

Family law must be one of the most misunderstood areas of law in Canada. It seems that everyone, lawyers and lay persons alike, have the wrong idea about what family law is.

The prevalent belief among law school graduates seems to be that family law is easy. Lawyers who do not practice family law appear to carry along that same belief.

Clients are probably most misguided when searching for a lawyer to help them with their divorce. They appear to make mistakes that clients of lawyers practicing in other areas of law do not appear to make. I suspect that the situation that brings them to a lawyer is so traumatic that the client is inevitably affected by the stress. Having a psychology degree could probably help any lawyer practicing in the area of family law. A crystal ball would be better!

Everyone, lawyers and clients alike, seem to think that they know what there is to know about family law. I've lost track of the number of times that a client calls and insists that he or she has a simple question. All she wants to know is what her rights and obligations are when she divorces her husband. It will take 10 minutes to answer the question. Those clients who overcome the initial suspicion that I refuse to answer their "simple question" in 10 minutes so that I can collect my fee, discover that they are much more informed after the initial meeting than they ever thought they could be. Knowing how much you don't know is valuable information.

The fact is that family law is one of the most complicated, interesting and challenging areas of law. It's what I like to call "real law". It is nothing close to the misguided notion that knowledge of the law is not important. I still learn something new about family law every day. But knowing the law alone is not enough. This is law that applies to real people and real situations. It's as relevant as law can be in the eyes of the public. No one is immune from the prospect of having their family fall apart. Family law deals with real situations but no two cases are ever the same.

So here are a few points to keep in mind when faced with discovering just how real this area of law is, at the hardest time of one's life, when the family unit breaks down. Below are some common questions that arise in my practice. Let's start with advice on the point already made,

1. Never listen to the neighbours! Each case is different. One minor fact can seem unimportant but will make all the difference in the resolution of your case. Just because your female neighbour lost custody of her three children, does not mean that you can expect the same result. Your neighbour may not want you to know all the details of her case. Don't rely on her experience. You may not know the whole story.

2. Always listen to the neighbours! When selecting a lawyer, ask around. If you were seriously ill, would you select a specialist by the glossy advertisement in the paper? Select a lawyer by asking people who dealt with that lawyer and try to get as many referrals and opinions as possible. Search the internet but be careful about misguided advice and disgruntled former clients who may not be telling the whole story. Check the web site maintained by the Law Society of Upper Canada (www.lsuc.ca) for any disciplinary action taken against that lawyer. The most reliable way is to check what court decisions are posted in which the lawyer represented a client in perhaps similar circumstances.
3. How should I decide whether or not I should retain the lawyer I met?
 - Establishing rapport with your lawyer is very important. You should feel comfortable with your lawyer. You should not be intimidated.
 - You should not be afraid to ask questions. You should be certain that the lawyer can explain her advice thoroughly in a way that you understand it. You should not be told to trust the lawyer blindly. Questioning the advice you are given will not intimidate a good lawyer. The questioning process itself will give you an opportunity to disclose relevant facts that may change the lawyer's mind, will remind your lawyer of facts she already knows and will help your lawyer formulate a sound position on your behalf.
 - Be very suspicious if your lawyer always tells you what you want to hear without being able to explain the basis of that advice in a way that would convince your estranged spouse if s/he was a reasonable person. Listen to your lawyer. The lawyer's job is not to appease you. Buy a dog if you want unconditional affirmation. You pay a lawyer to teach you how to behave in the context of your case, what to expect from your legal process and when to give in if necessary. The lawyer's job is to tell you the truth about the strengths and weaknesses of your case.
 - Compare. Interview a few lawyers and decide which lawyer makes you feel most confident in his/her skill and knowledge, as well as ability to represent you.
 - Show respect. If you demand respect from another person, show that you know what it means. Remember that your lawyer is a human being just like you – not a machine. Showing up without appointments and demanding unscheduled time, calling at all hours of the day and night, mistreating your lawyer's staff (especially the accountant), assuming that the lawyer has as little respect for his secretary as you do, being rude or obnoxious will result in you having to pay another lawyer to take over your file. That will cost you.
 - Be aware of the amounts you are paying your lawyer. Some clients arrange a delayed payment with their lawyer but never bother to ask how much debt has accumulated. That is the same as using a credit card without a spending limit and never looking at your bill. Ask to be billed frequently and review the bill carefully each time you get it.

