Rethinking the Lawyer-Client Interview: Taking a Relational Approach

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The client interview is an integral part of a lawyer's work. Despite this, there is little research focused on the client interview and how it might influence the economy of the legal strategies and processes that follow. This study examined students' perceptions of perspective-taking, trust, self-disclosure and understanding in a client interview where the students took the roles of either a lawyer or client in a dispute resolution context. The results revealed that the client's perception of their lawyer's perspective-taking increased their trust in the lawyer, which increased their self-disclosure, which subsequently helped the clients to gain a better understanding of their situation. The results illustrate the importance of the key relational aspects during consultation and accords with similar findings in the procedural justice and mentalising literature. The findings could have powerful implications for rethinking the purpose and aims of the lawyer-client interview and helping lawyers to reshape the outcomes.

Key words: lawyer-client interview, mentalising, perspective-taking, procedural justice, relational, self-disclosure, trust.

Introduction

Lawyers are a relatively understudied population. There is a paucity of data relating to the work of lawyers and the effects of the lawyering processes on the client. Further, the client interview is an integral part of the legal system chain. Yet despite this, there is little research focus on the client interview and how it might influence the subsequent steps taken in the legal process and the economy of those processes.

Lawyers and clients

The studies that have investigated the interaction between a lawyer and client are mainly from the family law domain and were

conducted in the 1990s and early 2000s. These included Sarat and Felstiner (1995) in the United States who examined the power dynamics inherent in the lawyer-client relationship; Mather, McEwen and Maiman (2001), also in the United States, who explored how lawyers respond to conflicts and problems with their clients; and in the United Kingdom, Eekelaar, Maclean and Beinart (2000) who studied what solicitors do in practice.¹ Ultimately, these studies showed that a family lawyer's work involves trying to modify the client's expectations and to respond to both the legal as well as the 'human and emotional matters' of the client.² However, these studies did not explicitly focus on the perceptions of the clients and

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their perceptions of the lawyers' efforts to respond to their situations. Further, they did not specifically investigate the effects of the client interview, or of the 'discussion, decisions and negotiations' that take place between a lawyer and his or her client about the best ways to resolve their disputes.³

Howieson (2011) investigated the nature of the relationship between the lawyer and client from a procedural justice framework.⁴ The study found that family law clients rated their satisfaction with their family lawyers according to procedural justice principles. The clients reported that they would follow their lawyer's advice if that advice was given in a procedurally just manner, which included the variables of status recognition, voice, benevolence and trust.⁵ The study also found that clients appreciated the lawyer who took a constructive approach to the dispute resolution process, namely the lawyer who protects, supports and encourages them towards a fair and reasonable resolution of their dispute.⁶ Essentially, this line of research established that the relationship between the lawyer and the client is one in which the lawyer and the client develop a rapport that enables them to develop a relationship of trust and understanding.

In a study of rapport in negotiations, which included the use of role-play activity and self-reporting on the experience (similar methodology to the present study), Kim et al. (2014) conceptualised rapport as a 'level of understanding' between the parties. They found that if the parties perceived that there was 'understanding' between them, then this was positively associated with more trust and desire to work again with the person in the future.⁷ Similarly, the present study investigates and highlights the important role of fostering a sense of understanding or perspective-taking during communication.

Perspective-taking

Acknowledging the perspective of the other person in one's communication is widely held

to be beneficial during conflict.⁸ Several theorists suggest that the underlying reason why acknowledging perspective is beneficial is that it taps into a fundamental human desire to be understood by others.⁹ For instance, Morelli et al. (2014) found that the experience of being understood is associated with activation of reward pathways in the brain.¹⁰ Whilst the present study does not delve into the neuroscience of perspective-taking, we use these theoretical concepts to explore the experience of the client interview from a framework of increased understanding, empathy and trust between the parties.

