

Mental Health

Hidden mental health issues and family law

By **David Frenkel**



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(December 11, 2018, 9:23 AM EST) -- The term "mental health" is now at the forefront in everyday conversations, headlines in the news and government agendas. However, when it comes to family law, more subtle forms of mental health are often overlooked despite them being the difference between an amicable separation and financial disaster.

To appreciate these subtleties, a more in-depth look at the process of separation and divorce is warranted. For example, once a couple has decided to go their separate ways, there are typically many levels of emotions swirling around. There is the fear of the unknown, there is the financial uncertainty, there is the bitterness toward the other spouse and the sadness arising from the failed relationship itself.

These emotions are the undercurrents that often are ignored when attempting to settle matrimonial cases. They are forgotten as couples and their lawyers fight about custody, support and property division issues. But is it wise to pass over these hidden issues?

Basic psychology tells us that individuals are regularly influenced by the interplay of thoughts, emotions and behaviours. "I'm bitter because you chose to sleep around behind my back" can translate into "I am not budging from my position of wanting the highest level of spousal support from you." "I am angry at my wife's parents for ruining our marriage" can result in "I want to have joint custody no matter what factors are evident from the family history."

Repeatedly parties fight with each other in court ignoring their deepest thoughts and emotions and not having healthy goals of how they want to move on from their marriage. It is the job of lawyers with the assistance of mental health professionals to guide clients and to understand the underpinnings of the emotional sea that is beneath each individual's "instructions to their lawyer."

Family law clients are often oblivious to their own mental well-being. It is understandable as they come into the fray of separation vulnerable, scared and relying on family law lawyers to be their steady hand. It is therefore not in the clients' best interests to have a lawyer jump whenever they say jump. A helpful lawyer should hear their client say "jump" and not ask how high, but rather ask "why." Often, the client will simply say, "I don't know."

Sometimes the client just feels like exercising a bit of control in the process. Sometimes he wants to show his ex that he still has stamina. Frequently, the initial knee-jerk reactions are not rational and simply defensive or self-destructive.

In light of the inner turmoil of many clients, how can a mental health-focused approach help instead? For starters, it can create positive objectives to strive for and it can provide healthy distractions to present day bickering. Clients who understand their own emotional make-up are typically less reactionary and more focused in reaching toward positive goals. They focus more on settlement rather than a litany of endless court battles.

It is definitely not easy to compartmentalize the negative thoughts; however, it is critical to do so and all attempts should be made to enhance a healthy thinking mindset. Otherwise, a client can become just another statistic of family law cases that show how destructive bitter litigation can get.

In yet another painful example of a family embroiled in a litigation war, Justice Patrick Monahan in *Fielding v. Fielding* 2018 ONSC 5659 wrote as follows: "The vast majority of parties involved in family law proceedings heed these calls for compromise and voluntary resolution of their disputes. Over 90 per cent of family law disputes settle before trial. But cooperation must be chosen by the parties involved rather than imposed through law. Regardless of the fact that a voluntary resolution is generally in the best interest of all involved, there will inevitably remain a minority of cases where one or both of the parties are determined to pursue their dispute to the (usually bitter) end. This is one of those minority of cases."

In the above case, it was estimated by Justice Monahan that the parties spent collectively close to \$1 million in their legal battle and that the children "were never given a choice as to whether their lives would be disrupted by their parents' divorce and its aftermath."

As a way to minimize such collateral damage, I suggest that parties in general apportion a significant part of their finances toward a mental health professional who can sift through their emotions and assist with their anxiety and stress on a proactive basis. Such an approach will likely minimize the clients' decisions that are near sighted and harmful to themselves and others around them, such as their children. Mental health assistance can also provide positive direction in the course of negotiating settlements as it will likely help in creating a theme of purpose and meaning rather than a focus on revenge and war.

Family law lawyers should strive to weave in components of mental health strategies into their practice, as that will inevitably help their clients and the people they love around them. Positive mental health approaches can also assist to build bridges between the once warring spouses as it may result in them looking for commonalities that they once shared rather than differences.

Unless the hidden mental health issues of family law clients are unearthed, exposed and nurtured, their ignorance will be an impediment in reaching family law agreements having a focus on mutual love for children along with a positive understanding between the parties based on kindness and respect.

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