THE CO-PARENTING CLINIC

WORKING TOGETHER BEYOND SEPARATION

Why Parents Should Avoid Family Court Proceedings

Is it realistic for parents to expect the family court system to offer meaningful help and support for those families experiencing the distress of separation or divorce? Regardless of whether you are the parent applying for a child arrangements order or the respondent parent, there are several important factors worth considering.

The vast majority of parents report their experience of the court system (whether past or present) as an extremely negative one. Comments we often hear all too often are:

- "It's been financially crippling and I still don't have the child contact I hoped for"
- "The whole process was completely biased and unfair - there's no equality at all"
- "I found it really stressful representing myself at court"
- "My ex made so many false allegations about me in court! I'll never trust them again!"
- "It took such a long time to get to see my children and now my contact is supervised"
- "My ex doesn't stick to our court order so I have to keep making new applications!"
- "Our court order didn't cover all the issues and we were sent back to mediation"
- "The hearings were often delayed and sometimes we didn't even get the same judge!"

Relinquishing Control

Separating parents should recognise and appreciate that, in bringing matters before the courts, they are relinquishing 'control' of their family's future and thereby reducing their capacity to resolve their own parental issues. By effectively handing over your 'parental power' to an adversarial and combative judicial system there is a genuine risk that the court process may only aggravate, and very possibly escalate, the conflict between you.

Escalating Conflict

This conflict will certainly take its toll on you both in terms of emotional energy, financial costs and valuable time. As parents, it will also greatly reduce your capacity to support your children as you focus on the complexity of the legal proceedings. And it will impact on your children more than you can imagine! As they become increasingly aware of the 'war' being waged between their parents, they will struggle to find the resilience they need to adjust and deal with the emotional 'loss cycle' of your separation. Ultimately, the longer the conflict continues, the less they will feel able to express their thoughts and feelings and the more they will end up feeling lost, confused, isolated and abandoned.

Allegations & Accusations

Attempting to discredit one another, you will begin to gather 'evidence' that paints a disapproving picture and negatively 'profiles' the other parent. There is often a need to feel vindicated by playing the 'blame-game' in the court arena. All too often, intractable and long-lasting disputes arise as a direct result of ongoing allegations which the court then has a duty to investigate in order to safe-guard children. Allegations are often intentional 'strategies' used as a means of withholding or restricting access to children., thus ending all parental communications, increasing suspicion and parental mistrust. It's a highly destructive approach to dealing with an already very fragile family system.

Legal Advice
Of course it is both recommended and essential to fully understand your legal rights and entitlements, but parents should bear in mind that solicitors fight solely for their clients. In this respect any legal advice you receive does not necessarily take into account the needs of the whole family. For this reason it's important to choose your legal counsel wisely and ensure they do all they can to minimise the conflict. Remember, you are paying for a service so the choice is yours. If you are dissatisfied with the advice you receive - look elsewhere. It's also worth doing some of your own research as the more knowledge you have, the more empowered you will be. And if recommended to go to court, think carefully and prepare well before entering a system that is highly likely to leave you mentally exhausted, financially depleted and emotionally battered.

Court Resources & Financial Costs
Court resources are increasing sparse and the immense backlog in cases over the last few years continues to grow with over 120,000 divorces per year. Long delays are now to be expected and it may be many months, or possibly even years, before you have a resolution to your case. There is also no such thing as reasonably priced litigation: multiple hearings cost vast amounts of money, and if you have a figure in your head - triple it and you'll have some idea of just how much you could be out of pocket at the end of the process. It's worth bearing in mind all the benefits of saving your precious financial resources for starting your 'new' life and for your children's futures.

ADR (Alternative Dispute Resolution)
As we head towards the long-awaited change in the law and introduction of 'no-fault' divorce on 6th April, the traditional contentious litigation process seems increasingly outdated. Whilst the 'true' purpose of the family court should be to assist a parent who is being denied contact with their child without just cause, unfortunately, around 90% of applications and associated court time is being taken up on matters which parents could be sorting out themselves. The key is opening up child-focused dialogue, whether directly or through the mediation/arbitration process. With so many collaborative options available, there is no good reasoning for parents not to seek out the specialist support they need. By making effective use of the expert guidance and innovative co-parenting 'tools' available they can drive their separation/divorce down a far gentler path.

It's not surprising then that family courts cannot be expected to come to the rescue of a family who find themselves 'shipwrecked' on an emotional 'sea' of hurt and despair. Judges are often required to make monumental decisions for the families they deal with, sometimes having only met the parents briefly and, in most cases, never even having met the children. How can they realistically be expected to satisfy the unique and detailed requirements of families whose lives they have very little or no knowledge of? For many private law cases, entering the family court system is something of a 'lottery' - rather than achieving a "win-win" solution for all, the impossible position of the court will only result in a "lose-lose" outcome - generating further parental resentment rather than fostering future collaboration.

It is clear that the court process fails to create the positive foundation needed on which to build a successful future co-parenting model. Parents who are emotionally raw from separation require early-intervention specialist support in order to deter them from the belief that 'thrashing it out' in the courts is constructive. The courts can be very effective but cannot be the 'fixer' of all problems. Family situations and dynamics vary so greatly these days and everyone's situation is unique. By diminishing your own decision-making capacity as parents and getting caught up in repeated contentious disputes, you could find yourself unpleasantly surprised at the outcome.