

Changing the Focus of Your Separation

published 05/25/2015

Author Andrea J. Hadley is no longer with TDS.
Please contact us for further assistance.

Statistics indicate that approximately 40% of marriages will end in divorce before their thirtieth anniversary. Given that this does not include common law relationships, it is unfortunately expected that most of us will experience some form of significant separation or divorce in our lifetime.



Similarly, most children will experience a separation or divorce either in their own immediate families or in those of close friends or cousins. This can be a significant and damaging life event or it can be simply an event that they experienced and from which they were largely unaffected.

The paramount consideration of the courts in family law matters is the best interests of the children. The children are the victims of separation and divorce. They have not chosen to live in a broken family nor have they chosen to have their parents constantly arguing.

What separating parents need to realize is that they can make this a positive experience, or at the very least a neutral one, for their children by focusing on the children's needs and perspective. This can be done by keeping the following in mind:

1. Children are not possessions to be fought over. This concept may seem obvious but a large percentage of the cases heard in the courts are custody matters. Parents are constantly fighting over time spent with their children. There are times when courts should provide guidance to parents. For instance, there are instances where a matter of a few days per month can have a huge impact on child support, government benefits and subsidies. However, much of the time it looks no different than fighting over the house or the cabin. Each parent does what he or she can to paint the other in a negative light so that the court will award them with custody of the children. They do this only to find out that the courts have no interest in the mud-slinging and are only concerned with maximizing the child's time with both parents.
2. There are two parents for every child. Each child has aspects of their father and aspects of their mother in their looks, their mannerisms and their psyche. When you call down the other parent in front of the child, they are well aware that it means that a part of them (specifically, one half) has those negative qualities. It is made especially worse when a parent who is always calling down the other parent says "you are just like your ...". This is extremely

hurtful to any child. Parents also need to be mindful of what others are saying. Maybe the mother has never said a negative word about the father but allows her extended family to constantly call him down in front of the children.

3. A child needs both parents in his/her life. This is not always a choice if one parent decides to leave, but a parent should never be prevented from having a relationship with his or her child if he or she is willing to facilitate one. There have been countless cases of one parent attempting to thwart the relationship that the other parent has with the child. Unfortunately, many are successful in doing so with no consideration of the impact that this has on the child.

The Supreme Court of Canada has made many decisions where this form of behaviour, called parental alienation, is referred to as a form of child abuse just as damaging as physical abuse. Parental alienation not only prevents a child from having a relationship with the parent but also involves a significant amount of negative comments being made about that parent. Both of these circumstances can cause significant psychological damage to the child.

4. The role of a new partner in a child's life should be considered carefully. In many cases, children are forced to call a new partner "Mom" or "Dad" or are told that they are not allowed to have a relationship with a new partner in the other household. Children need to learn to respect authority and should never be encouraged to undermine it. Each partner will have a different role in a child's life depending on their own family circumstances, strengths, weaknesses and the roles played by the child's parents. If a child has a mother in his/her life, dad's new partner does not need to take on a motherly role but that does not mean that she cannot be an important adult figure or mentor to the child. The parties must always consider what is in the child's best interests and do what they feel best reflects those interests.

5. Childhood is brief. Children grow up quickly and who they become as an adult is largely shaped by how you treat them as a child. If you are making your child suffer because of your anger toward your ex-partner, this cannot easily be undone and it is the child who will suffer.

6. Parents need to retain authority over their children. This sounds obvious to most of us. However, how many times have we heard that a child can decide where he/she wants to live when she turns X years old? Usually they are told 12, 13 or 14. Imagine the defiant child who has been told he/she can make this decision. When she does not like a punishment that she is given by one parent, she will simply decide to live with the other. This creates a scenario whereby neither parent is able to punish or control this child.

When clients focus on the children throughout the separation process, there are many other benefits that arise as the parties tend to be much more agreeable. Some of the benefits can include less emotional strain on the parents, lower legal fees due to a lack of litigation, and

improved relationships between the parents and the children. As such, all parents are encouraged to consider the above if they are considering a separation. There are a number of child-focused services available to separating families. If you are unaware of these services, ask your lawyer.

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at kdl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.