

KEEP OUT OF THE RING

Family conflict can spiral out of control and before you know it there are legal advisors involved benefitting neither family nor business. **Dennis Jaffe** explains the alternative ways of resolving conflict before it reaches to the boxing ring stage

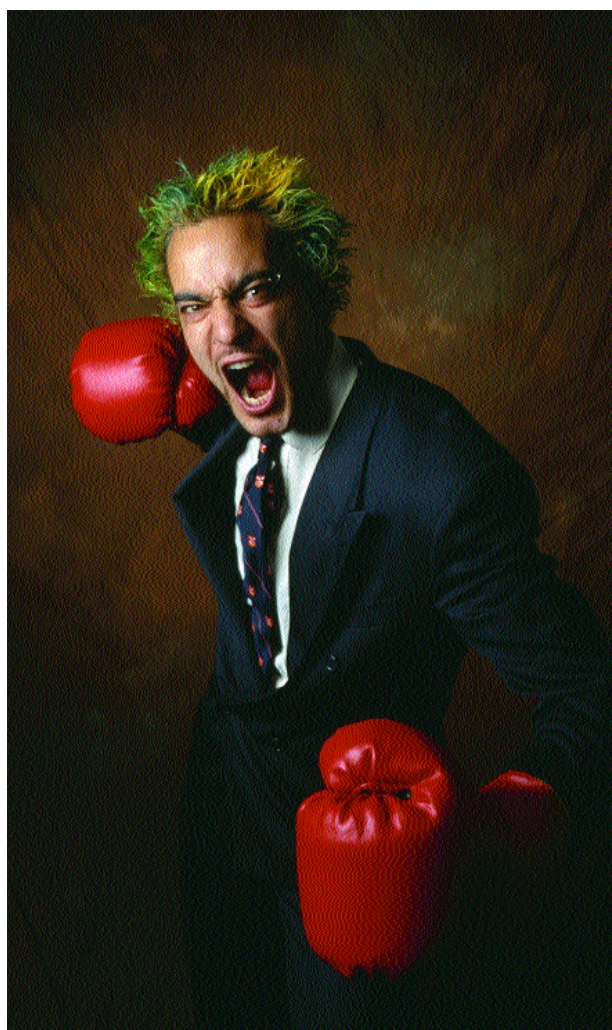


There is nothing more ominous for a family advisor than to hear from a family member about his or her growing resentment or conflict with the family. Too often, the advisor feels helpless, seeing misinformation, misperception or misplaced feelings begin to poison family relationships, and undermine the financial health of the family. The family member feels deeply wronged by some action, and instead of facing the issue directly, they build up negative feelings that too often lead them to seek legal redress for what are both personal and legal issues.

Family conflict is inevitable within a family where there are multiple generations, family branches and complex and valuable financial entities. The challenge for a family, and their advisors, is to find ways to deal with conflict that sustain the family's overall financial and business health, but also respect the personal realities and relationships within the family. Too often, once a family dispute enters the legal system, the process and the outcome may be destructive to both the financial and personal health of the family.

Family conflicts undermine the family's ability to manage their wealth in several ways. The existence of the conflict makes it more difficult for the various individuals and entities to reach agreement on basic policies. Conflict brews below the surface and while the discussion centers on control or distribution of wealth, the real issues that lie below the surface (and are not discussed) centre on family rivalries, fairness and ancient events. To make matters worse, the conflict often preoccupies family members, who spend endless energy working on their own agenda, while nobody in the family focuses on the external challenges of the marketplace, the family business and the whole economic picture. While the family engages in endless palace intrigue, the kingdom is under siege.

The hidden causes of family conflict lie deep in the family history. There are issues that one family heir is unfairly favoured financially. There is jealousy over who is closest to the parents, or whose



work is more valued, or who is more successful. There are secret agreements where some family members do not feel they are being told the whole story, or the truth. There are old hurts, such as one's spouse not being welcomed into the family, or feeling neglected by one's parents, which lead a family member to feel 'entitled' to something later on.

