any case that specifically applies that practice to wastage by unreasonably incurring legal costs. However, it seems to me to be at least possible that such an argument could be made.

Ongoing obligation to seek resolution of matters in dispute

- Clause 6(1)(c) of Part 1 of Schedule 1 of the Rules requires lawyers, unless it would not be in the best interests of the client or a child to "endeavour to reach a solution by settlement rather than start or continue legal action".
- This obligation necessarily applies to applications for interim orders that are made during the course of a matter. In that respect, rule 5.03(1) provides that:

> *Before filing an application seeking interim, procedural, ancillary or other incidental orders, a party must make a reasonable and **genuine** attempt to settle the issue to which the application relates.*

- A similar obligation exists in respect to conciliation conferences. In that respect, rule 12.07(2) provides that:

> *Each party at a conciliation conference must make a **genuine** effort to reach agreement on the matters in issue between them.*

- In the context of the main purpose of the Rules, to which I have referred, this obligation, at a minimum, would require a legal practitioner to be on top of the matter and to be aware of the nature of the other party's case, so that they are in a position to fairly, reasonably and objectively consider an offer of settlement and provide proper, relevant and realistic advice to their clients as to whether the offer is reasonable. The following extracts from cases

concerning Part VB of the *Federal Court of Australia Act* are instructive in that regard.

- In *Mijac Investments Pty Ltd v Graham* [2013] FCA 296 at [49], Tracey J observed that:

> *The achievement of the overarching purpose of the civil practice and procedure depends in part on a practitioner offering objective and considered advice to a client. This includes advice as to matters such as whether a proper basis in law exists for the making and pursuit of a particular application and the contents of any affidavits sworn in support of such an application. Without such advice, the just resolution of disputes according to law and as quickly and inexpensively as possible may well be hampered, if not frustrated.*

- In *Julstar Pty Ltd v Hart Trading Pty Ltd* [2014] FCA 108 at [94], Greenwood J referred to the obligation set out in the case management provisions, in the context of offers to offers of settlement, as follows:

> *[The provision] casts an obligation on the parties to a civil proceeding to "conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose". It follows that when the applicants, in their conduct of the proceeding, received the various offers of settlement … they were required, by s 37N(1), to engage with those offers, in their conduct of the proceeding, in a way directed to identifying whether each offer was conducive to the just resolution of the dispute as quickly, inexpensively and efficiently as possible. That obligation, and the notion of not unreasonably failing to accept an offer, required the applicants to carefully assess all the material, including the discovered material, to determine and confront the strengths and weaknesses in their case.*

- The reality is that it takes considerable self-confidence and often courage of conviction for a practitioner to advise a client of what is an appropriate settlement, having regard to the circumstances of the case and in the context of relevant legal principle. However, by community standards lawyers, are

paid a lot of money – their clients and the Courts are entitled to nothing less than that standard.

Effective preparation is essential for an effective ADR event

- Useful guidance regarding preparation for, and participation in, an ADR event is provided in a Handbook prepared by a leading Canadian Jurist and, as proudly declared by his Honour, his niece.[5] His Honour stressed the importance of being well prepared and hopefully coming to the ADR event with some innovative ideas as to how the dispute may be resolved. In terms of documentation that should be brought to an ADR event, as modified for the family law context, his Honour suggests the following:
  (a) an agreed statement of facts;
  (b) short written briefs, noting that shorter briefs tend to be better received;
  (c) portions of relevant documents, with most important aspects flagged and highlighted;
  (d) copies of expert reports, flagged and highlighted; and
  (e) legal authorities, again flagged and highlighted.

- Prior to a conciliation conference, parties should already have prepared a balance sheet, as well as a Financial Questionnaire, setting out their broader contentions: rule 12.06. In addition, rule 12.02 requires that, where relevant, the following documents should be provided:

> *(a) a copy of the party's 3 most recent taxation returns and assessments;*
>
> *(b) if relevant, documents about any superannuation interest of the party, including:*
>
> > *(i) if not already filed, the completed superannuation information form for the superannuation interest; and*

[5] John A. Agrios and Janice A. Agrios, *A Handbook on Judicial Dispute Resolution for Canadian Lawyers*, (Canadian Bar Association Alberta Branch, 2004), *http://www.cba-alberta.org/Publications-Resources/Resources /Handbooks-Reports/Handbook-for-Lawyers-on-Judicial-Dispute-Resolutio* [Accessed 30 October 2018].

