

TAB 1

Effective Interviews and Thorough Client Preparation

Chantal Desloges, C.S.
Green and Spiegel

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CONTINUING LEGAL EDUCATION

Effective interviews and thorough client preparation

Prepared by: Bahman Motamedi and Chantal Desloges

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The preparation of, timing of, and need for interviews varies from client to client and, more generally, the type of services you will be offering – ie) the amount of time one needs to invest interviewing with business applicants differs from refugee claimants.

One needs to develop a road map for the questions that he/she will ask for each type of client with the understanding that the process will have to be flexible (despite your daily time constraints) to allow for the client to disclose all relevant information.

Factors to consider in client interviews¹

Initial Client Contact

Building rapport with the client is absolutely fundamental. The client's first impression of you is formed within minutes, and it is lasting; therefore, it is worth investing extra time and effort into the initial meeting for the purpose of building rapport and getting down the client's history in their own words.

A client's comfort level dictates the ease with which they share information with legal representatives. This notion of comfort is tied to perception of security, compassion / empathy, and expertise. The client must trust you and feel that you care about the problem. If you fail to connect with the client and foster in them a feeling that you understand, are on their side, and sympathize with them, you will almost never get the whole story.

Particularly in an immigration and refugee context, never forget that the client is coming to you at a time when they are frustrated, confused and worried about a variety of things, many of which extend beyond their legal problems. Your role as an advocate depends greatly on your ability to extract the relevant information from your clients. Without the ability to gain your clients' trust, you will not succeed as an advocate.

Over time, we lawyers tend to take certain things for granted which are not obvious to clients, so we forget to explain the basics. For example, it is important to explain to them the concept of confidentiality and to assure them that your conversation will not leave the room. It is important to explain what is the purpose of your initial consultation, and what is and isn't the role of a lawyer within the Canadian system.

In addition, our training as lawyers encourages detachment and rationality. We are taught in law school and in Bar admission to be "neutral advocates", to be unemotional, and not to give assurances. Some lawyers interpret this to mean that one should not empathize or be reassuring to a client. However, this is exactly what we need to do with

¹ Some of this material is from Doug Cochran's *Interviewing Skills for Legal Professionals*, Emond Montgomery Publications, 2003

our clients in order to increase their trust level and willingness to participate in the process, all the while not giving rise to false expectations. Therefore, it is a very fine line between the two extremes.

Moreover, as practitioners we need to take control of our schedules. Aside from having to work on the files of existing clients, we are constantly inundated with emails and phone calls, as well as having to devote time to the development of our client base. Many practitioners conduct initial consultations at all times during the week, instead of designating specific time frames for meeting with clients. This is problematic as our attention span is not the same during the course of the day and often we are distracted by other obligations. The end result is that we rush through the initial meeting, not having surveyed all the important issues, as well as leaving a bad impression with prospective clients. Clients will always refer back to the initial consultation in order to qualify our subsequent instructions and expectations from them which can result in the breakdown of solicitor-client relationship.

Identifying the Legal issues

It is important to note the role of emotional inhibitors in the timely disclosure of the issues. In other words, your client will often have emotional and psychological barriers which prevent them from opening up and sharing information with you readily. The problem is, as a practitioner, you have the competing goals of managing your time efficiently and yet still obtaining all the information that is required in order to provide advice and make competent representations. This is particularly germane in Legal Aid cases, where the number of hours allotted per claim is unrealistically low.

The temptation is to rush the clients or cut them short, because practitioners feel that they need to do so in order to identify the legal issues quickly and efficiently. It can be difficult to avoid this temptation, especially when you see the client rambling on about seemingly irrelevant details, or running down rabbit trails without hitting the points that you deem are relevant.

However, legal advice which is limited to solely an understanding of narrow legal issues may have disastrous consequences for the client. Clients rarely see their legal issues separately from the other concerns in their lives. The implication is that when a practitioner limits the interview to exploring specific events, not allowing the client to explore all that concerns him/her, then the client feels removed from the process and will often withdraw from the process and leave out information that is actually relevant to the legal issues.

Managing Client Expectations and Motivations

As with every other aspect of social interaction, communication is crucial to the management of expectations. Clients need to feel that they are part of the process, and the mere knowledge that you are doing your legal best is not enough.

The time you invest during the first meeting with client in outlining the process (which preferably is accompanied by an engagement letter reflecting the conversation), the number of steps that need to be taken, the role of the client at each step, and the general timelines and chances of success, has the following benefits:

- Reducing the number of status and procedural inquiries from Clients
- Clarification of the client's obligations in the process
- Reducing liability resulting from complaints
- Building client rapport and trust

In an extensive report released in summer of 2000,² LAWPRO highlighted the fact that lawyers today are facing more complex challenges in operating a practice. The statistics provided were compiled for over a decade, and take into account past claims in terms of numbers and the costs incurred by litigation practitioners.

