



Your Marriage is Ending: What Now?

Marla Miller Q.C.

Unfortunately, you've come to the realization that your marriage is over, or worse yet, you've just been advised that your marriage is over. What now?

You realize that you are going to need some help dealing with the issues arising from the marriage breakdown and ultimately you or your spouse may choose to formally end the marriage by obtaining a divorce. At a time when you may be least prepared emotionally to make decisions, you find you are in a situation where you have to make a lot of very important decisions. One of these may be who to turn to for legal help.

You wade through the myriad of recommendations made to you by family, friends, and colleagues or you sift through the Yellow Pages, Internet and radio ads, and you finally take a deep breath and call a divorce professional. Often, the decision about who to call and what process to follow is made out of fear. Divorce is a very uncertain process and, depending on your particular situation, you will likely choose a professional or process that you believe will most likely alleviate your fears and concerns. The good news is that there are more options today than ever before to help people through the process. The bad news is that because financial resources at a time of marriage breakdown are more often than not strained, you can't afford to make the wrong decision.

Feature Report on Arbitration and Mediation

When it comes to the divorce process, one size fits none! You are well advised to obtain as much information as possible about your various options and the professionals assisting you. The more information and understanding you have, the more you are likely to choose the best option for you. Which option you choose will depend upon your situation, and perhaps, your finances.

You may find yourself in a situation where you have absolutely no option but to rush into court to obtain court orders addressing an emergency situation. This could be anything from your spouse removing the children or assets from the jurisdiction, to your spouse dissipating assets, to your spouse depleting all funds and finding yourself without means of support

for your family. If you are in this position, you should immediately consult a lawyer who is not only skilled and experienced in bringing applications to court, but who is also reasonably available and able to give your case the time and attention it deserves.

Remember that there is often an overwhelming feeling of loss of control when a marriage breaks down. Emotions run high, both you and your spouse may say or do things out of character, and everything may feel like it is an emergency to you. If you start with court applications, it will set the tone for the balance of the divorce and you may never find your way out.

Two cautions are necessary here. The first is to make sure that your situation really does call for an immediate court application. Remember that there is often an overwhelming feeling of loss of control when a marriage breaks down. Emotions run high, both you and your spouse may say or do things out of character, and everything may feel like it is an emergency to you. If you start with court applications, it will set the tone for the balance of the divorce and you may never find your way out.

The second caution is to find the lawyer who is the best fit for you. Resist the temptation to retain someone who you have heard third-hand is a “barracuda”. Although you may feel you want to retain someone who will share your goal to obtain your pound of flesh, this may not be in your long-term best interests. A lawyer who is civil yet assertive and who has an honourable reputation amongst other lawyers and the courts is better able to represent your case professionally and capably and will be able to objectively advise you when to pursue a matter and when to settle a matter.

Hopefully, you will be like most people and not need emergency access to the courts. Most people handle their divorces by hiring divorce lawyers who deal in the area of divorce and family law. They represent their clients in court if and when necessary, but who will use their best efforts to keep their clients out of court and negotiate settlements of all the issues on their behalf. Most lawyers who deal with divorce and family law fall into this category. If negotiation of a settlement is not possible through legal counsel, the issues will be left to the court to decide. This option may appeal to you as it is the most familiar.

Feature Report on Arbitration and Mediation

Again, when choosing a lawyer to represent you in this process, the two most important things to look for are the lawyer's reputation and the lawyer's availability to give your case timely attention. If you are able, ask another lawyer for a recommendation. When checking out a lawyer's reputation, find out if the lawyer is known for being reasonable, assertive, efficient, and effective. These attributes will serve you better than those of aggression, over-commitment, and rigidity.

