

The new white knight: divorce lawyers

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I have a confession to make. Several years ago, when I was in the midst of my divorce, I had a mild case of transference.

I began to think of my divorce lawyer as I once thought about my obstetrician. I adored him, in a platonic sort of way, because I trusted him to deliver me from a painful situation I could no longer avoid.

A divorce proceeding makes you needy, angst-ridden and emotionally fragile.

The person you once thought was going to love you forever becomes someone you barely recognize.

Most people can't go through a divorce by themselves, and often those who think they can shouldn't. You need help.

That vulnerability - the most acute I have ever felt - is worth noting, however embarrassing, because it points to the power that family lawyers wield and how divorcing spouses need to educate themselves about how to manage that relationship.

It also helps to know what to expect from the whole process.

Phil Epstein, a noted family lawyer in Toronto, once asked attendees at a workshop about divorce what they thought their most important decision would be when they were about to embark upon a legal separation.

"When to tell the kids?" one woman suggested.

Mr. Epstein shook his head.

"Who is going to move out of the marital home?" a man asked.

Another shake of the head. There were several attempts at the right answer before Mr. Epstein told them what no one had mentioned. "The most important decision you will make is your choice of lawyer," he said.

That choice of counsel sends a signal to the opposing side. "Knowing who the counsel is tells me an immense amount about the case," Mr. Epstein explains. "It tells me whether the lawyer is going to simply accept instruction and push the client's agenda or whether the lawyer will take a more holistic view of the matter and encourage the client to be flexible and reasonable."

In other words, who is on your side and who is on the other will determine the kind of legal exchange you will have and how cost-efficiently a settlement will be reached.

Each side needs to realize that there is no such thing as absolute victory or even justice, which is difficult to accept when emotions are running high.

Mr. Justice Harvey Brownstone has seen many divorce cases end up in court because the estranged spouses expect justice for the emotional injury they feel they have suffered. "They think that they're going to come out of this with some sort of satisfaction. They are looking for power or control and vengeance. ... The satisfaction level is rock bottom. Family court is not in the vengeance business," says the author of the recent book *Tug of War: A Judge's Verdict on Separation, Custody Battles and the Bitter Realities of Family Court*.

Interestingly, family lawyers are often ill-equipped to practise the art of negotiation, says Victoria Smith, a collaborative lawyer in Toronto. "Ninety-eight per cent of cases settle prior to trial - very few cases, less than 3 per cent, have final trial - and yet most legal training continues to be focused on developing courtroom and advocacy skills," she points out.

The lesson: Shop around for your lawyer. "Ask them if they have had additional training in negotiation," Ms. Smith advises. "Do they understand non-defensive questioning skills and empathetic listening? Clients need to know how often they go to trial. And they should ask, 'Are you going to negotiate on my behalf? Is this a case that will be based on my rights and obligations or on what my goals and interests are?' "

Still, the selection of the right lawyer doesn't eliminate the dependency a client often feels in the professional relationship. The lawyer becomes a confidant. You are divulging emotional information to him that you may not even have told your mother. You explain your fears. You have to strip naked financially. And with the future uncertain, he seems to be the only person who can somehow secure it.

More than once, my lawyer pushed a box of tissues across his big, wooden desk in my direction. He listened and understood my personality - enough so he could effectively negotiate on my behalf - but he also knew when to draw the line. "I am not your therapist," he told me once in the kindest possible way.

At the end, when a separation agreement was reached, he and I went to lunch, and I told him that my only complaint was that he should have explained, early on, how and when I should communicate my concerns. In my high-anxiety state, I had been in the habit of sending him e-mails about every issue as they arose. His e-mail response, typically, was just a brief acknowledgment when I think I was expecting some kind of reassurance. It would have been more efficient, I told him, if he had simply told me to save up my list of concerns for one of our \$400-an-hour meetings rather than send e-mails for which I was charged a nominal fee for him to read.

It's hard to accept the fact that your precarious future is not your lawyer's only concern. I later realized that I was not alone among the damsels in distress who look to their lawyer to rescue them. He paraphrased an e-mail to me from a female client who was terribly upset that he was going on holiday when she was worrying about how she was going to manage. The tone of her note was "How dare you leave now?"

Why does he do family law, I wondered. "Because you feel that you are helping people through one of the most difficult life transitions," he said.

Mr. Epstein was more direct: "One of the most common characteristics of family lawyers is that they have rescuer personalities."

Which is good news, I guess, because it means that as much as we need to be rescued, they want to rescue us. Willingly, my lawyer was my fireman fantasy. It was just too bad the city wouldn't pick up the tab for getting me out of my burning house.