The following is the statistical breakdown of the types of errors resulting in claims:³

- 35% Administrative errors (including calendaring and procrastination)
- 27% Breakdown of lawyer-client relationship
- 23% Failure to know, apply the law, meet deadlines
- 9% inadequate discovery of facts and other substantive errors
- 3% Conflicts of interest
- 2% Intentional wrongs
- 1% Other

In reviewing these statistics, it is worth noting that what lawyers perceive as errors, such as substantive mistakes and conflicts of interest, are insignificant in comparison to administrative errors and relationship breakdown⁴. In other words, clients complain far more frequently about delays in completing work and not returning phone calls than they do about actual legal mistakes. The report further defines breakdown of lawyer-client relationship to rise from such issues as poor communication with the client and failure to follow instructions.⁵

Moreover, the potential pitfalls in the interviewing process include the failure to appreciate the underlying motivations of clients, and the fact that you may be "blindsided" if you rely solely on your client's version of the events, as opposed to cross-checking their version with objective information and your own common sense. Despite our roles as advocates, we have to guard against becoming a tool or dupe for the client. This is not to say that we have to look for misrepresentation under every stone, but simply to note that clients' motivation range from expecting you to do all the work without any of their participation, to those who say things just to please you, or who are too stressed and inhibited to be able to share all the information that is required.

² Special Report from LPIC, "Litigation Claims Exceed Real Estate Claim. Lawyer Conduct is Deteriorating. All Practitioners Should be Alarmed." (Summer 2000) <http://www.practicepro.ca/information/default> [**Special Report**].

³ *Ibid.*

⁴ **Note:** These trends are similar in other areas of practice such as family, real estate and wills/estate. The LAW PRO Magazine, Winter 2007 Volume 6 Issue 1, reports that in the context of wills and estate claims the following was noted: lawyer-client communication failures accounted for 40% of the claims, failure to know or apply law accounted for 14% and conflicts of interest only accounted for 6% of claims;

⁵ *Ibid.*

Keys to a Good Interview

As stated previously, building rapport with the client is essential in establishing trust. A fundamental part of this process is our ability to listen as interviewers. One must use both verbal and non-verbal cues to indicate to the client that he or she is being heard. Accordingly we must monitor not only the language we use but also our gestures, always trying to remain neutral and open to the sensitive information the client may be hesitant to share.

This is particularly critical as some clients approach us not with the best of intentions. They are looking to read us and ascertain what they perceive would improve their chances of success. Regardless of the clients' intentions, it is imperative to allow the clients to convey their experience in their own words, before we begin to isolate the issues and information we need to determine the proper course of action. Often we forget that our role in this process is two-fold; namely, we must first gather all the relevant information before offering our legal advice.

Further, during the interview it is crucial to take detailed notes and share our recording of the facts with the client in the form of an engagement / non-engagement letter. The challenge remains for us to maintain eye contact, appear interested and reflect the information back in clients' own language, avoiding the use of legal jargon as much as possible.

The ability to pay attention and reflect back to the client that you are listening is normally not a hard task. However, this proves to be the greatest challenge for practitioners (as business management skills are not the focus of training in law schools or articling) as we have to be able to set aside all of our daily distractions and actively listen to the client sitting in front of us.

Factors that must be considered in the immigration context

The Role of Cultural Inhibitors⁶

In the immigration context and in particular when it comes to representing refugee claimants, this issue is further complicated by the cultural differences that inhibit the exchange of information. Culture is a set of learned patterns of thought and behaviour, shared and passed down by a group of people. It consists of traditions, beliefs, values, norms and symbols, the meaning and importance of which are shared in varying degrees by members of the community. Culture includes material and artistic objects created and used by the group. Culture is dynamic and ever changing.

The notion of intercultural competence refers to the ability to communicate effectively with people belonging to cultural groups different from our own. Cultural fluency is a combination of knowledge, understanding, skill and attitude that is the basis of the ability

⁶ The following excerpts on Cross-cultural communication are derived from a lecture given by Yasaman Rafat, Department of Spanish & Portuguese, University of Toronto

to communicate effectively across cultures. Cross-cultural competence is of immense value to you, given the enormous cultural diversity of your future clients.

Attitude

Our ability to look and understand the behaviour of other cultural groups can be influenced by our attitude. Barriers to intercultural competence include ethnocentrism, stereotyping, assumption of similarities, prejudice, racism and discrimination. On the other hand, aids to intercultural competence include acceptance of cultural relativism, mindful observations and embracing paradox.