Other research shows that just as important as recognising the perspective of the other is the act of making it clear to the person what one's own perspective is. Ames (2008) and Ames and Wazlawek (2014) found that stating one's own perspective (if not done too forcefully) was a key element of assertiveness and something that helped to foster understanding of the situation while reducing anxiety associated with uncertainty for both parties.¹¹

Considering this research, the present study set out to explore the ways in which understanding between a lawyer and client might foster greater understanding between each other and subsequently, greater self-disclosure, trust and empathy. In turn, the study examined whether this led to the client believing that the lawyer would work in his or her best interests – according to the earlier theorists, a common concern for clients enlisting a lawyer's services.¹²

Rationale of the Study

The purpose of the client interview is to obtain as much information in respect to the situation presented by the client. It is a reciprocal gathering and giving of information to decide on the best course of action for the client. It is also an opportunity to establish a good, professional working relationship and partnership with the client. However, as pivotal as the client interview is in the lawyering chain, it is

rarely studied from a relational perspective. This study uses the role-play methodology to examine the character of the relationship that develops between a lawyer and client from the initial client interview and whether this leads to trust and understanding between them. The role-play used for the exercise was an IP-IT (intellectual property/information technology dispute) between an IT company and a former employee.

The study examined the lawyers' and clients' reflections on the interview in terms of:

- consideration of the client's perspective on things
- empathy from the lawyer about the situation
- trust in the lawyer to work in client's best interests
- client self-disclosure, thinking and feeling
- client/lawyer understanding of the situation

Study Method

Participants

Law students in the University of Western Australia's LAWS5109 Dispute Resolution class in 2015/16 participated in a role-play exercise where half of the students took on the role of the lawyer and the other half took on the role of the client in a simulated client interview.¹³ Post-interview surveys were completed by both the 'lawyer' and the 'client', and the surveys were matched to examine the perspectives of each pairing. Ninety-three 'lawyer' responses, 85 'client' responses, and 76 matched responses were received. The analysis is on the 76 matched cases. The non-matched cases were excluded.

Survey Instrument

Note that all items below were answered on a 7-point scale: (1) Not at all (2) Slightly (3) Somewhat (4) Moderately (5) Very much (6) A great deal (7) Extremely.

LAWYER Items

Lawyer Perspective-taking & Empathy

1. Reflecting on the interaction, as the LAWYER I believe that I conveyed to my client that I considered his/her perspective on things.
2. Reflecting on the interaction, as the LAWYER I expressed empathy to my client.

Client Trust in Lawyer

3. I think that my client was left with the impression that s/he could trust me.
4. I think that my client was left with the impression that I will always work in his/her best interests.

Client Self-disclosure

5. Reflecting on the interaction, I think my CLIENT told me about himself/herself.
6. Reflecting on the interaction, I think my CLIENT told me about how s/he was feeling.

Client Understanding

7. Reflecting on the interaction, I think my CLIENT was able to get a clear perspective of his or her situation.
8. Reflecting on the interaction, I think my CLIENT was able to understand my perspective on things.

CLIENT Items

Lawyer Perspective-taking & Empathy

1. Reflecting on the interaction, I think my LAWYER considered my perspective on things.
2. Reflecting on the interaction, I think my LAWYER expressed empathy about my situation.

Client Trust in Lawyer

3. I was left with the impression that I could trust my lawyer.

4. I was left with the impression that my lawyer would always work in my best interests.

Client Self-disclosure

5. Reflecting on the interaction, as the CLIENT, I told my lawyer about myself.
6. Reflecting on the interaction, as the CLIENT, I told my lawyer about my feelings.

Client Understanding

7. Reflecting on the interaction, as the CLIENT, I was able to get a clear perspective on my situation.
8. Reflecting on the interaction, as the CLIENT, I was able to understand my lawyer's perspective on the situation.

