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# Dealing with high conflict parents

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# Introduction

## Corney & Lind Lawyers Pty Ltd

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➤ Our focus areas

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➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

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# 1. What we'll cover today

- ❖ The importance of the Enrolment Contract
- ❖ Strategies for managing high-conflict individuals (**HCIs**)
- ❖ Engaging with Separated Families
- ❖ Avoiding Discrimination
- ❖ Limiting contact
- ❖ Barring from physical attendance
- ❖ Terminating the Enrolment Contract
- ❖ Litigating where absolutely necessary (using litigation as a sword is fraught with danger)



## 2. Case Study

- ❖ A P-12 private school
- ❖ Father of a young child at the College
- ❖ Divorced from mother
- ❖ Relations between the father and the school became acrimonious
- ❖ Significant litigation followed:
  - Federal Circuit Court – \$1.755 million for misleading and deceptive conduct (admin charge for duplicate reports to separated parents)
  - Damages claim against the College and Board for \$3.55 million
  - Various other claims and appeals
  - College commenced proceedings in Supreme Court (June 2013) – restrain Father from publishing objectionable material about the College, restrain him from attending the College and having him declared a vexatious litigant



## 2. Case Study

- ❖ June 2013 – Injunction by the Supreme Court restraining Father from publishing material about the College
- ❖ Father gave an undertaking to the Supreme Court to not institute proceedings in Queensland against the College, director or employee without bringing an application for leave
- ❖ November 2013 – Deed of Settlement between Father, his former wife and the College, seeking to bring an end to all the litigation between the parties. Included a permanent and irrevocable undertaking to never publish any material or comment about the College
- ❖ 21 November 2013 – Supreme Court interim injunction restraining Father from publishing any comment about the College, its officers, employees or agents
- ❖ 27 November 2013 – Supreme Court ordered the Deed of Settlement be specifically performed by the parties. The interim injunctions were extended.
- ❖ Later – father published further defamatory material. College prosecuted – father was given 12 months imprisonment (wholly suspended).



## 3. High Conflict Personalities

- ❖ Of great use to understand why we have high conflict personalities (HCPs)
- ❖ High conflict or *'querulant'* personalities may make up less than 1% of the population, but account for approx. 30% of complaints
- ❖ They also pursue complaints for longer and produce far more material in support of cases
- ❖ According to Dr Grant Lester they are:
  - Persistent, demanding, rude and frequently threatening
  - Suffer in their own life in pursuit of their claims
  - Show an increasing need for vindication and revenge (rather than compensation)
  - Key event is usually a **genuine** grievance



*"I'd rather be a huge part of the problem than a tiny part of the solution."*



## 3. High Conflict Personalities

- ❖ Managing High Conflict Personalities (and preventing them from, if possible, coming into conflict with you) is paramount
- ❖ Identifying them early (if possible, in the enrolment process) and taking preventative measures is also important
- ❖ How do we do this?
  - Your enrolment contracts are the ‘first line of defence’
    - Not unrealistic to ask why they want their child to attend your school, and why they are changing schools
    - Can help identify any potential red flags early
    - Can be worth taking a little bit longer with your intake – avoid problems later
  - Become familiar with personality disorders and how to manage them
    - Bill Eddy’s *High Conflict People in Legal Disputes* is a good place to start



## 4. The Enrolment Contract

- ❖ **Enrolment contract is your first line of defence against HCPs**
- ❖ Should play the central role in establishing the Ground Rules
- ❖ Should be in writing and signed by both parents
- ❖ Should incorporate the Enrolment Application
  - Require full disclosure
  - Certify honesty in the application process
  - Consequences if full disclosure not made
  - Discern at outset if families might become problems (referee checks, etc)
- ❖ Should address the consequences of split families
  - Obligations on parents to notify changes
  - Obligation on parents to provide Court Orders (including Domestic Violence orders)
  - Obligation on both parents to pay fees (joint and several liability)
  - How the College will provide reports (both parents or only one)