The legal and business system is ill-suited to handle these issues. Firstly, the issue that is being fought over may not be the real issue. If the legal system is contesting a trust agreement, or a family financial decision, then the legal system takes that as the real conflict, and does not have a mechanism to see below the ►

surface. Therefore, the resolution will tend to satisfy neither party. For example, sometimes, because of the deeper hurts, it is not clear what a dissident family member really wants. There are endless negotiations to buy out their share of a family enterprise, or over a fair price for their interest, but the deeper hurts make it difficult for either party to come up with a reasonable figure. Instead of looking out for their own interests, one family member is focused on what the other side will gain and, too often, the situation is posed so that the other party is the clear loser. This form of thinking makes it difficult to find a fair resolution for both parties.

The advisor, seeing the storm brewing in the family, often takes action that makes things worse. Since they often have a working relationship with one member of the family, either a patriarch, board member or family office manager, they may feel forced to take sides and 'agree' with their colleague rather than suggest that there may be more to the story. If they only talk with one person, they may not see how other family members see the issues differently. For example, some minority family members may feel less informed than the staff and family members who are in the office, or working in the family business every day. Other advisors are not comfortable with emotions in general, and collude with an upset family member to sweep the issue under the table, as if it will go away. They don't want to "stir the pot" and face a conflict directly. Neither does the family leader. The outcome of this neglect or one-sided focus is that the dissident family members, who feel unheard and helpless, will try to empower themselves by obtaining the services of a confrontational legal advisor to shake the family tree.

Once a conflict has entered the confrontational stage it is harder to resolve. Each person, talking to people who are 'in their corner' gets more deeply convinced that their cause is just. The legal advisors strongly urge family members who disagree not to talk to each other because they may hurt their cause. So efforts to reach a personal agreement are less likely. In addition, in the heat of the moment a family member may say and do things that add more hurt

and distrust to the relationship. Everybody becomes captive to the legal process, which can never achieve real family justice, because it is only concerned with the legal and financial issues, not the personal ones.

Of course, from within a family conflict both advisors and members of the family can clearly see that the best and most effective measures were those that could have been in place to prevent the conflict from getting out of control in the first place.

A family can initiate several forms of prevention. First, families can have informal activities to get to know each other and build trust. Families that have annual picnics or all-family meetings have a chance to get to know each other, and even to breach sensitive topics in informal settings.

Second, you can't communicate too little. And the communication process has to be extensive enough so that individual fam-

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ily members are able to talk about their concerns and receive full responses. A family advisor who takes time to educate and share trust or business information with an upset or confused family member can be practicing preventive medicine, even if the questions and time can feel frustrating. A family often has a regular forum where financial and business information is shared and the family is able to hold an informal discussion. Of course, the family members must agree and understand the need to keep these discussions confidential.

Finally, it is preventive for the family to create agreements about major issues such as the overall mission and goals of the family enterprise, how a family member can sell their shares, how dividends and compensation are accomplished, conflict of interest policy, and employment and decision-making authority about family ventures.

But hindsight is not insight. Families do develop conflict and the advisor is sometimes in the best position to help the family move towards a resolution. The advisor often has the ear of all the key people, and

can persuade them to come together to work on a solution. There are several foundations that help them take on the role of mediator. First, the advisor has to make clear that their role in the conflict is to speak for the whole family, to be the 'voice of the business' or a fair witness, rather than taking sides or working for one part of the family. This role is not that of arbitrator, but of mediator, whose task it is to create a safe setting for the family members to come together and find their own resolution.

A good mediator moves in certain ways to help create trust and engagement in the family. First, they can help the whole family create a setting where family members feel comfortable sharing their feelings about the issues. The mediator might say that the initial meeting will not focus at all on what to do, but just on making sure that each person is able to say what they

want to, and that the whole family has access to the information they need. There is a phrase 'go slow to go fast' that suggests that a family has to decide that they won't have a quick resolution of an issue that has taken many years to grow up. Second, the advisor

should begin with the positive and discuss what family member's value, and what is working well in the family. The focus then should not be on 'who is to blame' but rather on what can be done to move on. Avoiding a climate of blame and recrimination is a key element of positive conflict resolution. And finally, the aim is to make sure the family members in the middle who have good relations with both 'sides' act as helpers to show each side that there is more to the story than their own views.

When a family develops a conflict, as is inevitable in a large, complex and wealthy family, the advisor is in a position to make a great deal of difference. Instead of feeling caught in the middle, and helplessly watching the family go downhill, the advisor can take action and become a family mediator, helping the family resolve conflict in ways that preserve both the family relationships and their wealth. ■

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