

DIVORCE Improving Eleventh Hour Agreements

Some say an elephant was a horse made by a committee.

The value of that metaphor is handy to keep in mind when separated parents and lawyers seek to achieve settlements at the final hour on the courthouse steps.

In view of ongoing parenting disputes, many parents turn to the Courts to resolve their differences. As many a lawyer will advise their client, the Court is a very blunt instrument. They are telling their client that they may not be satisfied with an outcome handed down by the judge. In view of the risk involved, that the decision may not reflect the wishes of the parent, lawyers and parents seek to achieve a settlement, right up to the last minute. Many judges also encourage this.

There is tremendous benefit to parents achieving their own agreement, even at the final hour. Agreements entered into voluntarily tend to be more durable than solutions imposed by third parties. Further, parents who voluntarily enter into agreements tend to feel like their life and situation is still within their control, at least to some extent.

The problem with achieving settlements at the final hour is that parents and lawyers may come up with solutions that although sounding reasonable in the heat of the moment, may not be practical in the clear light of day. Further, without the added benefit of input from other professional parties, parents and lawyers may also come up with solutions that are contra-indicated or too cumbersome or so far reaching that it may bind the parents' hands to processes that are just unacceptable.

Parents and lawyers are advised that while pressure may work in some instances to achieve reasonable agreements, in other instances, the agreements reached can backfire and work against both parties and in particular the needs of the child. In other words, while reaching to develop a horse, they may have come up with an elephant.

Frequently, after achieving such elephant agreements, the parties are referred to therapists or counsellors to implement the plan – plans achieved without the input or guidance from the very counsellor expected to carry out the work.

If parents and lawyers are looking to settle at the final hour and achieve reasonable plans, particularly next involving the work of other service providers, they are

well advised to include the intended service provider in the planning process.

Strategies to include the service provider include inviting the service provider to act as a consultant during the planning process. Hence the service provider can be invited to the settlement conference, not to provide the service per se, but to speak to how the service may be helpful and what would be necessary to make it so. Another strategy is to at least have the service provider on notice that he or she may receive a phone call to discuss potential involvement and the nature of involvement as the parties are negotiating their plan. By virtue of input from the intended service provider, parents and lawyers can be better assured that their plan doesn't require something beyond the ability of the service provider to provide or doesn't bind the process inadvertently.

The last thing separated parents need when looking to develop an agreement and plan, is an outcome that quickly falls apart from lack of input from other reasonable sources. Obtaining the input during the planning stage, even if at the final hour on the courthouse steps can facilitate a more workable solution, clearly in everyone's interest.

This is like the slogan from the gas or electrical company, "Call before you dig", or in this case, "Call before you commit someone else to your plan." Make sure the settlement is achievable in the eyes of those who may have to carry out the plan.