

COMMUNICATING LIKE IT'S 1876:

THE CONTINUING IMPORTANCE OF TELEPHONE SKILLS FOR LAWYERS

When the Western Union Telegraph Co. famously declined to purchase the telephone patent from Alexander Graham Bell, it was allegedly because they wondered why anyone would want to use such a frivolous and impractical device when a clear and concise written message could just as easily be sent by telegraph.

This assessment seems less absurd today than it once did. For younger generations, communicating by telephone is quickly becoming an anachronism—the “phone” component of smartphones a vestigial relic.

One recent study found that 73 per cent of millennial employees primarily use email to communicate at work, while only 19 per cent still primarily use a telephone. With less telephone usage, our comfort with the device can fade and our skills can atrophy—leading to anxiety and lack of confidence. Another study found that 81 per cent of millennials sometimes feel like they have to summon the courage to make a phone call.

But despite the changing ways we communicate with one another in the modern world, the legal profession is still a place where the ability to confidently and successfully communicate and negotiate by phone is a fundamental skill—one that was never covered in law school.

Communication breakdowns and misunderstandings cause close to 47 per cent of malpractice claims.

We spoke with Deborah Glatter, a management consultant for various Bay Street firms who previously led Cassels Brock’s professional development department and worked with the Law Society of Ontario designing and teaching the bar admission course for new lawyers, and Sandra Forbes, a partner at Davies Ward Phillips & Vineberg LLP with 27 years of experience as a commercial and civil litigator. They provided us with their thoughts on when phone calls should be preferred and the bad telephone habits they often see in the legal profession, including the advice they have for lawyers looking to improve their ability to advance their clients’ interests over the phone.

Five times it’s best to pick up the phone

1) When the client prefers phone calls

If a client or third-party usually reaches you by phone, you can assume it’s their preferred method of communication. Deborah says, “you should determine the form of communication in some part by virtue of how people are communicating with you. If I have a client who only communicates by email, I might not pick up the phone, and vice-versa.”

2) Delivering bad news

Bad news shouldn’t be delivered in an email. It’s difficult to convey empathy without a true conversation, and

it's important to communicate to the client that you care about their interests and share their disappointment, lest they question how hard you worked to avoid such a turn of events.

3) Scheduling and other non-substantive matters

Written communications can be easily misunderstood.

A quickly dashed-off email can leave the recipient confused or with the wrong impression. Any time more than one email is needed to confirm a non-substantive issue, such as scheduling a meeting or court date, or if there is any concern that the other person has misunderstood what was intended, it's best to pick up the phone.

Sandra advises that a phone call will often expedite scheduling issues: "I get lawyers who are frustrated because they sent an email asking for dates and they can't get a response. So I'll just say 'get on the phone and call them.' There comes a point where you find you're not getting anywhere with written communications and getting someone on the phone can be very effective."

Of course, if you come to an agreement, you should follow up with an email to confirm it in writing.

4) Asking for favours and addressing outstanding accounts

It's harder to ignore someone when they have you on the phone. Sandra suggests if you need a favour from opposing counsel, such as adjourning a court date, it's easier to get what you need if they put a voice to the request.

Similarly, Sandra says lawyers should follow-up with clients regarding unpaid fees by phone: "It's more effective to call the client and say 'the account that we sent three months ago remains unpaid, do you have any questions about it? We would really appreciate it if you would bring these accounts up to date.' This has more impact than writing another 'Further to my letter of such and such' message, which looks like a form letter and won't have much effect."

5) Putting the brakes on an escalating conflict

Sometimes you may want to have a discussion before putting anything in writing. Sandra suggests there are "circumstances where someone may write you an email or letter and it's clear that your only possible response to them would take everyone down an unhelpful path. It's a good idea to call the other person and say 'Is this really what you want to do? Maybe we should think about another option.'"

Similarly, a phone call can help unwind an escalating dispute. In Sandra's experience, "if somebody is being difficult or rude by email, I usually try to call them, because that will often deflate the situation. You humanize yourself that way and can often avoid the animosity and dispute that might otherwise arise."

Six bad telephone habits (and how to fix them)

1) Not listening

For Sandra, the biggest problem she sees is lawyers doing a lot of talking, but not a lot of listening: "People have a natural inclination when they get on the phone to feel like they have to make their point and convince the other side. Unfortunately, that means they're often not listening. They try to talk over others and act like the last word is going to win the day. That's really not the case though."