## 4. The Enrolment Contract

- ❖ Should require appropriate behaviour by students and parents (towards other students, teachers, other parents etc)
  - Require parents to also comply with relevant policies (bullying, etc)
- ❖ Should require mutual trust and cooperation (education is a partnership between the College and the parents)
- ❖ Should require parents to fully support the educational programs of the College
- ❖ Should be regularly reviewed
- ❖ Can be tailored for specific circumstances (i.e. supplemental terms for parents who have behaved badly)
  - Parental Contact with the College
  - Parental attendance at College events
  - Immediate termination for non-compliance



## 5. Minimising Impact of HCPs

### ❖ Listen to their concerns

- This can sometimes be all it takes to manage a HCP
- Listen **carefully** – active listening is incredibly important
- Use reflective listening
- Show you understand how they're feeling without agreeing with what they say
- Don't focus on the emotion
- **DON'T** reinforce that you believe them

### ❖ Manage their concerns

- Communicate you will investigate their concern
- Be clear where you can and can't assist
- Don't allow yourself to be '*recruited*'
- Take time before responding to anything in writing – emotional responses are no good for anyone!
- Be respectful, give credit where it's due
- Be clear about *realistic* boundaries, expectations and roles early
- Try to give them something to do (even if it's a small task) – it helps to make them feel they're participating in the resolution



## 5. Minimising Impact of HCPs

### ❖ Cover your backside when things turn contentious

- Get everything in writing – and don't communicate with them verbally where possible
- Take detailed notes for any verbal conversation
- Have at least 2 staff members in any meetings where you believe there'll be a high conflict situation
- In receiving any correspondence, use Bill Eddy's BIFF method:
  - Brief
  - Informative
  - Friendly
  - Firm
- Be transparent and open (where possible)
- Be very clear about what they have agreed to previously (especially in enrolment contract)
  - As you agreed, we are doing (x), or
  - As you know, the procedure is (y)
  - Point them to the relevant places in the enrolment contract



## 6. Engaging with separated parents

- ❖ Have clear boundaries with parents and child
  - What services will be extended
  - What information will be provided
  - What information will be considered confidential
  - Who is responsible for fees
- ❖ Try to have open communication with both parents
  - Phrase communications as neutrally as possible
  - Open communication minimises an allegation of bias
  - Get both sides to a story where relevant
  - Only communicate with one parent where necessary
  - Don't suggest to a parent that you "support" their position
- ❖ Extra-curricular activities – consider obtaining consent of both parents where practicable
- ❖ Keep clear, factual notes of your communications (who, what, when, where). Avoid assumptions or opinions in your notes
- ❖ Consider policies around names of children (will you allow "known as" names, or only legal names?)
- ❖ Provide information to both parents unless exceptional circumstances



## 7. Avoiding Discrimination

- ❖ Discrimination law – very far reaching now
- ❖ Important to know what can and can't be done
- ❖ Direct Discrimination
  - Includes treatment of an “associate” of a person with a disability/impairment (i.e. Parent)
  - Less favourable treatment than another person without the attribute would be treated in circumstances that are the same or not materially different
  - Focus is on the real reason for the action
  - Where there is more than 1 reason
    - Queensland - Impairment must be a substantial reason
    - Commonwealth – Disability must be a reason
  - Identify and apply the comparator
  - **Motive is irrelevant**
    - “the central question will be, why was the aggrieved person treated as he or she was? ... Motive, purpose, effect may all bear on that question. But it would be a mistake to treat those words as a substitute to “because of”” (Gummow, Hayne and Heydon JJ in Purvis, at p 163)*



## 7. Discrimination issues

### ❖ Indirect Discrimination

- What is the Requirement/Condition being imposed?
  - Behaviour Management Policy/ Bullying Policy
  - Terms of the Contract of Enrolment
- Is it reasonable?
  - objective test;
  - less than necessary but more than convenience
  - relevant circumstances – reasons, effect, financial burdens

