

Separation agreements upheld family law seminar is told

Recent changes in legislation governing separation and divorce, including the increased tendency of divorce courts to uphold the terms of legal separation agreements, were the prime topic of discussion at a legal seminar on family law staged last Wednesday in Georgetown.

Sponsored by the Halton Hills Legal Aid Clinic and the Toronto Community Family Law Clinic, the seminar featured panelist-lawyers Mike Heller, Gord Chapman and Jo Ann McMillan, all of whom are in practice legally.

About 25 interested residents were on hand at Knox Presbyterian Church hall to hear the panelists state the facts and lend advice on the advantages of separation agreements, problems associated with the division of property and ongoing support payments and the custody of children.



Area lawyers Jo Ann McMillan, Gord Chapman (centre) and Mike Heller had advice and opinions about all facets of family law, and particularly the legal aspects of separation and

divorce, ready to share with about 20 interested residents who attended last Wednesday's seminar in Georgetown, part of a series of discussions presented by the Halton Hills Legal Aid Clinic.

(Herald photo)

though, to be open to compromise while the agreement is being drafted, Mr. Heller stressed.

REASONABLE DEMANDS
"A lot of clients come looking for the moon," he said. "It's one of the duties of your lawyer to make sure the client is reasonable in his demands, because if the agreement doesn't get signed, you're just wasting your time."

Lawyers, Mr. Heller said, are the "buffers" for the two marriage partners while negotiations on the agreement, including proposals and counter-proposals, are underway. Usually, the lawyers will ask the husband and wife at the outset whether some communication between them is still possible so that some terms of the agreement can be personally and mutually resolved, he added.

Mr. Heller described the separation agreement as a worthwhile alternative to divorce, which necessitates lengthy, complicated and often painful court confrontations with the spouse and still does not guarantee a satisfactory resolution of the issues at hand.

Entering into a separation agreement, however, eliminates the need for any hostility between the marriage partners by having lawyers for each spouse work out the terms of the agreement on their clients' behalf. It is most important,

Mr. Heller advised the recipient of a proposed separation agreement to consult a lawyer as well, since the document's true intentions may be hidden by its "legalese." And once the agreement is signed, he warned, be careful not to breach the contract, or else you will be open to suit.

Mr. Heller stated that the agreement could form the basis for the decree nisi if the separation is ultimately taken to the divorce stage. If the judge of the divorce court considers any part of the separation agreement unconscionable - that is, unfair to either party - he will generally strike it down, Mr. Heller said.

"A separation agreement provides a measure of certainty and allows people to separate with some sense of dignity," he said.

According to Mr. Heller, recent revisions to the provin-

cial's Family Law Reform Act will witness an increased tendency on the part of divorce courts to attach more weight to separation agreements when considering the terms of divorce settlements. Soon, he said, such agreements will probably be, "quite binding."

PROPERTY DIVISION
Issues of property division and possession constitute "the main thrust" of the Reform Act, Mr. Chapman added. Recently, divorce courts have begun requiring both marriage partners to fully disclose their personal and shared assets and outline their means of support.

This "important change" Mr. Chapman said, is of particular benefit to the wife, who was all too often left "in the dark" as far as her husband's assets were concerned previously.

Generally, he explained, assets that are acquired by the couple during their marriage and are regarded as being mutually-owned are "pooled" for purposes of division. In some cases, he conceded, such possessions are hard to define and, at those times, litigation may be necessitated. Business assets acquired by either party during the marriage are not subject to division between the husband and wife, Mr. Chapman stated.

In dividing up a couple's property, Mr. Chapman said, the court may vary from the accepted guidelines in order to ensure that both parties are reasonably accommodated. Among the factors that will be taken into consideration, he said, are the extent of assets owned by both parties, their respective needs and their children's needs, the assets either party brought into their marriage and the future ability of either party to become self-supporting.

Ms. McMillan outlined some of the eligibility requirements which married persons must meet in order to apply for divorce. Among them, she said are residency in Canada for the year previous and in Ontario for ten months prior to the application.

TWO CATEGORIES
Grounds for divorce fall into two categories, Ms. McMillan explained. Matrimonial offenses such as adultery, cruelty, rape and homosexuality, are termed "fault grounds", while "no-fault grounds" are comprised of such factors as separation stemming from desertion.

After three years of separation, he said, the marriage partner who has been deserted can apply for a no-fault divorce. The partner who does the deserting, however, must wait five years. The exception to the rule involves cases in which the spouse's unreasonable behaviour during the marriage forces the other party to desert. In that instance, the offending spouse is "in constructive desertion."

Alcoholism or gross drug addiction on the part of either spouse can be construed in some cases as cruelty and thus grounds for a fault divorce.

According to Ms. McMillan, the divorce process can take anywhere from two months to five years to finalize, depending primarily on whether or not children are involved and whether the couple is agreed on the terms of their settlement.

If the marriage has produced children, she said, the parents must obtain an official guardian's report through the provincial government which

if conflicts are revealed in the couple's approach to divorce settlement, may lead to an investigation.

A three-month wait is required between the time the court issues its decree nisi and the final "decree absolute." The period can only be abbreviated when one party wishes to re-marry someone else immediately, but good reasons, of course, must be presented.

There is no objective way of testing allegations of mental or physical cruelty, Ms. McMillan advised. Judges are always "very careful" about granting divorces on those grounds.

PROVE PARTY
To establish that adultery has been committed, she added, the spouse seeking divorce must prove that the other party had both the "opportunity and the inclination" to do so.

