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CAREER & PRACTICE

How lawyers can embrace their inner 'chicken'

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"Chicken?" Why not? I would like to talk about a subject many of us in the legal profession are afraid to discuss: fear. As lawyers, our work can be stressful, leaving us gripped with fear. This must be a relevant issue, as with my glance at a thesaurus, I note that there are at least three synonyms for fear beginning with the just letter "a" alone—namely "anxiety," "alarm" and "angst."

Can an exploration of fear help us in our practices? Napoleon, in describing military genius, said something like: The true genius is the one "who can do the average thing," when those around him grow hysterical with emotion and fright.

And isn't litigation a type of warfare? As lawyers, we are soldiers. We do not actually get conscripted. It's not like the government sends lawyers a draft notice ordering us to defend Harvey Langley in the divorce action started by his wife, Mabel. We are more like mercenaries—still soldiers. And here in Canadian courts, we even wear uniforms, donning black robes and white tabs. In England, the barristers (or trial lawyers) also sport those wigs. I can see how this bellicose attire can serve to terrify the enemy.



Marcel Strigberger.

In our routine as litigators, we show up daily knowing that we are in for a battle. We often hear the comment: A trial is not a tea party. Then again, some trials might indeed remind us of a tea party, namely *Alice in Wonderland's* tea party with the Mad Hatter.

Once, in criminal court while waiting to be called, the case before mine involved some firearms offense. The judge, having a reputation for being erratic and bizarre, took hold of the pistol in question—Exhibit C—as the defendant was testifying and started playing with it, seemingly oblivious to the testimony of the witness. The defense counsel said to the judge: “Your honor, I see you examining this gun meticulously, and I am not sure you are catching all of the evidence.”

The judge became livid and adjourned the case, telling the lawyer that he was considering charging him with contempt. The judge reminded me of the Mad Hatter and of the Queen of Hearts, who goes around shouting, “Off with their heads!” The madness of some judges can certainly generate fear in lawyers. I’m sure that poor lawyer felt angst. Big time.

We have other sources of fear. One is missing limitations or procedural deadlines. A common one here in Ontario is the two years that someone has to issue a claim post-accident. Though we are repeatedly urged to establish a good tickler system, some lawyers still miss limitation dates. Or they almost miss them but raise their blood pressure by catching it at the last minute.

Toronto’s time zone is Eastern Standard Time, like say, New York. However, the western Ontario city of Kenora is in the Central time zone, like say, Chicago. A lawyer from Kenora once spoke at a seminar here in Toronto and told us that he sometimes gets frantic calls late in the afternoon from EST lawyers, who realize that their claims are in their eleventh hour. They provide basic details of their case, and the Kenora lawyer has that extra hour to get the claim done and issued at his local courthouse, ergo saving their butts. Phew!

I actually took his business card—only to keep it pinned on the corkboard in my office where I collect funny cartoons. It often served to remind me not to leave important matters to the last minute. I actually scribbled on it an image of a character with a halo and wings. It added to the chuckles that the cartoons gave me to ease tensions.

That gets us to clients. Can they strike fear in a lawyer? Actually, they can be a bigger source of fear and stress than other sources, including mad judges or procedural hurdles or even nasty lawyer opponents.

I would often fear that my client would blow the case. For example, in preparing for a personal injury examination for discovery, also known in some parts as a deposition under oath, we would instruct the client to be conservative when asked how severe that their symptoms were on a scale of 1 to 10. At the office rehearsal, the client would say something like a 6 to an 8. Notwithstanding, at the examination, when asked, many clients would blurt out an ugly three letter word: The number 10. Sometimes, they would one-up this answer when asked whether they ever felt better since the accident, replying emphatically: “Never.”

Given that fees on these files are on a contingency percentage basis, I would feel like I was personally writing a check from my pocket to the insurance company.

Are there ways of dealing with these stressful fears? Some literature suggests that anxiety is often caused by catastrophizing a situation. If an event makes you feel like your case is sinking like the *Titanic*, just say to yourself something like: “Not the end of the world. Worst-case scenario: It’s only money.” Does that help? It might to a certain extent, but I’m not so sure how well that works when it’s your money. My mood would start going south when, once again, I would see myself writing out that check to that insurance company.

Then there are the classical bromides of solace, including phrases such as: “Everything happens for a reason.” It sounds OK until you ask: “Why is it happening to me? Give me a good reason.”

Taking a brisk walk can be helpful to interrupt the fear pattern. I would often saunter out for a half-hour or so after lunch, at times walking through a nearby old cemetery. Aside from benefiting from the exercise, I found it a relaxing switch to go from reading nasty threatening emails to scanning some of the inscriptions on the tombstones.

I realized that unlike the occupants of this venue, I still had choices. This experience helped clear my head a bit. This is important, as with a clear head you can perhaps “do the average thing,” like Napoleon said. Or if you’re in a pickle, you might just think about calling that lawyer in Kenora.

As lawyers, we are engaged in battle with a colleague who also thinks they are right. Can we banish fear? I am not sure whether we can do so 100%. But do we need to banish it totally? Perhaps we can take some comfort in the wise words of Mark Twain, who said: “Courage is resistance to fear, mastery of fear—not absence of fear.”

The bottom line? it’s OK to sometimes feel “chicken.”

*Marcel Strigberger, after 40-plus years of practicing civil litigation in the Toronto area, closed his law office and decided to continue to pursue his humor writing and speaking passions. His just-launched book is *Boomers, Zoomers, and Other Oomers: A Boomer-biased Irreverent Perspective on Aging* (<https://marcelshumour.com/books>). For more information, visit MarcelsHumour.com and follow him at [@MarcelsHumour](https://twitter.com/MarcelsHumour) on Twitter.*

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