

Truth-telling critical when meeting with lawyer

By Peter Small, AdvocateDaily.com Contributor



Clients may be tempted to hold back embarrassing details about their case, but it's important to tell lawyers the whole truth, says Brampton civil litigator [Edwin Upenieks](#).

"I always say, 'Tell me the good, the bad, the ugly,'" says Upenieks, partner with [Lawrence, Lawrence, Stevenson LLP](#).

Recurring clients are generally truthful, but new clients seeking representation for a discrete piece of litigation often couch the facts to show themselves in the most favourable light, he says.

"I've learned over the years there's almost a reticence to tell the lawyer everything," Upenieks tells [AdvocateDaily.com](#).

They seem to believe their lawyer will think less of them if they admit they sent an embarrassing letter or said something they regret, he says.

"And I always say, 'Look, I've made mistakes. I've done things that I regret. I've sent out letters that I wish I could take back. We all do that,'" Upenieks says.

Sometimes clients take a little time to tell the whole story, he says.

What often happens is when a client is driving home or back to their office after the first meeting, they will call to say, "You remember you told me about the bad and ugly? And, yeah, I have some bad and ugly to tell you," Upenieks recalls.

He reassures his clients that whatever they tell him is completely confidential. The only exception is if they've committed a criminal offence or he thinks they're about to do so, something that has never happened in his more than three decades of practice, Upenieks says.

He tells clients he will never know the story as well as they do.

"But I have to present something to the court in which I emphasize what I think is important and downplay what I don't want the judge to focus on as much. So give me everything you've got and let me decide."

It's like a funnel, Upenieks says.

"You've got to put everything into the funnel, and we'll decide what comes out of the bottom. But if you don't put it into the funnel, we can't consider it and incorporate it into our strategy."

Sometimes a fact that the client thinks is innocuous could be part of a pattern that leads to a great argument or theory, Upenieks says.

"We'll tell you if it's relevant or not, but just give us everything," he says.

Upenieks also asks clients, "What's the other side's Achilles heel? What's their weakness?"

And if he feels his client hasn't told him everything, he'll sometimes ask: "What would they think your Achilles heel is?"

Upenieks wants to see all potentially relevant documents as well.

“Let us decide. Don't be selective. I'd rather get everything and read through it,” he says. “But otherwise if you only give us part of the story we're going to be spending extra time trying to figure out the gaps.”

Upenieks regularly goes over mock cross-examinations with his clients, posing tough questions to ensure they're prepared.

“And I also tell them, ‘How can I prepare you for your cross-examination or your discovery or trial if I don't know everything?’”

It's up to the lawyer to decide when and how to disclose certain information, Upenieks says. If there's something damaging to his client, the sooner he knows about it the better because it softens the blow if your side, rather than the other side, discloses it, he adds.

This is especially true if you have time to think about how to put the damaging information in context and explain it away so it's not as damning as it might first appear, Upenieks says.

Lawyers don't want to be blindsided, he says.

“The worst case is you're up in court, you're arguing a case, and the other side presents something that you had no idea about,” Upenieks says.

It has the potential to derail the case when the other side puts something to your client during cross-examination that you did not know, he says.

“And you couldn't prepare your client for that cross-examination because you didn't know,” Upenieks says. “I'd rather find out the facts from the client than the other side.”