

Client Support

Counselling for family law clients during a sea of change

By David Frenkel



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(July 2, 2019, 12:11 PM EDT) -- Have you ever gone boating? Have you ever had your boat capsize in the middle of a sea and gotten stuck on a raft wondering if and when you will be saved? I haven't either.

But family law clients often feel this way. They are sometimes alone, confused and without adequate support or guidance from family, friends or colleagues.

At that point, they turn to the only people they think can help them: family law lawyers.

They arrive for legal advice but realize they need more. They are often told to seek therapy or counselling but brush it off as something that is not on the top of the list of priorities. This is understandable. They have children to take care of; they have a home to possibly sell; they need to figure out where they are going to live and how they are going to financially manage it all.

They are on a raft and occasionally floating in a big sea of confusion and stress.

It is at this point that perhaps family law clients should consider placing counselling closer to the top of their priorities, especially when they are negotiating or litigating their matrimonial affairs.

Although it may cost a few thousand dollars, counselling may actually save clients thousands more in legal fees if, as a result of positive therapy, they are able to make more rational and sensible decisions while fighting with their ex-spouse in court.

The benefits of therapy, mental stability and controlling impulsive behaviour in the context of family law cannot be overstated.

For example, in *V.P. v. D.M.* [2019] O.J. No. 2328, Justice Melanie Sager pointed out that the father in the case displayed an elevated level of anger and lack of emotional maturity during the trial. It was emphasized that the father had not engaged in any counselling or therapy to understand what truly triggered his anger.

Justice Sager also expected concrete evidence of a change in the father's attitude and further concluded that the father's "aggressive and vindictive nature" put the child "at risk of emotional harm."

Had the father engaged in productive counselling sessions at the start, perhaps certain issues could have been resolved more calmly at a case conference instead of requiring a trial.

In *McLaughlin v. Dance* [2018] O.J. No. 4748, Justice Cheryl Lafrenière put it a bit more starkly: "I strongly recommend the parents attend separation counselling as soon as possible to assist them in learning how to communicate and cooperate as separated parents. No matter what the custodial designation is in the end result, the parents would do well for themselves and more importantly for their children to learn how to work together effectively."

Ironically, at a time when family law clients require stability in their lives, what could be of most help is the change in their negative behaviour and counterproductive thought patterns.

However, it is often said that a person needs first to recognize that they are the ones who need change before any form of therapy or counselling could be of use.

Nevertheless, judges have continued to try to help litigants in this regard by suggesting counselling while still recognizing its limitations.

For example, in *A.C.M. v. M.A.S.* [2018] B.C.J. No. 1378, Justice Gordon Funt recognized that the father may have been able to change his behaviour and recommended that he seek counselling.

However, Justice Funt also held that "I will not order that he attend counselling because counselling will likely be of benefit only if he first accepts that counselling may be fruitful."

Unfortunately, individuals miss the signs that are provided to them during the course of family law litigation. Noticing these signs can lead to opportunities for change in their behaviour towards their ex-spouse and as a consequence becoming better role models for their children for years to come.

Bad habits are indeed hard to break; thus the need for professional counselling to assist in this change is all the more critical.

Hopefully, the benefits of counselling can resonate a bit more clearly to family law clients and thus also serve as a guiding light in a turbulent sea of matrimonial challenges but also opportunities.

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