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Emotional Intelligence: How It Contributes to the Practice of Law

Knowledge of case law and doctrine, rational analysis and the application of law to the facts of our cases are among the many skills taught in our law schools. That being said, some studies suggest that the training of lawyers should be expanded to help them develop their emotional intelligence. In fact, increasing the emotional intelligence skills of lawyers would benefit not only the lawyers, but their clients as well.¹ Indeed, Professors Austin and Durr note that emotional intelligence improves the well-being and performance of lawyers. Furthermore, M^e Pedro Barosa, in a report for the United Nations Interregional Crime and Justice Research Institute (UNICRI), reports the results of studies showing that emotional intelligence positively influences work commitment, teamwork, innovation, quality of service and skills development and fosters client loyalty.²

Yet many of us still have a sense of mistrust of emotions. Indeed, who hasn't had emotionally draining cases, clients who have had difficulty containing their resentment or anger, or colleagues who burst out at the slightest annoyance?

In light of the foregoing, the primary purpose of this text is to sensitize you to the concept of emotional intelligence and how it can be a powerful lever to improve your practice. We will begin by defining the concept of emotional intelligence and its branches. Then, we will consider concrete applications of emotional intelligence in the practice of the legal profession. We will continue by exploring the links between emotional intelligence and the reduction of malpractice proceedings. Lastly, we will suggest some tips to improve one's emotional intelligence.

¹ Austin, D. and Durr, R. (2016). Emotion Regulation for Lawyers: A Mind is a Challenging Thing to Tame, *Wyoming Law Review*, vol. 16, no. 2, article 7; Daicoff, S. (2012). Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law, *Santa Clara Law Review*, vol. 52, no. 3, 795-874.

² Barosa, P. (2016-2017). The Significance of Emotional Intelligence to Trial Lawyers, *United Nations Interregional Crime and Justice Research Institute*. Found at: https://www.plmj.com/xms/files/v1_antigos_anteriores_a_abr2019/Tese_PEDRO_BAROSA_plmj.pdf

Definition of Emotional Intelligence

The recent popularity of emotional intelligence has led to a proliferation of definitions of the concept. For purposes of this text, we will use the definition developed by Professors Salovey and Mayer, namely: “the capacity to process emotional information accurately and efficiently, including that information relevant to the recognition, construction, and regulation of emotion in oneself and others”.³

A Multidimensional Concept

Based on their research, Salovey, Mayer and Caruso identify four branches of emotional intelligence: perceiving emotions, facilitating thinking through the use of emotions, understanding emotions and managing emotions.⁴ It should be noted that the acquisition of skills specific to one branch is necessary to move on to the next one.⁵ Thus, the perception of emotions precedes the facilitation of thinking through the use of emotions, which allows for a better understanding of emotions and subsequently, better management of them. Let’s take a brief look at each of the branches of emotional intelligence.

To begin, the perception of emotions involves the ability to identify one’s emotions from certain physical signals, feelings and thoughts. At a higher level, it refers to the ability to differentiate between real and fake emotions.⁶

As regards facilitating thinking through the use of emotions, our first reflex as lawyers is to believe that a good decision is a rational one. Yet the work of neurologist Antonio Damasio reveals that emotions play a decisive role in our decision-making. Damasio analyzed the skull of a worker who had suffered severe damage to the prefrontal cortex in an accident. This worker had retained his attention, memory and intelligence, but his personality had changed considerably. In fact, he had become incapable of making decisions in his own interest and in accordance with social norms. In other words, his brain no longer made the connection between reason and emotion.⁷ In view of the above, emotions help prioritize where our attention should be focused. They also lead us to change our perspective on a situation and help us to solve problems.⁸ Finally, an emotionally intelligent person is able to mobilize a mood or emotion to improve thinking or perform a task.⁹

For its part, understanding emotions refers to an individual’s ability to name and classify emotions. It also involves understanding the underlying cause of the emotions and their complexity. In short, an individual in this branch is able to predict the occurrence of certain emotions.¹⁰

To conclude on the four branches, managing emotions implies remaining open to them whether they are pleasant or not, but also detaching oneself from them according to

³ Salovey, P. and Mayer, J.D. (1990). Emotional Intelligence. *Imagination, Cognition, & Personality*, 9, 185-211.