An alternative process called Collaborative Divorce or Collaborative Family Law is gaining popularity amongst lawyers, other helping professionals, and divorce clients and is based on the commitment to keep out of court. A safe estimate is that less than 10 percent of divorces end up having to be resolved by the courts. Most people are able, sooner or later, to come to an agreement regarding the terms of their divorce, how they will parent their children,

share their property and support themselves and their children. Since almost all divorces are resolved outside of court, the premise behind Collaborative Divorce is that the divorcing couple and their lawyers make a formal commitment right from the beginning to stay out of

When it comes to the divorce process, one size fits none! You are well advised to obtain as much information as possible about your various options and the professionals assisting you. The more information and understanding you have, the more you are likely to choose the best option for you. Which option you choose will depend upon your situation, and perhaps, your finances.

court. If you wish to use this process, you and your spouse must each retain Registered Collaborative Family Lawyers, who are specially trained in the Collaborative process, interest-based negotiation and mediation techniques. Your lawyer is there to assist you to reach a settlement out of court. Court is never threatened, neither party is ever attacked by the other side, and the process is designed to be completely transparent and respectful to both parties. Your lawyer's role is to ensure that your needs and interests are represented and met, and to assist you in becoming the architect of your own future. Other professionals may assist in reaching your agreement. These could include Divorce Coaches, Financial Neutrals or Parenting Specialists. In the event that you choose not to come to agreement within the Collaborative process and you find it necessary to proceed to court, the Collaborative professionals are precluded from representing you. One of the many advantages of Collaboration is that all of the work is done with you and your spouse being there and the process can proceed at your own pace and as everyone's schedule permits. To find a Registered Collaborative Family Lawyer or other Collaborative professionals go to the website www.collaborativelaw.ca

If you want to be in charge of the decisions that will determine your future and you wish to take control of the cost and pacing of the settlement discussions, you may want to consider mediation as your option. This process typically involves a series of meetings between you, your spouse, and a mediator. You and your spouse share the costs of the mediator who is a neutral party and who assists the two of you in

Feature Report on Arbitration and Mediation

negotiating your own agreement. When an agreement is reached, it must be formalized in writing and, for it to be binding under Alberta law, it must be properly signed and witnessed. Independent legal advice must be given to each of you by your own lawyers. Some people wish to consult and retain their own lawyers right from the beginning of the mediation process so that they have someone available to them for advice as may be needed. Others wish to wait until the end when a lawyer's advice is required by law. Even if you wish to wait until the end to hire your own lawyer, a good mediator will know when you may benefit from having legal advice in the process and will encourage you to seek advice at that time.

One of the things to be aware of is that there are no licensing or training requirements in order to call yourself a mediator. There are many people from all disciplines and educational backgrounds who will conduct divorce mediations. There are, however, voluntary associations such as the Alberta Family Mediation Society (www.afms.ca) and the Alberta Arbitration and Mediation Society (www.aams.ab.ca) which have set their own requirements and which each maintain their own websites with directories of qualified mediators. As mediation is considered by the Law Society of Alberta to be a part of the practice of law, if you choose as your mediator a mediation-trained lawyer who is an active member of the Law Society of Alberta, he or she is governed by the Rules of Conduct of the Law Society and is covered by professional liability insurance.

Finally, you may have heard about alternate ways of handling your divorce settlement negotiations without lawyers. The training and qualifications of the providers of these other services vary, although most follow their own specified protocol. This alternative often offers you the opportunity to conduct all of your negotiations for one fixed price. Note that the work is not done by lawyers. In accordance with the matrimonial property laws of Alberta, you will still require lawyers at the end of the process to formalize the terms of your agreement and ensure that you have received the necessary independent legal advice. One of the advantages of these businesses is that they may offer flexible hours of business or guarantee the cost, and the concern over the cost of a divorce is a legitimate one. Don't assume, though, that the costs of these services are less than retaining a lawyer or a lawyer-mediator. You would be wise to compare the quoted costs against those of other processes, especially mediation.

No matter which process you choose it is important to do your homework. Understand your options. Speak to other professionals in the field to obtain their recommendations as to which process might best suit you and which professional might be the right fit for you and your personal and financial situation. Above all, remember that one of the most important decisions you make is choosing who will help you achieve your family's needs and interests through this very important legal and emotional process.

Marla S. Miller, Q.C. is a Registered Family Mediator and Registered Collaborative Family Lawyer with the Miller Boileau Family Law Group in Edmonton, Alberta.