Are you experiencing legal abuse syndrome?

Both lawyers, litigants report trauma from court process

BY YAMRI TADDESE
Law Times

For Patricia Stanley, the triggers can be unpredictable. Recently, it was realtors, not lawyers, who reminded her of the trauma she went through during a family law matter more than a decade ago during a stressful and upsetting time in her life.

"My latest attack of panic and fear was just last week," says Stanley, an Ontario resident who used to live in Texas.

"One realtor walked into my kitchen and slapped down all the previous listings over 10 years when I had tried to sell my home, exactly the same way my Texas lawyer would slap down papers on his desk."

Stanley describes herself as "having a meltdown" over having to sign documents to list and refinance her home all due to the trauma she endured during her divorce proceedings between 1997 and 2003.

"You can't stop the recall process; you just have to wait it out until it goes away. It's easier to do this without people around you," she says.

The mental injury people suffer while dealing with the courts can be so great that Karin Huffer, an adjunct professor at the department of professional studies at the John Jay College of Criminal Justice in the United States, says protracted litigation is a risk to public health.

Huffer, the author of *Overcoming the Devastation of Legal Abuse Syndrome*, says if stress during litigation is high enough, the legal process itself can result in post-traumatic stress or anxiety disorder.

"But be very clear: It is an injury, not a mental illness," says Huffer. "Legal abuse syndrome is an injury, and many, many, many lawyers have it."

The symptoms of what Huffer calls legal abuse syndrome are similar to post-traumatic stress disorder.

"One of the first things you'll notice is that the person can't get their mail. It's too traumatizing to go get their mail. They're afraid to open their door; they're afraid to answer their telephone. Their life has become consumed with litigation, and bullying very often is a part of litigation," she says.

When she appears before courts to give expert witness testimony about legal abuse syndrome, Huffer says many lawyers have approached her afterwards to say they, too, suffer from it.

"I have many lawyers who are suffering from this and trying to [remain] in their profession. But the profession itself has become a bullying environment," she says.

"We wonder why [lawyers] have such high incidents of substance abuse and depression and suicide. Lawyers are not happy people as a rule," she adds.

University of Windsor Faculty of Law Prof. Julie Macfarlane, who studies self-represented litigants' experience in the Canadian justice system, says she has heard from many people who describe trauma after going through a legal process.

Some litigants described how they felt something akin to "post-traumatic court syndrome," says Macfarlane.

"Many of the symptoms were associated directly with court appearances. This is clearly what causes people the greatest anxiety."

The litigants she spoke to used the term post-traumatic court syndrome as a way of capturing the consequences of their overall experience: dealing with conflict, managing a legal process without legal training, experiencing some hostility from some parts of the justice system, and feeling disadvantaged, says Macfarlane.

Some of the symptoms the self-represented litigants described include being unable to walk near the court for months after the case ended without experiencing symptoms such as shaking, sweating, and a racing pulse, according to Macfarlane.

Others, she says, spoke of having to take a day off from work following a court appearance, experiencing signs of amnesia and increased use of alcohol. Macfarlane also says some litigants suffered social isolation caused by an obsessive fixation on the details of their case.

Stanley says she tried, to no avail, looking for support groups that help people like herself. "All I can find so far in Ontario was help for veterans with PTSD," she notes.

Stanley says she'd like to see recognition of the fallout of a traumatic experience with the courts as disability in Canada with support made available to sufferers.

Generally, lawyers aren't aware of the symptoms their clients may be dealing with, says Macfarlane.

"I think there is an enormous problem with conflation of the symptoms of situational stress — which is what this is — with the symptoms of pre-existing mental health issues such as personality disorders," she says.

"I hear lawyers talking a lot about clients with personality disorders. I suspect they greatly over diagnose this and at the same time underestimate the impact of situational stress on those going through the litigation process."

Huffer says the stresses are there for lawyers themselves and many have told her about struggling to do their work.

"I had an attorney write to me and say, 'Until I read your book, I didn't know why I'd get all ready for court but when I walked through the door, a dark cloud came over me and I didn't know what to do,'" she says.

Huffer trains people to coach those who are going through high-pressure litigation and negotiations to "help keep them going and help them not succumb."

"Most accommodations for invisible disabilities cost nothing. It amounts to simple kindness and common consideration," she says, noting it's sometimes just a matter of giving somebody a break, she notes.

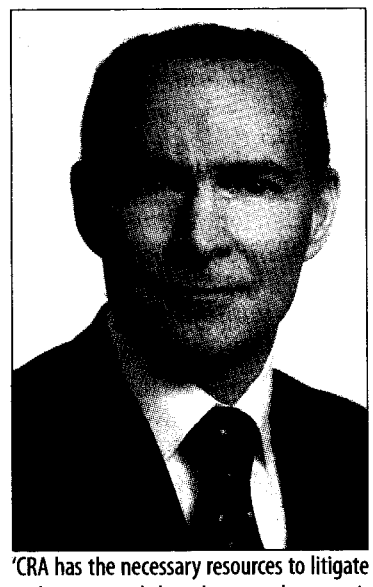
While the trauma of litigation can have a "real and potentially profound" impact on people, therapist Doron Gold says he'd distinguish between clients and counsel when talking about the consequences of high-stress litigation.

