

## **THE SKILL SET OF A CO-OPERATIVE PROBLEM-SOLVER: Value Added For Clients**

The legal landscape has been undergoing significant change over the past few decades brought about as a result of concerns over the high costs of litigation, backlogged Courts, a tendency toward court – mandated mediation and judicial settlement conferences. As a result, clients', both institutional and individual, needs and expectations have changed. They are looking for their lawyers to be problem-solvers – lawyers who are not only competent and well versed in the rights-based adversarial legal system but also have the ability to be collaborative and solve their problems thus avoiding expensive and protracted litigation. Clients are looking for value from the legal services they engage.

Clients' demands have expanded to include expectations that their lawyers have the skills to negotiate co-operatively and an attitude and mindset conducive to effectively and efficiently resolving issues. Thus, this requires an expanded role and skillset for lawyers and a broadening of the culture in which lawyers work and interact.

The traditional role of the lawyer – that of a zealous advocate and competitive negotiator does not fit every type of dispute or problem. As client centered, collaborative processes are becoming more commonplace in the legal arena, clients are seeking lawyers who can go beyond the ability to look at issues logically and in a rights-based fashion, think outside the box and assist in tailoring creative, mutually satisfactory solutions.

### The Litigation Culture

This change of mindset can be challenging for lawyers. After all, the culture and norms of lawyers are comprised of a number of drivers that influence and reinforce adversarial values. This begins with legal education and training with its rule orientation based on the adjudicative model as well as the highly competitive and individualistic law school environment.

As well, the adversary system itself with its positioning and aggressive competitive strategies and tactics, aggressive adversarial negotiations and lack of information sharing reinforces these values. Further, the structure of law firms tends to be hierarchal in nature and highly competitive.

These drivers, accordingly, make it more difficult for lawyers to take on this enhanced role of a co-operative problem-solver.

### Effective Problem-Solver Skill Set

What does it take? Seven Important Steps.

1. Appropriate Case Selection – The lawyer should have an openness to collaborative problem-solving processes. This begins with recognition that the adversarial model of dispute resolution does not fit with every dispute and that

there are many disputes that may be better suited to an alternative approach to resolution. Hence an early appraisal of whether such a process is an appropriate alternative to adjudication given the client and the particular circumstances of the case is necessary.

2. Client Education – It is critical that the lawyer inform and explain to the client the particulars of the problem-solving process so that the client gains a good understanding and a willingness to put in a good faith effort towards resolution.
3. Preparation – It is important that the lawyer has a good understanding of the case including the evidence and legal issues and is clear about what is negotiable. It is also important that the lawyer pays attention to the other party's needs and expectations.
4. Adopt a Collaborative Role – It is essential that the tone and mindset of the lawyer is conciliatory and collaborative with a view towards joint problem-solving. An orientation of understanding not only the client's own needs and concerns but the needs and interests of the other party is essential. Understanding what is driving the dispute from the other side's perspective is also useful as well as a willingness to approach a collaborative negotiation process in good faith and with a constructive attitude.
5. Communication – This is vital to the process and entails different communication and listening skills that might otherwise be employed. Good communication skills require the ability to speak effectively, listen with understanding as well as an information sharing ability to empathize and build rapport with the other party.
6. A Shift in Control – This involves a shift from a lawyer-centered approach to a client-centered approach where the client is empowered in the process and plays a key role in the discussion and decision making.
7. Creative Problem-Solving Abilities – These abilities are crucial to the process and involves the lawyer thinking outside the box of traditional remedies and solutions to a broadening of the options generated for resolution.

### Conclusion

All across the country, lawyers are seeing demands from their clients to be problem-solvers. If lawyers were trained to consider the possibility of cooperative resolutions tailored to the needs of all parties, this would greatly enhance their services and value to their clients. The suggestion is not to completely abandon litigation and adversarial representation but to add more cooperative dispute resolution mechanisms and styles to the lawyering toolbox.

These additional skills need to be ignited through training and lawyers' attitudes broadened through education in the area of collaborative problem-solving and negotiation in order to enhance lawyers' value to their clients.

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