⁴ Caruso, D.R., Mayer, J.D. and Salovey P. (2004). Emotional Intelligence: Theory, Findings, and Implications. 15 *PSYCHOL. INQUIRY* 197.

⁵ Kelton, C.C. (2015). *Clients Want Results, Lawyers Need Emotional Intelligence*, 63 Clev. St. L. Rev. 459. Found at: <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=3848&context=clevstlrev>

⁶ *Id.*; Albert, M.C., Prost, C. and Morin, E. (2017). *Intelligence émotionnelle*. Lesson 4-441-15: Intelligence émotionnelle et applications en développement organisationnel.

⁷ Aubry, K. (2011). Prise de décision et émotions. *Leadership, Motivation et Neurosciences*. Found at: <https://kolibricoaching.com/leadership/prise-de-decision-et-emotions/>

⁸ Kelton, C.C., *supra*, note 5.

⁹ *Id.*; Albert, M.C., Prost, C. and Morin, E., *supra*, note 6.

¹⁰ *Id.*

one's perception of their usefulness in a situation. Moreover, managing emotions includes the ability to control them through our thinking.¹¹

Now that you're aware of the various branches of emotional intelligence, perhaps you're wondering how it applies to your daily practice? Let's try to shed some light on this!

Application of Emotional Intelligence to the Practice of Law

The legal profession contains a strong relational component, such that it is impossible to consider all the situations requiring the use of our emotional intelligence. That having been said, here are a few scenarios:

- During the lawyer's first meeting with a client, he shakes hands with the client and finds that the client's hand is cold and clammy. The client avoids his gaze and his voice is trembling. The lawyer infers that his client is nervous about meeting him. Thus, in order to allow him to relax, the lawyer begins the meeting by making small talk.
- During an examination on discovery or a meeting with a client, the lawyer bombards the witness or client with questions without allowing him the time to answer fully. The lawyer takes a step back and notes that he is sceptical of the witness's version or disapproves of the client's conduct in the file. The lawyer decides to be more open-minded in order to gather all the relevant facts of the case. As far as the client is concerned, this open-mindedness is essential for building a relationship of trust, which is important to ensure the file proceeds smoothly.
- Similarly, in an examination on discovery, a lawyer notes that the witness's body language indicates discomfort following a seemingly innocuous question. He decides to deviate from his planned examination and go deeper into the subject.
- The lawyer is representing a client who is being sued following the discovery of poor workmanship. The lawyer requested an expert report, but the report is unfavourable to his client's interests. While reviewing the report with his client, he notices that the client is tilting his head and shielding his eyes with his hand. He is shaking his head back and forth. The lawyer infers that his client is ashamed and probably a little sad. He decides to show empathy and help his client regain control of his emotions so they can develop a beneficial strategy for the client.

¹¹ *Id.*

- During negotiations, tensions are sometimes high and anger can even rear its ugly head. It is to the lawyer's advantage to suggest breaks to the client to help calm him down. Indeed, anger can interfere with decision-making and even divert the client from the original strategy.
- Lastly, what about trials? A courtroom is a place full of emotions: yours, the client's, the opposing party's, the lawyer's and the judge's. In his report for UNICRI, M^e Barosa raises the importance of emotions in the process of persuading others. Thus, by showing empathy, a lawyer increases his chances of gaining the cooperation of a recalcitrant witness. In addition, emotional intelligence allows a lawyer to properly interpret the verbal and non-verbal language of witnesses and the judge.¹²

In short, we have seen situations where emotional intelligence allows the lawyer to clearly identify the emotions involved so that he is able to adjust his conduct appropriately. Conversely, it's easy to see how misunderstandings and errors can occur when the emotional component of a case is underestimated or denied.