Results

Correlations

The correlations between the individual items (as described and numbered above) are provided in Table 1 (lawyers) and Table 2 (clients). We created composite variables by averaging across the two items for each category described in the method section, for example an ‘understanding’ score was created by averaging across items 1 and 2. Note that in Tables 1 and 2 the correlations between the two items for each category are positively associated and moderate in magnitude (i.e., all above 0.4). Specifically, item 1 was combined with 2, item 3 with 4, item 5 with 6, and item 7 with 8 to create four composite variables (i.e., perspective-taking/empathy, trust, self-disclosure and understanding). We report Spearman correlations instead of Pearson cor-

Table 1. Spearman correlations between question items (LAWYERS).

	1	2	3	4	5	6	7	8	9	10
1	1									
2	.58*	1								
3	.69*	.53*	1							
4	.51*	.51*	.63*	1						
5	.46*	.44*	.41*	.36*	1					
6	.40*	.47*	.49*	.44*	.41*	1				
7	.52*	.43*	.63*	.60*	.53*	.53*	1			
8	.66*	.49*	.63*	.60*	.36*	.36*	.66*	1		

**p* < .05.

Table 2. Spearman correlations between question items (CLIENTS).

	1	2	3	4	5	6	7	8	9	10
1	1									
2	.55*	1								
3	.54*	.53*	1							
4	.51*	.42*	.70*	1						
5	.30*	.24*	.55*	.39*	1					
6	.33*	.19	.33*	.40*	.51*	1				
7	.32*	.21	.47*	.40*	.34*	.32*	1			
8	.24*	.28*	.51*	.43*	.28*	.27*	.67*	1		

**p* < .05.

relations as a visual inspection of frequency histograms revealed that for most question items there was limited responding for the ‘not at all’, ‘slightly’ and ‘somewhat’ options. Bearing this in mind we decided to take a more conservative approach via reporting Spearman correlations.

Means

The chart above (Figure 1) presents the means for each variable (perspective-taking and empathy, trust, self-disclosure and understanding) from the lawyer perception and client perception. On average, client perceptions were slightly more favourable than lawyer perceptions on all the variables but the effect was small and not-significant (except for the trust variable). The difference in the ‘trust’ variable was statistically significant across the multiple t-tests. On average, clients stated that they trusted their lawyer more than their lawyer thought that the client trusted them but, although significant, the difference in this variable is small.¹⁴

Lawyers’ perceptions

How accurately are lawyers able to perceive the variables under study? In Figure 2 are the correlations between the lawyer perceptions and client perceptions for each of the variables.

Of the four variables, the strongest correlation is for understanding. The lawyers’ perceptions of their client’s understanding appear well matched to what the clients report is their own understanding. Lawyers appear reasonably accurate at gauging the client level of trust in them. However, the results indicate that the lawyers did not estimate their clients’ perception of their level of perspective-taking and empathy very well. This result is consistent with the literature that discusses that an understanding of how well we are ‘communicating perspective taking’ is generally difficult for us to ascertain.¹⁵ A further result is that the lawyer’s ideas regarding how much information the client is disclosing does not match well to the client’s perceptions of themselves. This also fits with the disclosure literature that suggests that people can have very different notions regarding what constitutes ‘a lot’ of disclosure.¹⁶

Inter-correlations

The inter-correlations between the composite variables are presented separately for the lawyers (Table 3) and clients (Table 4).

The Effect of Perspective-taking

When considered holistically, the inter-correlations among composite variables illustrate

Figure 1. Means for each variable from the lawyer and client perception. Errors bars represent 95% confidence limits.

Figure 2. Correlations of lawyer and client perceptions.

Table 3. Inter-correlations among composite variables – lawyers.

	Lawyer PT/empathy	Client trust in lawyer	Client self-disclosure	Client understanding
Lawyer PT/empathy	1			
Client trust in lawyer	.69*	1		
Client self-disclosure	.60*	.57*	1	
Client understanding	.64*	.77*	.44*	1

Table 4. Inter-correlations among composite variables – clients.