### ❖ Qld Exemption – Act that is reasonably necessary to protect the health and safety of people at a place of work (section 108)

- Act to protect all those within the College (staff, students, other parents etc)

### ❖ Implications

- Treat parents consistently
- But don't be afraid to act



## 8. Limiting Contact

- ❖ Why do it?
- ❖ Ease of communication can be a weapon against you
  - i.e. Email, telephone etc
  - Expectation of immediate response
  - Increase stress for staff dealing with the parent
  - Distract staff from other responsibilities
- ❖ Duty of Care to Staff – *Work Health and Safety Act 2011*
  - A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of workers.
  - Parents can behave in bullying behaviour
  - College has a duty to protect staff in these circumstances
- ❖ Your duties are first to your students and staff – you cannot serve them by spending all your time at the whim of HCP parents!



## 8. Limiting Contact

### ❖ Consider limiting communication

- Graduated limits of communication, depending on the parent's behaviour
- Basis – College's duty of care to staff
  - Communicate with one staff member
  - No telephone contact, unless risk of injury
  - No email contact
  - Transition to postal contact
  - Final option – limit contact to a third party (College legal representative)
- Aim – slow down the communication

❖ People build expectations based on behaviour – if you are **consistent** in limiting contact with all parents, that will become the expectation





## 9. Barring from physical attendance

### ❖ Sometimes things get so bad you need to prevent attendance by a parent/guardian

➤ You can do this!

### ❖ How?

### ❖ *Education (General Provisions) Act 2006*

➤ Section 346 – Direction about conduct of movement

- Direction by the Principal to restrict conduct by a person on school grounds
- Up to 30 days in duration
- Grounds on which Principal must be satisfied: safety and wellbeing of persons on the premises, prevent or minimise damage to premises, maintain good order, proper management of the School

➤ Section 348 – Direction to leave and not re-enter for 24 hours

- Direction by the principal
- Grounds – Principal reasonably suspects that person:
  - Committed or about to commit an offence
  - Abusive, threatening or insulting language
  - Threatening or violent behaviour
  - Disruption of good order
  - No good and lawful reasons to be at premises



## 9. Barring from physical attendance

- ❖ Alternative Approach – Rely upon common law rights as landowner
  - Land-owner / Lessee has a right to exclude all others from entering or using land
  - Must prove:
    - You are the land-owner/Lessee
    - The individual has intentionally or negligently entered or remained upon your land
    - The person has done so without your permission or other legal justification/excuse
  - Parent/Student has permission to enter school premises
  - However, this permission can be revoked
- ❖ How to go about it?
  - Give the direction verbally and confirm it in writing
  - Seek the assistance of the police if non-compliance

# 10. Terminating the Enrolment Contract

## ❖ Ensure the Enrolment Contract places obligations on the parent

- Obligation to comply with the Bullying Policy
- Obligation to not bring the College into disrepute
- Obligation to treat staff, students and parents with respect
- Mutual Trust and Confidence
- Ensure Termination provisions are clear and enforceable

## ❖ Process for Termination

- Will you provide Natural Justice?
- Not required at law (but will still need to prove the breach on “balance of probabilities”)
- If providing natural justice:
  - Particularise the complaint
  - Provide an opportunity to respond
  - Provide an independent/unbiased decision maker
- Termination is the option of last resort
  - Exposure to common law damages if termination is unlawful/ Repudiation of the Contract
- Seek assistance of legal representatives for this

# 11. Litigation

## ❖ Litigation where absolutely necessary

- Using litigation as a “sword” is expensive and can be fraught with danger
- May be necessary where the parent is endangering the health of staff/engaging in serious defamation
- Embark upon cautiously and with good legal counsel
- Look out for possible exit points (Deed of Settlement, etc). Settlements may involve compromise, but can still be used to your advantage.
- But sometimes – it is the only option available to the College to obtain “peace”



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