Emotional Intelligence and the Prevention of Malpractice Proceedings

In an interview with the American Bar Association, Ronda Muir, author of *Beyond Smart: Lawyering with Emotional Intelligence*, discusses the contribution of emotional intelligence to the reduction of malpractice proceedings.¹³

Ms. Muir's first finding is that emotional intelligence enhances lawyers' communication skills. Indeed, they are more adept at decoding non-verbal language or they show more empathy. Similarly, they tend to favour active listening techniques in order to help them understand their clients' expectations and emotions. It is therefore reasonable to think that emotional intelligence helps lawyers detect unrealistic expectations on the part of their clients or emotions that are detrimental to the proper conduct of a case. In this way, lawyers can give these negative expectations or emotions the necessary attention to ensure that they do not lead to malpractice proceedings.

Moreover, emotional intelligence allows one to adequately identify the meaning of one's emotions and to anticipate the personal and professional consequences they may generate. For example, a lawyer who finds himself unable to detach himself from a file and who espouses his client's cause will be better off to stop before his emotions compromise his professional judgment. What's more, a lawyer's understanding of his emotions allows him to mobilize them towards the achievement of his goals.

In addition, author Ronda Muir points to research that shows that the use of emotional intelligence skills assists the lawyer in assessing risk and understanding the ethical standards to be applied to a given situation. It also allows the lawyer to understand how those around him make ethical decisions and to be at ease with his own decisions and values even in the presence of pressure from his environment.

In summary, considering that in the past five years,¹⁴ more than 21% of the claims handled by the Insurance Fund have involved the lawyer-client relationship, it is not superfluous to develop one's emotional intelligence skills. However, the question is how?

¹² Barosa, P., *supra*, note 2.

¹³ American Bar Association, *How emotional intelligence makes you a better lawyer*, October 2017. Found at: <https://www.americanbar.org/news/abanews/publications/youraba/2017/october-2017/how-successful-lawyers-use-emotional-intelligence-to-their-advan/>

¹⁴ The data covers the period from January 1, 2015 to December 31, 2019.

Some Tips for Improving Your Emotional Intelligence

The good news about emotional intelligence is that it can be developed! Here are some steps you can take to improve your emotional intelligence:

- **Maintain a healthy lifestyle.**¹⁵ This means getting physical exercise, eating a healthy diet and getting enough sleep. Indeed, each of these dimensions of healthy living provides the energy and resources for the brain to improve attention and learning, memory and stress management. It also helps regulate emotions.
- **Meditate.**¹⁶ Regularly meditating improves concentration and allows the lawyer to focus on performing one task at a time. It encourages active listening and directing one's energy towards the achievement of set objectives. Meditation also allows one to detach and manage the false sense of urgency created by multitasking. In addition, it influences the brain, especially the nervous system, since it slows down the response to stress.
- **Develop self-awareness.**¹⁷ Self-awareness refers to the lawyer's understanding of his values, discourse and emotions and their influence on the way he behaves. Self-awareness is central to the ability to self-manage as it allows the lawyer to recognize the emotion he is feeling and step back to better manage his reaction. In fact, without the capacity for self-management a lawyer will be controlled by his emotions instead of being guided by them. One way to improve self-awareness is to note on a regular basis the emotions felt in different situations. One interesting application to do this is the *Mood Meter* developed by the Yale Center for Emotional Intelligence. It also helps build one's vocabulary with regard to the range of emotions that can be felt.¹⁸
- **Pay attention to non-verbal language when talking to your clients.** Remember that 55% of communication is through non-verbal language. In view of the foregoing, body language can reveal valuable information about the emotional state of clients, which can provide you with information on how to manage the file.
- **Listen actively.** This entails reserving your judgment during conversations with your clients. In addition, rephrase some sentences to show that you understand the situation being presented to you. Doing so demonstrates your empathy, which is a crucial skill for building a relationship of trust with your clients. Empathy also makes it possible to understand the file from your client's frame of reference.

In conclusion, we have defined the concept of emotional intelligence and discussed its contribution to legal practice, particularly with respect to the reduction of malpractice proceedings. It is clear from the foregoing that to excel in the practice of law, it is no longer sufficient to master technical skills or possess a body of knowledge. One needs to master one's emotional skills!

¹⁵ Austin and Durr, *supra*, note 1.

¹⁶ *Id.*

¹⁷ American Bar Association, *supra*, note 13; Austin and Durr, *supra*, note 1.

¹⁸ American Bar Association, *supra*, note 13.