4. Should I research the law on the internet or other sources before consulting a lawyer? Yes, you should. The more informed you are about the issues, the better equipped you will be to ask intelligent and productive questions when you are paying for the lawyer's time. Do not expect that doing your own research will qualify you for the job of your lawyer. But do expect that knowing what questions to ask will help you interact with your lawyer.
5. Should you hire a Legal Aid lawyer? Yes. You should if you qualify for a Legal Aid Certificate. There is no such thing as a Legal Aid lawyer. Every lawyer makes a personal choice as to whether or not he or she will accept a legal aid certificate. Some lawyers do it as a service to the community and others do it to gain or expand upon their experience. Some do it for selfish reasons. Some of the areas of law that can be covered by a client who pays with a legal aid certificate would not be covered by a client who is required to pay out of her own pocket. There is much to be learned this way, even for a lawyer with many years of experience. The offensive suggestion that lawyers who accept legal aid are worse lawyers than the ones who charge \$700 per hour will gain no credibility with an intelligent client. There are plenty of bad lawyers charging double the rate I charge and there are plenty of excellent lawyers who accept Legal Aid certificates and work for only a fraction of the pay, at no cost to the client.
6. Should I be sure to hire a Canadian lawyer? If a Russian speaking lawyer speaks English better than you do, then I don't see why you wouldn't hire that lawyer. There is no such thing as a "Canadian lawyer". One is either a lawyer or she is not. To be a lawyer in Canada, a Canadian degree is required. Russian degrees don't count. Speaking your language and understanding your culture is just a perk you get for hiring a Russian lawyer.
7. Why should I hire a lawyer if I can pay a fraction of the price by hiring a paralegal? Good for you! By asking this question, you demonstrate that you know the difference. Or do you? There is a lot more difference than the amount that is charged. A paralegal is not a lawyer. Many paralegals can do a great job in certain procedural and uncomplicated matters. Many paralegals are very intelligent and experienced workers who opted not to obtain a Canadian law degree for any number of reasons. They cannot provide any legal advice. They can help you complete the documents that you need to obtain a simple divorce. They can also find on the internet the blank form for a separation agreement and they can fill it out for you. But they cannot tell you what the impact of signing a separation agreement will be, nor can they tell you what implications the divorce itself may have for you in the future. You should certainly consider hiring a

paralegal if you are well informed and prepared. Consider consulting with a lawyer before you decide to hire a paralegal. A good lawyer will always tell you if your case is capable of being managed by a paralegal. If you are looking for someone to help you with the forms because you do not have proper control of the English language or simply cannot be bothered to figure it out yourself, or if you do not wish to spend time waiting in line at the court office to file your documents, then by all means you should hire a paralegal. But similarly to what you should do with any lawyer, don't forget to think for yourself. If the separation agreement you are being asked to sign says that: "the husband/wife will pay to the husband/wife the sum of \$100 per week/month/year in child support", then obviously, the agreement does not say anything and you know it whether or not you are a lawyer. Similarly to dealing with a lawyer, you should never hesitate to ask questions. As of the beginning of the year in 2008, all paralegals will be required to write exams and qualify to work as paralegals. They will also be required to carry liability insurance, in the same way that lawyers must do. This is part of the initiative to protect the public from persons who are not qualified to do the job. Ask whether or not the paralegal is licensed to practice as such. Ask whether or not the paralegal has insurance. Ask whether or not there have been any complaints against the paralegal to the law society or disciplinary action taken against him/her. You should ask a lawyer the same questions. When you get the answer either from a lawyer or a paralegal, check the Law Society of Upper Canada web site to confirm the information.

8. Should I document the fact that I am separated from my spouse? Not usually. There are different ways of determining the date of separation. However, "documenting" the date of separation in the easiest way would be by making a sworn statement that you are separated. Unless you need this document to show to a person in authority, this document is self-serving and loses its effect if you try to reconcile your relationship for a specific period of time. It may not help you in the future, but if you are the kind of person who feels safer knowing that you have a document on hand, then making an affidavit is not a complicated nor an expensive process. Besides, going to a lawyer for the affidavit may alert you to the fact that you have other, more serious issues to keep in mind.
9. Shouldn't my lawyer just do as I tell her to do? No. That's not why you pay the lawyer. If you wanted to do whatever you want, you could do it for free. I am always amazed by people who call and bluntly state that they need to "oformit' separate" so that they could cheat welfare, or that they need to get a divorce from a "fictivni brak". If you told the lawyer that you expect her to help you commit fraud, then you can forget about that lawyer wanting anything to do with you. No fee paid to the lawyer will convince a good lawyer to risk her licence for you. Contrary to what the jokes tell you,

an honest person is honest even if she is a lawyer. Honestly does not equate with stupidity. A good lawyer can be honest and honestly clever at the same time.

10. I need a separation agreement. Can I get it if my spouse doesn't want to sign it? The answer is easier than you think. Can you buy my house if I don't want to sell it to you? Can you believe that you actually asked me that question?
11. Should I get a divorce in Ontario or in Russia? This is a very important question. A divorce in Russia is much faster and for now, less expensive than in Ontario. However, the existence of the divorce obtained either in Ontario or in a foreign jurisdiction, has very serious implications for the rights of spouses. You should speak to a lawyer before you apply for a foreign divorce or agree to it. You should be certain that the foreign divorce will be recognized as valid in Ontario. You should also be certain that you understand the implications of obtaining the divorce on your rights or obligations as a former spouse. It may have serious implications for your rights to divide property, for your claim or defence of a claim for child support and spousal support.
12. Do married people have the same rights and obligations as people living in "common-law relationships"? Yes and no. Some laws that apply to married people do not apply to common-law spouses. For example, the common-law spouses do not have a legislated right to divide property. They also have to cohabit for a specified period of time, or have a child together, in order to qualify for spousal support. The rights of children are never affected by the marital status of their parents but the rights of the parents can be.
13. Can I get spousal support from my girlfriend? No. You are not spouses unless you live under the same roof. Only spouses can claim spousal support. That's why it's called "spousal" support.
14. I wish to give a monetary gift to my son in anticipation of his marriage. Is there anything I can do to prevent his wife from taking that money away in the event of a divorce? Absolutely! There are various options available. You should speak to a lawyer about the options best suitable for your situation.
15. Should I approach my future groom with a suggestion that we enter into a marriage contract? Maybe. If you have assets to protect, especially if those assets will eventually become your children's inheritance, then you should give this issue very serious consideration. But remember that this is a serious and sensitive issue to broach with the person who expects to

share your life with you. Speak to a lawyer before you make the suggestion to your future spouse. Then decide.