	Lawyer PT/empathy	Client trust in lawyer	Client self-disclosure	Client understanding
Lawyer PT/empathy	1			
Client trust in lawyer	.45*	1		
Client self-disclosure	.25*	.50*	1	
Client understanding	.16	.52*	.42*	1

how perspective-taking/empathy from a lawyer can have a positive impact upon the client interview.

Essentially, lawyer perspective-taking/empathy fosters client trust in the lawyer, which fosters client self-disclosure, and that in

turn fosters client understanding. Additionally, client self-disclosure can foster more lawyer perspective-taking/empathy (as more disclosure provides more opportunity for the lawyer to show more empathy perhaps). An alternative explanation for this is that if the client feels that s/he is disclosing more information, then this might influence the client to attribute this to greater perspective-taking/empathy on the part of the lawyer to draw the information out.

Discussion

Perhaps the most interesting aspect of this study is the ‘feedback loops’ that seem to occur during the interaction between a lawyer and a client during a client interview. The results indicate that these loops work to increase understanding of the situation for the client. For example, the results show that the client’s perception of their lawyer’s perspective-taking seemed to increase their trust in the lawyer, which increased their self-disclosure, which subsequently helped them gain a better understanding of their situation.

The client understanding the situation is important for several reasons. The first involves the legal professional duty of solicitors and barristers to ensure that their clients understand their situation sufficiently so that they can give proper instructions.¹⁷ Second, the procedural justice literature is clear that trust in the lawyer is important for perceptions of fairness and satisfaction in the delivery of legal services and co-operation between the lawyer and client.¹⁸ Finally, the concept of mentalising, or understanding one’s own and another’s behaviour based on intentional mental states, is important for good decision-making. When a mediator can create the space in a dispute resolution context for the client to mentalise, then this can increase client understanding of the situation, which in turn can lead to less stress and more meaningful dispute resolution discussions.¹⁹

Legal Professional Conduct

Problem-solving: Choice of Process

Although understanding for the client is not often cited as the focus of the client interview, this result accords with research conducted in other areas of lawyer-client interactions and dispute resolution.²⁰ In a dispute resolution context, one of the purposes of the initial lawyer-client interview is to decide on the most effective and efficient course of action for the client, for instance, choosing negotiation, mediation or possibly, arbitration. The lawyer requires sufficient disclosure from the client so that problem-solving and choice of dispute resolution process steps can be ascertained.

The Australian *Legal Profession Uniform Conduct (Barristers) Rules 2015* rules 36 and 37 place a duty on barristers (and by implication, solicitors) to ‘inform the client ... about the alternatives to fully contested adjudication of the case which are reasonably available to the client,²¹ ... and to ensure that the client has a sufficient understanding of the case to be able to give proper instructions’.²² Therefore, it is a duty incumbent on the lawyer or barrister to ensure that the client has sufficient information to make informed decisions and give proper instructions. To have sufficient information, the client needs firstly to disclose information and secondly to understand his or her situation – both ‘phenomena’ that this study has found can occur in a ‘relational’ client interview.

Trust and Procedural Justice

Part of a relational client interview involves inspiring trust. Kim et al. (2014) found that if the parties perceived that there was ‘understanding’ between them, this was positively associated with more trust and desire to work again with the person in the future.²³ This accords with the results of the present study and also the procedural justice literature, which shows that trust is integral to the client accepting and choosing to follow a lawyer’s advice.²⁴ Howieson’s 2011 study showed that

if the elements of procedural justice were present in a lawyer-client meeting, then the clients were more likely to co-operate with the lawyers, generally felt satisfied with the meetings and viewed them as fair.²⁵ The elements found to be most influential in the perceptions of procedural justice included the lawyers treating the clients with respect, dignity and politeness (the status recognition variables), giving them their voice (allowing them to say all that they need to say) and being trustworthy.

