

# Family law evolves to offer a range of services

BY MICHAEL MCKIERNAN

For Law Times

When Gerald Yemensky got his call to the bar nearly three decades ago, people with family law problems had essentially two options.

“Work it out yourselves or go to court. There were no other alternatives,” says Yemensky.

After 30 years, he says family law in Ontario has evolved distinctly from other forms of civil law with the courts placing an emphasis on settlement facilitation at every turn. Many family law boutiques have followed suit by putting alternative methods of dispute resolution at the heart of their offering to the public.

“There are dozens of options,” says Yemensky, a lawyer at Ottawa family law firm Campbell Clark Yemensky. Between them, the firm’s five lawyers offer clients a range of alternative dispute resolution services, including collaborative family law, mediation, and arbitration as well as unbundled legal services and litigation support for self-represented parties. “I prefer to call it appro-

priate dispute resolution. We want to find a resolution using a method that suits a particular family’s needs, starting with the least intrusive method,” says Yemensky.

“The emergence of alternatives to the court system is one of the biggest changes I’ve seen in family law, and I think the further development of appropriate dispute resolution is the way of the future.”

According to Yemensky, old-fashioned adversarial court battles still have their place. But that option only works for an increasingly small group of litigants in the highest-conflict cases, he says.

“The court has a real role to play in providing direction in those cases where there is no opportunity for the parties to co-operate on anything,” he says.

“Last year, we had a case where one of the issues before the court was the colour of the child’s eyes. The parents couldn’t agree whether they were blue or green for the purposes of a passport application. In a case like that, there’s no way any kind of co-operation or collaboration is going to help, so they asked the

court to step in and decide.”

Yemensky says family law boutiques’ embrace of alternative dispute resolution is in part an answer to clients’ demands for a less destructive option than court. He says clients are often concerned about ongoing relationships with former partners and now tend to see the court as family law’s nuclear option due to the extreme time and cost associated with it.

“When you’re dealing with a family that’s falling apart, you want to come up with a solution that allows people to go to their kid’s concerts, to graduation, and to sit at the head table at their wedding without wanting to disembowel each other,” says Yemensky. “I guarantee that if mom and dad went to court, they won’t be able to go together at the head table.”

A number of lawyers at Markham, Ont.-based Feldstein Family Law Group offer collaborative family law services. Principal Andrew Feldstein says the number of cases he takes to mediation and arbitration has ballooned over the last decade. “People want resolutions faster than they did 20 years ago.”

He believes the concentra-

tion of expertise that comes with a boutique law firm makes it the perfect environment to offer the full range of approaches to clients within the narrow confines of family law.

“I find people in this day and age prefer a person or a law firm that does one thing and does it right rather than doing a whole bunch of things,” says Feldstein.

Cheryl Goldhart, president of Toronto law firm Goldhart & Associates, witnessed the rise of boutique firms in family law at close hand, having left Gowling Lafleur Henderson LLP, one of Canada’s largest firms, to set up her own practice more than a decade ago.

“I think clients prefer a boutique setting [rather] than walking into a giant firm. For the lawyers themselves, they don’t need that kind of overhead,” she says.

Goldhart also found herself ahead of the game as alternative dispute resolution swept the family law bar. Before her call to the bar in 1987, she had completed a master’s degree that included a thesis focused on mediation. Three decades on, almost half of her practice involves mediation and arbitration with Goldhart

acting as mediator or arbitrator.

“That entire area has blossomed and grown exponentially since I started out. It’s endorsed by the courts, who have worked with the bar to make the whole process more streamlined,” says Goldhart, who also works as a dispute resolution officer at the Ontario Superior Court of Justice and chairs the committee of dispute resolution officers based in Toronto.

“I think family lawyers are mindful that if a resolution is possible, it’s always going to be better for a client than litigating,” Goldhart adds.

Even at firms known for their litigation prowess, alternative methods of dispute resolution are a key part of a family law practice, according to George Karahotzitis, a member of the family law group at Thomson Rogers.

“Our reputation is that we do litigate quite a bit and we like to see the inside of a courtroom, but that’s not the whole story,” he says. “In my view, it’s mandatory for every litigator to have the skills to not only litigate but also to mediate and negotiate in order to effectively service your client’s needs.”

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