"One signed up for this and one didn't," says Gold, who assists lawyers in his practice. "I'm not saying legal professionals deserve to suffer, but clients are just trying to get their lives straight and the legal system is forced upon them."

Lawyers, he notes, are in a different situation. "Legal professionals went to law school and submitted themselves to the process," he says. "If it turns out that the process is harmful to them and they have to back out or get help, that seems to me a fundamentally different experience than the clients who are dealing with a sacred public trust, which is the justice system." LT

Business community upset as CRA's reach expanded

BY JULIUS MELNITZER
For Law Times



'CRA has the necessary resources to litigate and can expend them because the cases it wins can often be used against a host of taxpayers,' says Steve Suarez.

A recent decision of the Federal Court requiring public companies to disclose to the Canada Revenue Agency the reserves they take for contingent tax liabilities has the business community and its advisers up in arms.

What *Canada (National Revenue) v. BP Canada Energy Co.* does, critics argue, amounts to requiring businesses to provide the Canada Revenue Agency with the very ammunition it needs to challenge a company's tax returns.

"The reason we find the decision so disturbing is that CRA is looking under taxpayers' skirts," says David Rotfleisch of Rotfleisch & Samulovitch PC in Toronto. "It's especially offensive because the documents in question are not being prepared in the usual course of business as company records but as audit requirements."

To comply with their reporting obligations, public companies' consolidated financial statements must calculate reserves to account for contingent tax liabilities, including an estimate of the liability they and their subsidiaries would face if the CRA challenged uncertain positions in the tax returns. Working papers that identify the issues that the company knows might be subject to a challenge support the calculations. Known as issues lists or uncertain tax positions, they represent the areas at highest risk for loss of tax revenue.

Historically, the CRA hasn't sought production of the issues lists while conducting audits of a corporation. But in May 2010, the government effected a policy change requiring production of tax accrual working papers, including those relating to reserves for contingent tax liabilities. The policy stated that these documents were "not routinely required" but that officials "may request" them.

During the course of an audit of BP Canada, the company redacted the issues list from responses to CRA enquiries. The CRA brought a motion to compel production of the redactions. There was no evidence that the CRA had special concerns that led to the request; its position before the court was that it sought the issues list "no matter what." The agency's submissions to the court, however, justified the request as "required to verify whether BP's uncertain tax positions are compliant with the [Income Tax] Act."

According to Steve Suarez of Borden Ladner Gervais LLP in Toronto, uncertain tax positions may deal with issues such as whether a particular receipt is regular income or a capital gain; whether a particular expenditure is deductible for tax purposes; and whether a taxpayer is entitled to an investment tax credit for an expenditure.

"*BP Energy* marks the first time that the CRA has gone to court to compel a taxpayer to turn over its [uncertain tax position] analysis of potential tax exposures for the purpose of being used by the CRA as an audit road map," says Suarez.

"In the 25 years I've been practising, I can count the number of such requests on the fingers of one hand and then only when something is really stinky."

By demanding such information, Suarez maintains, the CRA is effectively forcing taxpayers to audit themselves.

"Everyone accepts that the CRA must be free to investigate any issue that it wants and able to obtain from taxpayers all relevant facts and source documents necessary to determine taxes owing," he says. "It's another thing, however, for the government to use its powers to force a taxpayer to list issues the taxpayer regards as uncertain as a result of a purely subjective self-assessment and analysis."

The CRA's position, Suarez adds, also militates against corporate transparency. "The legal requirement to generate audited financial statements is meant to protect creditors, shareholders, and others who rely on those statements," he says.

"If we want that transparency to be based on thorough analysis, does it make sense to penalize those who play by the rules by letting this analysis be used against them to support a tax audit?"

Ultimately, Suarez argues, the CRA succeeded in the case by persuading the court to grant its demands with the argument that taxpayers could always object to assessments by appealing to the courts.

"The Crown basically convinced the court that uncertain tax positions are issues that should be litigated, but an invitation to court from the CRA is like being asked to step outside by a heavyweight boxer," he says. "CRA has the necessary resources to litigate and can expend them because the cases it wins can often be used against a host of taxpayers."

According to Rotfleisch, the best recourse may be to assert legal privilege over documentation dealing with uncertain tax positions by running the analysis and documents through a law firm.

"But just how you accomplish that is not entirely clear because at some point the information has to go to the auditor and that could threaten the privilege," he says.

Still, Suarez believes taxpayers should be able to rely on the doctrine of limited waiver to preserve legal privilege against the CRA.

"Under that doctrine, the waiver given for use by the auditor is not necessarily a waiver of privilege against the world at large," he says. LT