Knowledge

The foundation of intercultural competence is knowledge about our own and other’s cultural patterns (patterns of thought and behaviour). The behaviours of others are not always the problem; rather it is often our expectations about their behaviours that cause misunderstanding or frustration. One way to prevent such frustrations is by becoming aware of our own cultural patterns and observing the cultural patterns of others with whom we interact.

It takes a long time to gain an in-depth knowledge of a culture. In order to become familiar with a particular culture, one can start interacting with and observing and asking questions of the members of that culture. One can also further increase his/her own cultural knowledge by reading about different culture and watching foreign movies.

According to Edward T. Hall, the founder of intercultural communication studies, cultures can be divided into two categories, high and low context. The distinction is drawn according to the way each culture derives meaning from its environment (for example by words or more holistic framework of communicative signs and symbols). He ranked cultures on a continuum of high to low, acknowledging that no culture is completely one or the other.

Comparing Cultural Programming Norms and Values:

Aspects of culture	Low Context (Mainstream North American Culture)	High Context (Japanese, Arab, Southern Europe)
History/society	Culturally diverse and less cultural knowledge is assumed about people.	Long history and tradition and a homogenous society. Hence people’s thought patterns are predictable.
Communication/ Language/ Meaning	Is explicit. Words carry most of the information. Fact based. Implicit-written or verbal info is not required, because people share a lot of knowledge about each other.	Intuition based. Meaning is derived from Contextual clues in the environment, situation, gestures and the players: age, sex, family and social and professional status

Conflict Management	Direct and quick in negotiations. A no nonsense approach! Disagreement is dealt with openly. People state their positions to reach a resolution. It is ok to say 'no' and it is not taken personally.	Conflicts are dealt with discretely in order to maintain harmony and long relationships. Direct confrontation is rare. Overt disagreement is best avoided! Mediators and go-betweens are common (behind the scene). It is difficult to say 'no'.
Contracts	Written out, signed and binding.	Often verbal and may change. Oral agreements can be sufficient.
Formality	Informal. "Dress for success" ideal. Wide range of accepted dress.	Formal. Dress seen as a sign of position, wealth, prestige. Religious rules.
Mental Processes	Linear, Logical Sequential. Problem solving focus	Lateral, holistic, accepting of life's difficulties
Time and Time Consciousness	Linear and exact time consciousness. Value on promptness---time=money	Elastic and relative time consciousness Time spent on enjoyment of relationships
Beliefs and Attitudes	Egalitarian Challenging of authority Individualist Gender equity	Hierarchical Respect for authority and social Order Collectivist Different roles for men and women

Cultural Programming (Client Handling & Questioning Techniques):

Meaning

Given that in high context cultures meaning is conveyed through body language, when interviewing clients or presenting their cases you need to pay close attention to their gestures. It is essential that you ask for clarification when you do not understand the message that they are trying to communicate. It is wrong to make assumptions about what they are trying to say as same gestures can have a different meaning in different cultures. For example a repeated nod of the head from left to right and back, two or three times in North America signifies a 'no', the same gesture in Sri Lanka and Bulgaria means 'yes'. You need to be mindful of the fact that long silences may indicate disagreement, while in contrast the North American approach views silence as a sign of acceptance. When dealing with high context cultures, say a woman from Japan, where meaning is implicit, you may mistakenly interpret her lack of explanation as a sign of her unwillingness to co-operate with you. In order to avoid miscommunication you need to ensure that you ask as many questions as possible in order to elicit the necessary facts about her case.

Conflict Management & Beliefs and Attitudes (respect for authority)

When dealing with clients from a high context culture you should bear in mind the concept of 'saving face'. Given that conflicts are viewed as "taboo" in some cultures, your clients may not openly disagree with you and may even agree with you in order to avoid an "embarrassing situation". It is necessary that you remember that a "positive" answer does not always mean that your client is truly in agreement with you. In addition, when eliciting information/ questioning your client, you may find that some clients view you as an authority figure and in order to please you and preserve their relationship with you, they may attempt to "read you" and tell you exactly what you want to hear and not necessarily the facts of the case. You will need to remind them not to guess what you want to hear. Such behaviour is often observed during immigration and refugee hearings, where the claimants would be guessing what the other parties (figures of authority) wanted to hear and would formulate an answer in order to please them.

Contracts

When requesting documents from your clients you need to be aware of the fact that they may not be able to provide you with the necessary police reports or 'written' evidence, given that in many countries people work with one another on a "trust basis" and make oral agreements. This can be problematic as the legal system in Canada heavily relies on documents and (the Federal Court) has stated that the burden of proof is on the claimant.