Ultimately, the field study identified that perceptions of procedural justice exert a major influence on the clients' view of their relationship with their lawyers. Further it showed that the quality of treatment that the lawyer affords the client is an integral factor in perceptions of both the fairness of the advice and the satisfaction with the lawyering experience.²⁶ Again, the importance of generating client understanding, which feeds back into creating an environment of trust, is seen as vital for a productive and satisfying lawyer-client relationship.

Mentalising

Research in the dispute resolution or mediation field has gone somewhat beyond procedural justice to demonstrate that promoting mentalising in the client or parties has the effect of increasing the understanding of the situation for the clients, which can result in better decision-making.²⁷ The literature suggests that by working to take the client's perspective, that is, by mentalising with the client (attending to the client's mental states and understanding how this might influence his or her behaviour) is likely to increase trust and client self-disclosure.

According to the present results, this will also be likely to increase both the lawyer and the client understanding of the client's situation and will therefore positively influence the choice of the most appropriate way to proceed. It is also likely to provide the opportunity to establish a good, professional working relationship with the client, and one which the

client is likely to perceive as fair, satisfying and productive.²⁸ Importantly, it will also foster a relationship whereby the client perceives that the lawyer is working in his or her best interests.

Limitations

In this study we had pairs of law students role playing as a lawyer and client. Whether our findings can be extrapolated to actual lawyer-client interactions could be determined by future research. Secondly, due to the correlational nature of our results, our suggestions regarding the directional influence for some relationships are tentative. For the types of variables, which we have examined, there is likely an element of bi-directional influence across all relationships.

Conclusion

The findings of the present study could have powerful implications for rethinking the client interview and its purpose. Taking a relational approach rather than simply a legal approach can foster trust between the lawyer and client and increase each other's understanding of the situation. This in turn can promote mentalising and perceptions of procedural justice, and subsequently, increase the 'economy' of the interview in terms of efficacy of decision-making. Clients who can trust their lawyers to be working in their best interests and who can gain greater clarity about their situations are more likely to retain that lawyer, accept and follow the lawyer's advice and make good decisions. This can only be beneficial for everyone involved.

Notes

1. Richard Ingleby, 'The Solicitor as Intermediary' in Robert Dingwall and John Eekelaar (eds), *Divorce Mediation and the Legal Process* (Clarendon Press 1988) 43; Carol Smart, *The Ties that Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (Routledge 1984); Austin Sarat and William L. F. Felstiner,