16. Am I married? Some people discover that despite believing that they are married, the Ontario law does not consider them to be married. This finding can have very serious consequences for the spouses. For example, they may not have the right to divide property. The law in Ontario requires that a marriage ceremony take place, officiated by a person authorized to perform the marriage and making it clear to the future spouses that their status will change at the conclusion of the ceremony. That is why people want to hear each other say: "I do!" I have discovered that there is a large portion of the immigrant population residing in the Toronto area who were married by civil means in Israel, who may not be considered to be married spouses in Canada. For example, some people were "married by correspondence" in Paraguay. If they did not have a marriage ceremony, then there is a serious question as to whether or not they are, in fact married in the eyes of the Canadian courts.
17. Should I sponsor my bride from Russia? Remember that sponsoring a spouse creates long term obligations. That person will be married to you. That person will have rights to divide your property, claim spousal and child support from you and have all the other rights that every spouse has. You cannot ship your bride back to Russia if you discover that she does not match the catalogue description. She's not baggage. She's your wife, although she may come with some baggage. Your obligations will arise in the context of family law but also outside of it. If the relationship fails and she finds herself in receipt of welfare, then you will eventually find yourself in receipt of a bill for that welfare amount that was paid out to your wife. You should certainly consider creating a marriage contract before marriage but consult with a lawyer to be determine whether or not the marriage contract will assist you, to what degree and how it must be created to be enforceable.
18. Can a marriage contract be created if my future spouse is not in Canada yet? Yes. But it must be done properly so speak to a lawyer before you create it.
19. Can you help me commit fraud? Not if I value my licence to practice law!
20. Should I grant a religious divorce (for example, the Jewish GET) to my spouse? Yes. If you do not, your spouse may have remedies against you that you did not expect. Speak to a lawyer before you tell a Rabbi that someone is forcing you into granting the GET. You may regret that statement later.

21. My wife never asked me for child support over the 2 years since we separated. Can she ask me now? Absolutely! She can ask you and she will get it if she asks the judge. Remember that your obligations to your children arise immediately upon separation. If you leave the house, start paying child support immediately. It is a lot easier to pay support every month than find yourself owing a huge amount retroactively.
22. Should I call the police to have my spouse arrested to advance my position in family court? Always, if you are a victim of abuse! Never, if your accusations are not true and your only goal is the perception that you will advance your case! There is a lot more to consider than may appear on the face of a dispute. Of course, it goes without saying that an abused person should seek the help available to him or her. There are various forms of counselling, financial and other assistance available to victims of abuse. If you are a victim of abuse, you may not know it or you may refuse to accept it. Get help if you are not sure. Call the police for help if you or your children are victims of abuse! But if you heard from your neighbour that calling the police with false accusations can help your case, then stop listening to neighbours. Aside from the fact that making false allegations in a crime, consider the fact that your spouse may have to participate in the criminal justice system. That spouse may be the same person from whom you will seek support for yourself and your children. The criminal charges may cause your spouse to lose the job that provides the income to pay support to you. On a personal level, you will start a war that will be hard to end.
23. Is there a peaceful way of ending a marriage when there are a lot of contentious issues between us? Of course there is! Give serious consideration to mediation. There are many highly experienced mediators who are well qualified to resolve any dispute without going to court and spending your life savings on legal fees. Some of them are psychologists. Some are lawyers. Some are both. Speak to a lawyer and research the issue thoroughly before you run to court with your court case that may have been avoided.
24. Should I insist upon getting the first consultation for free? Not if you are serious about dealing with your case properly. I cannot imagine how any lawyer can provide a full and proper consultation for free. Most lawyers offer a half hour free consultation. To be able to understand the case and gather the information necessary to give proper advice, approximately half hour is required. It is impossible to give proper advice in half an hour. I much prefer for my client to hear me speak about his case and actually understand what I say than be rushed through the meeting. Starting your process with a full understanding of your rights and obligations, understanding the nature of your instructions to the lawyer and being able

to communicate with your lawyer for more than 30 minutes at a time will help you deal with your case in the long run.

Perhaps the most important point I can make is to always remember that your children will suffer if you behave like a child yourself. Stop and think about what you do to your children or in their presence. If you cannot control yourself so that your children will never hear you say a bad word about their mother, even if she deserves it, then you are a bad parent. A child's parent is part of that child's identity. Telling a child that her mother is worthless is the same as telling the child that she is worthless.