Formality

When dealing with clients from a high context culture, if you want to be better trusted and respected, it is a good idea that you dress professionally. You will find that some of your clients who may not wear a suit on a daily basis given their jobs, will still appear before you in a suit to gain your respect and demonstrate their wealth/status in society. Similarly, they expect to see their advocate dressed according to their position and rank in society.

Mental Processes and Time

When questioning clients, it is necessary that you be aware of their mental processes and the way in which they provide information/ talk about the facts/incidents as they relate to their cases. While the legal system requires them to give evidence in a linear, logical/chronological manner, they may want to recount very minute unrelated/unimportant details and digress (in the eye of the legal system) without consideration for lack of time. Hence, instead of asking open ended questions you as Counsel may need to ask more specific questions in order to ascertain the relevant information needed.

Interpreter use and interviewing skills

Many of your clients do not possess the ability to speak English. In cases where you do not have knowledge of their language, you will require the services of an interpreter. In such cases, given that communication is done through a third party, it is more prone to

creating misunderstandings. The following tips will help you work better with interpreters and minimise the occurrence of miscommunication.

Choice of interpreters & Language/dialect of interpretation

A poor interpreter/translator can be the difference between the success and failure of the case.

Always try to hire certified interpreters. The interpreter must be fully competent in both English and the target language and preferably the dialect of the client. It is important for you to recognise that various languages and dialects might be spoken in the same country. Hence you may require different interpreters for people who are from different regions of the same country. For example, in Somalia the official language is Somali. However Somali, although spoken by many Somalis, it is not spoken by all Somalis. You will notice that people belonging to different tribes will speak different languages. For instance, Bajunis who come from the coastal areas of Somalia speak Bajuni, a language similar to Swahili.

Although dialects are often mutually understandable, you must be mindful of the fact that the interpreter may from time to time need to clarify the meaning of a word/expression with the client, given the variation in vocabulary and pronunciation across dialects. For example, Spanish is spoken in Latin American countries with the exception of Brazil. However, the Spanish dialect that is spoken in Argentina is different from the Spanish dialect that is spoken in Colombia. Although people from Colombia can easily understand those from Argentina and vice versa, from time to time they may have to clarify the meanings of some words or expressions. For examples a person from the province of Mendoza in Argentina may refer to the word 'theft' as 'el zhobo', where as a person from Colombia would say 'el robo'. The Mexican word for bus is "camion" but the Chilean equivalent is "el Micro", whereas the standard word for it in Latin America is 'el autobus'.

Communication with the Client -- Instructions to Client through the Interpreter

Before you begin gathering information about the client's personal information or history you must clarify with both the interpreter and the client (through the interpreter) that they have no difficulty understanding one another. You/the interpreter must instruct your clients to speak in short sentences in order for the interpreter to be able to be able to interpret everything they have said fully and accurately. You / the interpreter must inform the client that the interpreter is neutral and is only there to assist with interpretation. This is because at times the perception in the community is that the interpreters are "experienced" and in "favour" of clients and are willing to help the client by "correcting" their testimony. You/the interpreter must let the client know that the client must let you/interpreter know if he/she is having difficulty understanding the interpreter, so that you can stop the process. This is very important in the hearing room as you have to make sure that your client's right to be 'heard' is protected and not infringed on. You/interpreter must instruct the client to only listen to the interpreter and not to you, even if they speak/understand some English, in order to prevent confusion.

You/interpreter must instruct the client to wait for the interpreter to finish before they respond.

Your Speech

You must speak slowly, clearly, directly and in short phrases. Try to use a simple language free of idiomatic expressions and as they are often difficult to interpret. For example instead of saying "I am all ears" say I am listening. Adapt your questions to your clients' capabilities and understanding. For example you can ask more sophisticated questions from a medical doctor than a person who has no education. Try not to interrupt the interpreter while they are translating.

Conclusion

When we think back to the time we completed our studies and articling, it is safe to say that our main concerns were job security and the ability to transition into the role of competently representing clients based on our own judgment and understanding of the law. Rarely did we ever have the opportunity to hone our information gathering and client management skills. Yet, such tasks are absolutely essential to our role as advocates.

We are all fully aware of the duty to adequately communicate and follow client's instructions, and yet the statistics on the complaints filed against practitioners time and again demonstrate that having sound legal skills also requires the ability to effectively communicate with a variety of clients from all walks of life, most of whom are approaching you at a critical point in their lives and are hampered by language and cultural differences that you must overcome.

Ultimately, there are two keys to success in interviewing clients: first, we must be honest in assessing our own strengths and weaknesses as interviewers, and second, we should strive to manage the daily demands of our practice so we can set aside uninterrupted time for consultations with clients.