

Separation and Divorce: What are we fighting over?

When couples get downright nasty or unreasonable, it is much harder to reach a separation agreement. This often translates into significant litigation costs, emotional damage to spouses and their children that could simply have been avoided had cooler heads prevailed.

I often wonder if separated couples ever ask themselves, "What are we fighting over?" If they sat back and pondered the question, things might go a lot smoother for them.

It is rather obvious that separated or divorcing couples carry a lot of emotion. Grief, disappointment, fear, anger - sometimes even feelings of rage and revenge. I'm not going to tell you that it is wrong to feel that emotion. After all, much of it is a natural reaction. However, that emotion can prevent a quick and fair settlement of all issues at a much lower cost.

Some answer the question, "We're fighting over money." Who isn't? The bare fact is that this issue is relatively simple in most cases. You both know what you had entering the marriage, what you had on the separation date, and what inheritances, gifts, insurance payouts you receive during the marriage. So, the financial aspect of most cases can be resolved with a simple calculator. Granted, it gets messier when one of the parties fails to disclose financial information, tries to hide income or tries to exaggerate expenses, or when there are businesses and business or personal partners involved. However, most situations do not fall within those complex equations. Most couples have a house, a vehicle or two, household furniture, some jewellery, tools and so on. This is not complicated. You should not be spending several thousands of dollars to sort this out.

Another frequent answer is, "We're fighting over custody of the children." There may be obvious cases where it would not be in the best interests of the children to be with a particular parent. These are cases of abuse, domestic violence, or when one parent has inadequate parenting skills. In most cases, however, right up to the date of separation, both parents raised the children. And just as suddenly, one or both parents make a claim for sole custody, alleging that the other parent is a lousy parent, an inattentive parent, and so on. Children often disagree with their parents' fingerpointing and generally wish to be parented by both parents. In those cases, what are we fighting over?

It has been my observation that three things make a separation and divorce palatable. The first, is keeping emotions in check. The second, is being reasonable. The third, keeping the legal costs low. This is all attainable.

As I stated earlier, emotions are natural. The more difficult it is for a spouse to accept the breakdown of a relationship, the more emotion seems to play a role in the settlement process. It has been my observation that spouses who can keep their emotions in check are those who: (1) are prepared to move on, regardless of what happened; (2) are being proactive in moving on; and (3) are dealing with those debilitating emotions: anger, fear, and grief.

There are many resources out there that can help separated persons deal with these emotions during this difficult time in their lives. Keeping busy with an eye to the future is important and there are agencies and support groups that can help. There are counselling courses available to deal with the tragedy of separation. There are family and friends.

Rather than deploy your family and friends against your spouse, why not remain in one camp and try to work things out. Turning your family and friends against your spouse will only make your spouse fight back harder.

Similarly, slandering your spouse with regard to parenting skills and confusing your children who were, just yesterday, quite happy with your spouse as a parent is not a technique that will facilitate an early settlement of your separation issues. Using your children as spies and egging them on to despise your spouse or his or her new partner is not conducive to raising emotionally healthy children, nor does it foster an air of cooperation that is so important for an early, inexpensive and fair separation agreement.

I often try to tell people to focus less on their emotions than on moving forward. Sometimes, I tell people to treat our settlement meetings like a business transaction. No blame, no insults, no threats – just dealing with the children, the house and the money issues. Never mind what happened before, who did what to whom or who initiated the breakdown of the relationship. Just deal with the issues. What is in the best interests of the children? What does the law say about child support, spousal support, property division, and so on? Those are the issues to resolve. I know this is not easy and that there is so much at stake, but the less emotional a person is, the more likely that person is going to be reasonable in considering settlement options and the sooner the matter will settle.

Another way of keeping emotions from taking over the settlement process is to stay out of the courts. I often ask the client to consider proposing a separation agreement to their once better half. I have settled many cases without ever meeting the other spouse or their lawyer. If it works, why make it more complicated than it needs to be?

Another approach is a four-way meeting. This is a meeting between the parties and their lawyers where all of the family law issues can be settled in a non-threatening environment.

Another method of settling a family law case is mediation. Mediation involves a third party, a trained mediator, who will try to bring the parties to a settlement, generally with the assistance of their lawyers.

These no-court approaches rely on the parties being reasonable and having relatively equal bargaining power. In cases of domestic abuse, the abused spouse may have a significant disadvantage in these settlement approaches because of an imbalance of power and if a separation agreement cannot be negotiated, court may be the only recourse.

In most cases, no-court approaches tend to facilitate settlement because they do not create a competitive environment as exists in litigation. In meetings, it is much easier to work together to fashion agreeable terms for moving on. However, if resolution is not possible, one may have to resort to court.

Regardless of how the case resolves, it is important to resolve it quickly. This will save the parties the considerable emotional toll that prolonged proceedings often bring about. The sooner a case settles the less money it costs. Court cases drag on and on because of limited institutional resources. If you keep a case out of court, the sooner it will conclude and the more you will save on legal fees.

Another aspect to keeping legal costs to a minimum is being reasonable. Sometimes, a client will just not listen to sound legal advice. Usually, this is due to emotion overtaking rational thought. This is self-defeating behaviour. You are entitled to whatever the law allows. Sometimes there is room for debate as to your entitlements, sometimes there is not. Your lawyer will be able to advise you. Listen to your lawyer. They are working for you.

Sometimes, one spouse just wants to make the other spouse suffer. This is a terrible and self-debilitating approach to dealing with a family law case. If the relationship broke down, counselling failed or was not an option, it is time to move on – not to punish, to alienate or to keep trying to bring the other spouse back into the relationship. If it's time to move on, just move on or you will risk becoming an embittered and financially destitute family law litigant.

It's all attainable, but it has to start with the parties. A lawyer will usually try to settle things at an early stage of involvement with the client. However, the client and the client's spouse will then determine the shape of things to come. Dealing with emotions, being reasonable, and staying out of court proceedings, if possible, go a long way toward a fair settlement that will not break your budget or adversely affect the health and well-being of you and your children.

If you are separated or about to be separated, ask yourself, "What are we fighting over?" Then, get your support structures in place, retain a lawyer to assist you, and start making plans for a brilliant future. We are here to help you move forward.