(ii) if the party is a member of a self-managed superannuation fund--a copy of the trust deed and the 3 most recent financial statements for the fund;

(c) for a corporation in relation to which a party has a duty of disclosure under rule 13.04:

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns;

(ii) a copy of the corporation's most recent annual return that lists the directors and shareholders; and

(iii) if relevant, a copy of the corporation's constitution;

(d) for a trust in relation to which a party has a duty of disclosure under rule 13.04:

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(ii) a copy of the trust deed;

(e) for a partnership in relation to which a party has a duty of disclosure under rule 13.04:

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(ii) a copy of the partnership agreement;

(f) for a person or entity mentioned in paragraph (a), (c), (d) or (e)--any business activity statements for the 12 months ending immediately before the first court date;

(g) unless the value is agreed--a market appraisal or an opinion as to value in relation to any item of property in which a party has an interest.

Appropriate conduct in a mediation or conciliation

- Again, useful guidance as to the appropriate role for a lawyer is set out in the Handbook to which I have referred. That Handbook was prepared to assist the process of judicial mediation, however, much of the material has relevance to mediations more broadly. The following summary essentially replicates those suggestions. It should be noted, however, that in some cases, I have modified and adapted the suggestions to the mediation of family law matters.[6] The most pertinent suggestions are:

    1. Ensure that your client has realistic expectations. Unless they are persuaded to have a reality check, litigants with unrealistic expectations are destined to spend months, if not years, litigating and, along with hundreds of thousands of dollars and considerable emotional distress. One technique I use is to request parties to identify, in percentage terms, the portion of the matrimonial property pool that they believe they are entitled to as part of a "just and equitable" distribution. Invariably, each side will say that they are entitled to a much larger portion than 50% each. At that point, I remind them that Judges try their best to do justice but can't create property beyond the 100% that actually exists.
    2. Explain to your client the advantage of a settlement conference, as opposed to a trial. I usually point out to litigants that, if they are able to avoid a hearing, after the marital property is divided between them, they may well be able to get on with their lives in relative comfort, and in a location of their choosing. I then explain that, after legal costs are deducted from any adjustment, they may be unable to afford to live in their desired location and may be forced to travel long distances to maintain contact with their circle of friends and activities.

[6] The following is a mix of extracts from the handbook with a reflection of my own experiences.

3. Explain to your client that the usual adversarial approach will not apply. There will be no grandstanding or badgering. Instead, the client can expect thoughtful and considerate discussion. Further, explain to your client that they must be prepared to be flexible and listen to the other side. Your client must understand that some issues may have to be compromised in the interest of reaching a settlement. This is particularly important in the area of family law, where emotions tend to run high. While rare, it remains the case that some advocates see their role as channelling their client's hurt, frustration and occasionally venom. The client's appreciation of such theatrics may diminish when they receive the memorandum of fess for the performance but their matter remains unresolved.
4. Be prepared to disclose your case to the mediator. The purpose of the mediation is to settle the case, not to ambush the other side. A useful technique is to provide draft proofs of evidence in the form of unsigned statements. With the agreement of all parties and the mediator, it can be made clear that the statements are inadmissible and can't be the subject of cross examination if the matter does proceed to trial. The draft statements can be useful in adding meat to the bone of skeletal contentions.
5. Be prepared that you (and your client) may be wrong. Explain to your client that if the case does not resolve in mediation, and proceeds to hearing, the judge may find that their position is wrong or unreasonable. You and your client should be prepared for this possibility and, again, should come to the mediation prepared to make compromises.
6. If your client's attitude is inflexible and that they will go to trial "no matter what" all you can do is to protect your reputation and your insurer by confirming your advice in writing. Mediation in those

circumstances is probably a futility and consideration might also be given to instructing Senior Counsel at an early point to give a little more weight to sensible advice. The cost of Senior Counsel's advice may be minuscule, compared to the cost of ongoing litigation.

7. If your client is presentable and wishes to do so, let them speak. Issues of credibility are not, of course, determined in mediation. However a favourable impression may have considerable impact on the mediator and, more importantly on the other side.
8. If your client will not make a decision without the input of another person, that person should be in attendance at the mediation. In that context, it is not uncommon for a family law litigant to not want to offend their new partner by agreeing to what the new partner perceives as an overly generous financial settlement with the former partner. In those circumstances, it may well be important for the new partner to attend the mediation in order to become appraised of issues and the advice of the mediator. The same applies to "helicopter parents" who may be funding their child's family law case. Equally, however, if the third party's attendance proves to be an impediment to resolution, the mediator may request that they cease to play a part in the mediation.
9. Forget the adversarial role. You are there to settle. It is often extremely valuable for an advocate to openly acknowledge the weaknesses in their own case. That tactic enables the advocate to frame the weakness in their own terms and can avoid the discomfort of a hand grenade landing on the negotiating table when the issue is raised by the opponent. Be objective and endeavour to appreciate the other side's case at its highest.
10. As previously noted, ensure that your written material is short and to the point, with all transcripts, reports and authorities flagged and highlighted.

