DEALING WITH THREATS TO COUNSEL

By David Wotherspoon and Katie Peardon

"… 3) You are demonstrating your unmitigated incompetence and stupidity every day to this city and the entire country. Basically, you are a clown, complete with big red nose and floppy shoes. That conclusion is readily applied to your firm as well.

4) It is my information there will likely be no defence offered. The upside potential, vis-à-vis hourly billings is next to nothing. This entire exercise has virtually zero return possible, another fact any mental midget would have recognized immediately going in. But not you.

In conclusion. You have a week to resign as counsel. I will remove your pure dopey mug from public view on my blog. Fail to do so and that too generous offer to a full on retard is rescinded."

Internet anonymity enables and even seems to inspire some people to post defamatory statements or send malicious messages to others. As counsel receiving these kinds of messages, what is the correct response, and what considerations should you take into account?

An example of the sort of message that might be received is the following (a true story). A lawyer represents a plaintiff in British Columbia suing the author of an online publication for defamation. After filing the claim, the lawyer received an email from an anonymous sender with the subject line, "Why you are a total disgrace", which included the demand quoted above. Other emails have been sent to the lawyer and other members of his firm, defamatory statements have been posted about the lawyer online, and complaints have been made to the Law Society.

In the face of a threat to counsel, what do you need to bear in mind when considering the correct response?

Threats may come in many forms ranging from the trivial to the significant, and from the subtle to the overt. Much guidance comes from the Canons of Legal Ethics in the *Code of Professional Conduct for British Columbia* (the "B.C. Code"),[1] as well as the B.C. Code itself. As the Canons remind us, we are privileged to be members of such an honourable profession, and we must be mindful that such privilege comes with a variety of obligations.

The B.C. Code tells us that "[a] lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client."[2] The commentary goes on to say,

> Having undertaken the representation of the client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for a lawyer to withdraw on capricious or arbitrary grounds.[3]

The question counsel must then ask themselves is this: do personal threats to counsel constitute good cause to withdraw from representing a client?

"What else can be said?

*You're pure, pure *** scum of the highest possible order, it amazes how ***'ed you actually are in the head."*

The Canons emphasize that "it is a lawyer's duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, *be faithful to clients*, be candid and courteous in relations with other lawyers and demonstrate personal integrity."[4] Further, "the lawyer should represent the client's interests resolutely and without fear of judicial disfavour or public unpopularity."[5]

The B.C. Code goes on to state, "[w]hen acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect."[6] The commentary emphasizes:

> In adversarial proceedings, *the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law*.[7]

As lawyers, we must be ready, willing, and free to take on unpopular cases, and to fearlessly advance our clients' positions within the bounds of

the law. As Lord Denning remarked in *Abraham v. Jutsun*,[8] counsel's duty is "to take any point which he believe[s] to be fairly arguable on behalf of his client", while it is for the court to determine the effect of that legal argument.

In light of the duty to fearlessly represent clients, the receipt of threats and demands stemming from counsel's representation of a client would not constitute good and justifiable cause for withdrawing legal representation. On the contrary, such attempts at intimidation may even strengthen the lawyer's duty to advance their client's position. To abandon a client or the client's claim in the face of intimidation from an opposing or outside party would be a disservice not only to the client, but also to the public's confidence in the profession as well as our legal system.

> *"I believed I had nothing further to add, however, today I was contacted by U.S. media regarding you and your ridiculous firm's fully grotesque conduct.*
>
> *Rest assured, I will* ***always*** *have time for these types of inquiries."*

Assuming the correct approach is to continue representing a client in the face of threats or demands by third parties, how should counsel respond to these kinds of communications?

Again, guidance is found in the B.C. Code, which provides that "[a] lawyer has a duty to carry on the practise of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity."[9] The commentary emphasizes that "[i]f integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be."[10] Integrity and a good reputation are among a lawyer's most valuable assets.

In a similar vein, "[a] lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice."[11] Specifically,

> Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. *Personal remarks or personally abusive tac-*

> *tics interfere with the orderly administration of justice and have no place in our justice system.*[12]

This statement applies equally to counsel's communications with other lawyers as it does to all other persons with whom the lawyer deals in the course of their practice—even anonymous bloggers making threats aimed at strong-arming counsel to resign. Accordingly, lawyers are expected to remain level-headed and courteous in the face of abusive tactics by other parties or outsiders. If counsel believes a response to these types of communications is absolutely necessary, it is important for them to remain courteous, polite, and professional in their communications.

Tempting as it might be to engage in witty repartee with an anonymous blogger, or any other party trying to get a rise out of you as counsel, that course of action is unlikely to advance your client's best interests. Absent concerns about personal safety (which should be immediately referred to the police), the best approach is likely to provide no response at all. Hopefully the individual will grow bored and stop sending emails, and you can return your attention to where it belongs—minding your client's affairs.

ENDNOTES

1. The Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, 2013 ["BC Code"].
2. *Ibid* at ch 3.7-1.
3. *Ibid* at ch 3.7-1, commentary 1.
4. *Ibid* at ch 2.1 (emphasis added).
5. *Ibid* at ch 2.1-3(d).
6. *Ibid* at ch 5.1-1.
7. *Ibid* at ch 5.1-1, commentary 1 (emphasis added).
8. [1963] 2 All ER 402 (CA).
9. BC Code, *supra* note 1 at ch 2.2-1.
10. *Ibid* at ch 2.2-1, commentary 1.
11. *Ibid* at ch 7.2-1.
12. *Ibid* at ch 7.2-1, commentary 2 (emphasis added).