

Three Things I Wish My Family Clients Knew before Sitting Down with Me

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Lawyers Charge More than Therapist

When I first sit down with someone going through a separation, especially when the cause of the breakdown in the relationship was due to infidelity, I advise them to discuss the emotional difficulties and reasons of their separation with a therapist.



A therapist, unlike a lawyer or a friend, has the skills, tools and training to help someone navigate the emotional consequences of separation. Therapy sessions might even be covered under some health plans. Also, therapists often do not charge several hundred dollars an hour (unlike your lawyer), to listen about how your ex was sleeping with your best friend, and how you found out and how devastated you are.

While a lot of people are under the misconception that a judge is going to care that your ex was sleeping with your best friend behind your back – either to bolster a claim for spousal support or to shield themselves from such a claim. A judge cannot either under the Divorce Act (federal legislation) or The Family Maintenance Act (provincial legislation) take into consideration any misconduct of a spouse or common-law partner in regard to the relationship. [1]

Let the Little Things Go

Fight for the big things, let the little things go.

I have had clients come to me with extensive lists of items that have next to no actual or sentimental value: Fridge/freezer contents, refrigerator magnets, a moldy mattress in a leaky backyard storage shed, Halloween decorations from Dollarama, baby clothes in storage (child has outgrown), wood pallets (were obtained for free), and the other spouse's clothes (why?!).

Judges are not amused when parties fight over little things. In fact, the new Comparative Family Property Statement (Manitoba Queen's Bench Form 70D.5) required by the court, doesn't even have a heading for vehicles. A court doesn't want to deal with trivial things, they want to deal with the big-ticket items and you should too.

If it is not worth getting a professional opinion as to its value, then it isn't worth fighting over. Maybe it feels like the other side "wins" keeping the old toaster, but maybe you can "win" by not paying your lawyer to fight over it and end up with a nicer newer toaster that won't have the emotional baggage connected to it.

Get the Documents to the Lawyer Yourself

Gathering the financial documents required by the court in a separation is a lot of leg work...you can save yourself money if you do it yourself and get it to your lawyer's office the first time that they ask for it.

Start ordering your financial records that are in your name alone or in joint names (chequing, savings, loans, registered savings plans, TFSA's, etc.) in hard copy, direct from the source of that information (like the bank). It is especially important to obtain these financial documents for the month in which you separated, and depending on the length of the relationship maybe for the month that you started your relationship as well.

Don't rely on or expect that you will have electronic access to your bank accounts. Your spouse may vindictively change the passwords, close accounts on you, or block you in some way.

Find copies of your tax returns, notices of assessments, T4's, and the last three paystubs from all recent employers. If you don't know where your taxes are, order them directly from Canada Revenue Agency and get copies of your paystubs from your employers.

Order pension division statements by contacting your plan administrator directly. These documents can sometimes take months to receive.

If you are married, the spouse who files the Petition for Divorce must also file an original marriage certificate. If you don't already have one, it will have to be ordered from Vital Statistics, which can take 4-6 weeks. The court will keep the original marriage certificate and will not return it to you.

Most, if not all of the above listed documents are required by the court or the lawyer to advise you properly.

It is important that you obtain the documents that your lawyer asks for quickly. It will save you money as your lawyer won't have to "follow up" with you as to where the documents are, or have to get them on your behalf.

I hope these practical and cost-effective tips will be of assistance to you.

[1] The Family Maintenance Act, CCSM c. F20, s. 4(2) Conduct - "The obligation under subsection (1) [spousal support] exists without regard to the conduct of either spouse or

common-law partner, and in determining whether to make an order under this Act for support and maintenance of a spouse or common-law partner, a court shall not consider the conduct of the spouses or the common-law partners in respect of the marriage or common-law relationship”; The Divorce Act, RSC 1985, c. 3 (2nd Supp.) s. 15.2(5) Spousal misconduct – “In making an order under subsection (1) or an interim order under subsection (2) [spousal support], the court shall not take into consideration any misconduct of a spouse in relation to the marriage.”

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