- Divorce Lawyers and their Clients: Power & Meaning in the Legal Process* (Oxford University Press 1995); John Eekelaar, Mavis Maclean and Sarah Beinart, *Family Lawyers: The Divorce Work of Solicitors* (Hart Publishing 2000).
2. Eekelaar et al. (n 1).
 3. Lynn Mather, Craig A McEwen and Richard J Maiman, *Divorce Lawyers at Work: Varieties of Professionalism in Practice* (Oxford University Press 2001).
 4. Jill Howieson, 'The Professional Culture of Australian Family Lawyers: Pathways to Constructive Change' (2011) 25(1) *International Journal of Law, Policy and the Family* 71–99.
 5. Howieson (n 4).
 6. Howieson (n 4).
 7. Kihwan Kim et al., 'The Influence of Emotional Intelligence on Negotiation Outcomes and the Mediating Effect of Rapport: A Structural Equation Modeling Approach' (2014) 30 *Negotiation Journal* 49–68.
 8. Shiri Cohen et al., 'Eye of the Beholder: The Individual and Dyadic Contributions of Empathic Accuracy and Perceived Empathic Effort to Relationship Satisfaction' (2012) 26(2) *Journal of Family Psychology* 236–245; AM Gordon and S Chen, 'Do You Get Where I'm Coming From? Perceived Understanding Buffers Against the Negative Impact of Conflict on Relationship Satisfaction' (2016) 110(2) *Journal of Personality and Social Psychology* 239–260; J K Kellas et al., 'Communicated Perspective-taking During Stories of Marital Stress: Spouses' Perceptions of One Another's Perspective-taking' (2013) 78(4) *Southern Communication Journal* 326–351. doi:10.1080/1041794X.2013.815264
 9. Adam Galinsky, 'Why It Pays to Get Inside the Head of Your Opponent: The Differential Effects of Perspective Taking and Empathy in Negotiation' (2008) 19(4) *Psychological Science* 378–384; Owen Hargie, *Skilled Interpersonal Communication: Research, Theory and Practice* (Routledge 2011); D C Kemp and C E Smith, *Communication-based Intervention for Problem Behavior: A User's Guide for Producing Positive Change* (Brookes Publishing 1994); L Rizkalla, E. H. Wertheim and L. K. Hodgson, 'The Roles of Emotion Management and Perspective Taking in Individuals' Conflict Management Styles and Disposition to Forgive' (2008) 42(6) *Journal of Research in Personality* 1594–1601.
 10. Sylvia Morelli et al., 'The Neural Bases of Feeling Understood and Not Understood' (2014) 9(12) *Social Cognitive and Affective Neuroscience* 1890–1896.
 11. D. R. Ames, 'Assertiveness Expectancies: How Hard People Push Depends on the Consequences They Predict' (2008) 95 *Journal of Personality and Social Psychology* 1541–1557; Daniel R. Ames and Abbie S. Wazlawek, 'Pushing in the Dark: Causes and Consequences of Limited Self-Awareness for Interpersonal Assertiveness' *Personality and Social Psychology Bulletin*, published online 28 February 2014 <http://psp.sagepub.com/content/early/2014/02/28/0146167214525474>
 12. Eekelaar et al. (n 1).
 13. Student demographics were not taken as they did not form part of the analysis.
 14. $t(75) = 4.26, p < .05$.
 15. Kellas et al. (n 8).
 16. Z Rubin et al., 'Self-disclosure in Dating Couples: Sex Roles and the Ethic of Openness' (1980) *Journal of Marriage and the Family* 305–317; N. L. Collins and L. C. Miller, 'Self-disclosure and Liking: A Meta-analytic Review' (1994) 116(3) *Psychological Bulletin* 457; K. G. Meleshk and L. E. Alden, 'Anxiety and Self-disclosure: Toward a Motivational Model' (1993) 64(6) *Journal of Personality and Social Psychology* 1000; L. F. Barrett and P. R. Pietromonac, 'Accuracy of the Five-factor Model in Predicting Perceptions of Daily Social Interactions' (1997) 23(11) *Personality and Social Psychology Bulletin* 1173–1187.
 17. *Legal Profession Uniform Conduct (Barristers) Rules 2015*, r 36.
 18. Howieson (n 4).
 19. Jill Howieson and Lynn Priddis, 'A Mentalising-based Approach to Family Mediation: Harnessing Our Fundamental Capacity to Resolve Conflict and Building an Evidence-based Practice for the Field' (2015) 53(1) *Family Court Review* 79–95.
 20. Howieson and Priddis (n 19).
 21. *Legal Profession Uniform Conduct (Barristers) Rules 2015*, r 36.
 22. *Legal Profession Uniform Conduct (Barristers) Rules 2015*, r 37.

23. Kim et al. (n 7).
24. Howieson (n 4).
25. Howieson (n 4).
26. Howieson (n 4).
27. Howieson and Priddis (n 19); Jon Allen, Peter Fonagy and Anthony Bateman, *Mentalizing in Clinical Practice* (American Psychiatric Publishing Inc 2008).
28. Howieson (n 4).

Ethical approval

All procedures performed in studies involving human participants were in accordance with the ethical standards of the institutional and/or

national research committee [insert as appropriate] and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards.

Disclosure Statement

No potential conflict of interest was reported by the authors

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