As Deborah explains, "in terms of your tone, you want to provide active listening cues. Silence may not be reassuring to the speaker, so things like a simple 'uh-huh' can be beneficial because you don't want to interrupt. Small vocal acknowledgments from time to time let the other person know that you're listening. If there's a pause, it's helpful to repeat a word or phrase back to the other person and acknowledge what was just said. Things like 'I realize how important this is to you' in a tense conversation can go a long way. When you're wrapping up, it's good to ask 'Is there anything else you would like to add?'"

2) Lack of preparation

Sandra says, "it's important to set the stage at the beginning of the call for what you want to accomplish. Not doing that can lead to a wide-ranging discussion that becomes very inefficient. Before an important call, I'm going to think about what I want to say, what I want to accomplish, and what I'm going to say in response to what the



other person will likely say. That may mean thinking about the call for 15 seconds, it may mean writing an outline for five minutes, or it might mean sleeping on a strategy for the conversation overnight. Everything is a form of advocacy and if you're calling somebody to achieve something, you need to put your best foot forward to be successful."

Deborah suggests that an outline can help keep a conversation on track: "While you don't need to write out the narrative in advance, it's important to write down a few key points before the call. That will give you some assurance that you will accomplish everything you need without having to call back later."

3) Yelling

Unfortunately, one downside to using the phone to discuss a contentious matter is the possibility that someone will let their passions inform their volume. This undermines the productivity of the conversation. "It's hard to manage your own emotional state when somebody is yelling at you," Deborah says, "but if you respond in the same way, it escalates the situation. It's okay to say 'do you realize you're yelling at me? I'd like you to stop.' If you're speaking with someone other than a client, and you're unable to bring the tension down, you just have to say 'the tone of the conversation isn't productive. I think we need to speak again when we can control the emotions here.'"

Some aggressive phone conversations can be avoided by establishing a positive tone at the start of the call. Sandra says, "you'll have the most success if you make the other side feel like things are their idea. So it's good to start with a positive comment on their interests in the matter at hand, such as saying 'I've been thinking about your suggestions from our last conversation.' You should try to make your points in a context where the other side's defences aren't immediately raised."

4) Leaving muddled voicemail messages

"One thing that maddens me," says Deborah, "is when I pick up a voicemail and it sounds like the speaker is in a race against time. I can't tell where the first name ends and the last name begins and I waste an inordinate amount of time replaying the message to just get the information down."

Sandra agrees that long and confusing voicemails are a widespread and frustrating problem. She says "if I call someone and they're not there, but I'm not ready to leave a voicemail message, I won't leave it. I'll hang up and compose what I want to say and phone them back so they have a crisp, clear voicemail that will facilitate a response. When people are not prepared, they tend to repeat themselves, go on forever, and end up contradicting themselves."

The voicemail should briefly state the purpose of your call and whether or when you intend to call back. You should end the message by

slowly stating your own phone number—preferably twice to ensure the listener has time to write it down—and repeat your name at the end if the other person doesn't already know you.

5) Indiscrete cell phone calls

Some lawyers are rarely in the office and practice from their cell phones. But lawyers should take care when taking or making a call outside the office. "Aside from the fact that it's annoying to hear someone speaking loudly on their cell phone in public," Sandra says, "there are confidentiality concerns. If you're in a public area, you really can't have a conversation that mentions names, and it may not even be safe to speak in generalities."

Sandra suggests taking the time to find some privacy before talking about a legal matter by cell phone: "If someone calls me on my cell phone and it's urgent, I'll say, 'I'm on my cell right now, so how urgent is this? Can I call you back later when I'm in my office?' If not, I'll try to find a place close by where there is as much privacy as possible."

6) Not memorializing the phone call

Always make a written record of a phone conversation with a client or opposing counsel, including any substantive issues discussed, instructions received, or agreements reached. Habitually doing so can prevent serious headaches and malpractice claims down the road.

The generational telephone gap

While strong telephone skills are important for every practice, cultural and technological changes will likely continue to minimize the volume of calls most lawyers make. Even so, both senior and junior lawyers should keep in mind the communication preferences of their clients and colleagues and adapt accordingly.

Deborah points out that senior lawyers can sometimes take offence if a junior associate often uses email to communicate, rather than a phone call or in-person conversation: "I think some younger associates don't understand that when they're dealing with older lawyers, they often didn't grow up with keyboarding skills and it's sometimes very time consuming and cumbersome to communicate by email."

At the same time, Deborah says senior lawyers need to understand that younger associates will sometimes consider it rude to use the phone: "It means the caller is prioritizing their schedule over the schedule of the person they're calling. It's assuming that they have time to set everything else aside and talk right now."

Of course, telephone communications being one-sided impositions on another person's time was a feature from the technology's inception. After all, the first spoken words transmitted by wire were Alexander Graham Bell summoning his assistant with the utterance, "Mr. Watson—come here—I want to see you." ■