

Resolving Separation And Divorce Issues

Some 20 years ago it used to be that referrals from family lawyers were only for custody and access assessments long after the negotiation flowed into litigation. If there were business entanglements, business valuers were brought in from both sides to duke out their numbers in the court arena. If like the song, “love is a battlefield” then court was the slaying ground.

Then early within the 1990’s there was quite a proliferation of mediators; those folks who would work with both sides to reduce the risk of litigation, be it for determining the ongoing care of children or sorting out financial matters. However, in those early years, the mediators were often met with disdain, particularly from the litigators. Turf wars?

As the 1990’s moved on, the writing was on the wall that what the custody and access assessors recommended would likely be ordered by the courts. As such, there was a rise in requests for assessors to act as arbitrators. After all, why pay \$20,000 - \$100,000 for a trial if the outcome was likely going to be determined by the assessment anyway? From there the referrals for child related matters took on the form of mediator-come-assessor-come-arbitrator and parenting coordination was born.

Enter the new millennium and the dark horse that was collaborative law began sneaking up. Starting out as a movement of disenfranchised litigators, those disillusioned by the carnage of court as a slaying field, collaborative lawyers gained momentum with a mantra citing, “a better way”. Collaborative lawyers won’t go to court and the better way included recognition of the need for more attuned financial advice and the need to support families in their restructuring to new connected/separated domestic entities. It wasn’t enough to draw a line between the financial numbers. It became important to structure a financial relationship between separating parties that allowed for the greatest preservation of assets and a distribution of those funds so as to minimize loss and maximize residual income. There was the recognition that relationships don’t end, although change, and that children are better served by parental relationships that remain respectful.

The challenge that was collaborative law, has since become Collaborative Practice, with the recognition that financial and family professionals are not just adjunct players to the divorce team but represent the soul of matters to be resolved. With Collaborative Practice, the lawyer’s role has morphed from litigators and doing all, to guardian of the process in order to provide for the level playing field. This family law game is no longer zero sum, but win-win.

Litigators continue to linger. There are those parties who continue to seek revenge and retribution. For them, litigation is the route of choice. For those who see past the anger though, there is now a myriad of alternative dispute resolution options.

More limited are the referrals for custody and access assessments for the court arena. More in number are requests for the parenting coordinator to enter earlier on, before parents are entrenched in their dispute. Financially people are wiser and the monies saved from the cost of litigation are financing settlements that endure longer than Solomon’s knife to provide for more lasting annuities to ensure greater financial sustainability as the family restructures.

What was family law and litigation is nearly gone. The genie cannot be put back in the bottle. Parents and children are better served and the divorcing public is increasingly aware of these choices.

If you are separating or divorcing, look long and hard at the full range of choices available for resolving your restructuring. Long after the professionals have gone, do you want to be licking your wounds or taking pleasure in the preservation of assets and relationships? Now there are several *better ways*.

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