11. Be aware of relevant, and hopefully recent, Full Court authority on the issue or issues that your client is agitating. Bring along a copy of a pertinent decision also flagged and highlighted.
12. Be concise. Come prepared to make succinct, short statements that have been carefully thought out. Remember, if the mediator has been afforded the appropriate courtesy of being given an advance copy of the papers, then it is likely he or she would have read them and knows the issues.
13. Be persistent. If at first a settlement seems unlikely, keep trying. In some cases, the parties get very close to settling but cannot bridge that final gap due to emotion, stubbornness or any number of reasons. In these cases, it is often beneficial to end the discussions for the day with the understanding that the discussions will resume in the next few days, when cooler heads prevail. Many cases that do not settle on the day of the mediation, settle during the following week.
14. Seek the assistance of the mediator. While this is a controversial topic, it is my personal view that, if a mediator has been chosen for their expertise in the area, in this case, family law, there is nothing to be lost if a stalemate is broken by politely asking the mediator to express an opinion or even a range of likely outcomes if the matter was to proceed to litigation.
15. Finally, do not let yourself be brow beaten by the mediator if they are totally unreasonable. The purpose of mediation is not to create a forum where totally unmeritorious claims are given go away money. If, after undertaking appropriate preparation, you are satisfied that the law and facts are on your client side, and the mediator is trying to lock your client into an unacceptable compromise, you are well within your rights to professionally and courteously terminate the mediation.

What to do if the mediation fails

- A failed mediation is not the end of the world. Some cases just have to go to trial, either because of the complexity of issues or because of the stance taken by a particular litigant or, indeed, a legal advisor.
- Start preparing your case for hearing, attempt to limit the issues in dispute and, at the same, to maximise the prospect of your client obtaining an order for costs.
- While it is not frequently used in family law proceedings, it may be useful to serve a Notice to Admit Facts. In that respect, rule 11.07 relevantly provides that:

> *(1) A party may, by serving a Notice to Admit on another party, ask the other party to admit, for the purposes of the case only, that a fact is true or that a document is genuine.*
>
> *(2) A Notice to Admit must include a note to the effect that, under subrule 11.08(2), failure to serve a Notice Disputing a Fact or Document will result in the party being taken to have admitted that the fact is true or the document is genuine.*

- A party who contests an asserted fact is potentially liable for costs incurred as a result of the necessity for the party who served the Notice to Admit having to prepare and submit evidence in respect to that factual assertion (r11.08(3)).
- Where possible, a Notice to Admit should be prepared on the basis that the asserted facts are set out under the headings of the issues that are identified as being in dispute.
- In my experience, a particularly useful application of a Notice to Admit is in respect to the factual foundations relied upon in a single expert report. Going to the effort of setting out the relevant facts in a Notice to Admit can increase

the likelihood of the expert's report being accepted by the opponent or, at least, reducing the length of cross examination if the case runs to trial.

- Indeed there is no reason why the expert's conclusion cannot be set out in a Notice to Admit. This may obviate the need for any further participation by the expert in the proceedings and provide a foundation for settlement negotiations.

Conclusion

- There are many who will argue against some of the propositions that I have included in this presentation. I recognise that, in a perfect world, each and every citizen would be entitled to not only have their case heard in court but to also receive legal assistance for that to occur.
- That argument, with respect, ignores the reality of the situation faced in virtually every court in the common law world. Public resources are limited and public resources allocated to hearing cases should be proportionate to the issues in dispute. If a matter can be resolved on a fair and reasonable basis without the parties and the public incurring considerable expense, then it should be. The overwhelming majority of practitioners who I have spoken to recognise that reality.
- Moreover, litigation can be brutal on the budget and the person. I have been a judge for approximately three and a half years. The people I see at the end of their case are not the same people they were at the start. Many present as being hollow and simply wrung out. In the Family Court, we frequently read about the psychological and even physiological impact of conflict on children of litigating parents. It can be devastating for them and it may take years for them to recover.
- Lawyers are champions for their clients - they have a solemn fiduciary duty to act in their best interests. Occasionally that may be advising their client to litigate and to conduct the litigation until finality. That course should,

however, be the action of last recourse after every reasonable attempt has been made to resolve the matter.

- Remember – good lawyers are great advocates but great lawyers find solutions.