The terms of settlement set out in the court's decree nisi can be altered after a period of time, Ms. McMillan said, if either party can firmly prove that those terms have become unfair. She pointed out that it is wise to state in the terms the period of time that children must be supported by the partner to whom that task is charged. Recently, she explained, case laws have extended the age limit for support of children to age 21, particularly where furthering the child's education is a factor.

The terms of divorce also stipulate the location of residence and lifestyle which the designated custodian of the children has selected. The other party is simply granted access, under conditions also set out in the decree nisi.

Ms. McMillan admitted that women are usually granted custody of children because they generally have spent more time with them. There is a tendency now, however, to

grant custody to the father, a result of recent research that establishes that older children especially adolescent boys, are better placed in their father's custody.

CITED FINDINGS
Ms. McMillan cited the findings of a soon-to-be published study on the effects of divorce on children, which determined that the worst effects are felt by children age 10 and over, especially boys, who lose an important role model if their father leaves the marriage.

The study concludes that regular, but not too frequent, visits by the parents without custody seems to enable the children to do better in school than do more frequent or irregular visits. Monthly, rather than weekly visits are suggested, in order to enhance the child's feelings of security, trust and consistency.

"No visits are better than irregular visits," Ms. McMillan added.

The seminar was the last of three meetings organized by the Halton Hills Legal Aid Clinic. Additional information and advice is available at the clinic's Acton and Georgetown offices.

COMPREHENSIVE PLAN
Ms. McMillan advised those who are contemplating divorce to prepare a comprehensive plan for the upbringing of their children, included in the plan must be the stated wishes of both parents and children, the children's age and sex, the parents' mental and physical fitness, the parents' willingness and ability to support the children and their general "morality."

She pointed out that the court will not necessarily frown upon one of the parties maintaining a single relationship outside of the marriage, since the security of having two parent-figures is more beneficial to the children in the court's view.

"The important factor in the court's decision is preserving the status quo," Ms. McMillan said, noting that solid relationships begun outside the marriage during a separation will likely appeal to the court more than a single parent situation when awarding custody.

Problems stemming from access of one spouse to the children in the custody of the other confront about 50 per cent of divorce clients, she estimated. In many cases, the child's efforts to keep his parents or parents happy by reacting to visits or failures to visit accordingly will lead the parents to misinterpret the reactions, she said.

Nevertheless, she said, it is "nearly impossible" to have access to the children by either party cut off, unless a detailed medical assessment of both parents can be obtained. To cut off access, though, would be "a great disservice to the children," she warned.

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<p>ST. GEORGE'S CHURCH Anglican Rev. R. Gallagher B.A., S.T.B. Sunday, December 3 1st Sunday in Advent 8 a.m. The Eucharist 9:30 Family Eucharist 11:00 Choral Eucharist 9:30 & 11 Church School 9:30 & 11 Nursery Provided</p>	<p>GEORGETOWN ALLIANCE CHURCH 14 Main St. S. Pastor Peter Ralph Sunday, December 3 9:45 a.m. Sunday School 11:00 a.m. Morning Worship 6:30 p.m. Evening Service Everyone Welcome Come make our church your church</p>
<p>HALTON HILLS PENTECOSTAL ASSEMBLY Trafalgar Rd. and No. 7 Highway Pastor Rev. E.J. Friesen 10:00 a.m. Family School 11:00 a.m. Morning Worship 7:00 p.m. Evening Service Annual Christmas Sunday School Concert, Sunday, Dec. 10th., 10 a.m. to 11:30 a.m. Also 7 p.m. Gospel Quartet "The Crystalaires", London, Ont. Tuesday 7:30 p.m. Pioneer Girls Prayer & Bible Study Christian Service Brigade 7:30 p.m. Prayer & Bible Study Friday 7:30 - Youth Service</p>	<p>IMMANUEL LUTHERAN CHURCH Windsor Road at Carole St. Vacantly pastor Rev. Arthur Rader Sunday, December 3 9:00 a.m. Worship Service 10:15 a.m. Sunday School Worship Service Church of the Lutheran Hour</p>
<p>MAPLE AVENUE BAPTIST CHURCH 177 Maple Ave. Georgetown Sunday, December 3 Pastor Edwin H. Mitchell 9:45 a.m. Family Sunday School Bus Transportation 838-2330 11:00 a.m. Morning Worship Children's Church Translation for the Deaf 6:30 p.m. Evening Service NURSERY At All Services Boys-Girls Youth Clubs Telephone 877-6665-0320</p>	<p>Lioness Club News By MARCELLA NEELY If you haven't seen or heard anything from the Georgetown Lioness Club members its because they are all busily assembling their portion of the annual santa claus parade. "It's a lot of work but we're doing it for the little ones" says chairman, Joan Irwin. Watch for her efforts this Sat. in the parade. Since Sept, the girls have taken on a foster child, backed a juvenile hockey team and are strongly supporting our Halton Hills "Meals on Wheels" program. Ruth Pollons, from Meals on Wheels, recently visited the club and explained the entire operation including the many, many volunteer hours behind the scenes. She has been soliciting support from all local service clubs, determined to keep this, much needed, service available. Mrs. Pollons explained how meals brought in keep many elderly people in their own homes in cases where, unable to shop and cook, they would have to go into nursing homes. Community minded as they are, the girls are still following the progress of Georgetown's own cerebral palsy child, Todd Ellis. He is responding well to his therapy program and is able to spend one hour a day in school this year. "Todd can always count on our support," say the Lionesses.</p>

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