

Family Law

Why so many family law cases are difficult to settle

By Lorne Wolfson



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(July 19, 2017, 9:25 AM EDT) -- There are a number of reasons family law cases are hard to settle. Here are some of the main impediments.

The relationship between the parties

In most family law cases, the parties have had a lengthy history. They have had an intimate relationship and they continue to have an emotional relationship. The parties know each other's personality (including wishes, desires, fears and styles of conflict resolution).

Unresolved emotional issues often stand in the way of addressing legal issues. In most cases, they will need to have a working relationship (through their children) for many years into the future. Often one party still hopes that the relationship will be rehabilitated, while the other has lost any such interest. In many cases the breakdown of the relationship results in a loss of the trust that the parties previously had in each other. Finally, the influence of third parties (friends and family, new partners, etc.) can often create roadblocks to resolution.

The issues in dispute

Family law cases are generally about kids and money. For most people, there is nothing more important in their lives than their children. Decision-making and residence are critical issues. Even spouses who played a minimal role in decision-making and spent little time with their children before the separation suddenly see these matters as acquiring great importance.

Equally significant in many cases (and of primary importance when there are no serious child-related issues) is money. Money means many different things to family law clients. It can mean the ability to maintain a lifestyle, financial security, compensation for contribution to the relationship, power and control, recognition of value and social status.

Financial pressures

In most family law cases, the same amount of money that previously supported one household must now support two. Many of the "efficiencies" that the family enjoyed prior to the separation (division of labour, complementary roles, income-splitting, and so on) are lost once the parties separate. Often the major breadwinner's income declines following separation, whether because of loss of time, focus, or incentive to earn.

In many cases, financial problems that predated the separation (family living beyond its means, business or investment reversals, claims by creditors) become more acute after separation. Finally, the cost of resolving a family law case can become as significant as the original issues.

Unfinished business

Most family law cases involve a mixture of legal, factual and emotional issues. In many cases the parties present with totally different versions of the marital history. Often progress in resolving the legal issues cannot occur until progress in resolving the emotional issues has been achieved.

Depending on the nature of those issues, separation counselling, family counselling or individual therapy may be required to get the parties to the point where the legal issues can be addressed.

The dispute resolution process

Many family law clients find the dispute resolution process to be difficult to understand and navigate. For many their first experience with lawyers and the legal system is completely overwhelming. Parties who have typically relied on each other to solve problems must now find other sources of advice. Many clients have difficulty in obtaining qualified legal counsel with whom they can relate and work effectively.

The proliferation of dispute resolution alternatives (mediation, med/arb, collaborative, and so on) has added to the list of processes from which the client must choose (and hope that his or her spouse makes the same choice) and added to the uncertainty as to the best route to follow. Those who opt for the court to resolve their disputes are generally disappointed with the cost, slow progress and results.

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