Challenges in Family Law Proceedings

By Justice Michael White

What about Me? Prioritising Children in Family Breakdown Proceedings

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Croke Park

CATEGORIES OF CASES

1. Couples who separate and resolve issues without much assistance.

2. Couples who need some assistance.

3. Low conflict cases.

4. Medium conflict cases.

5. High conflict cases.

1. **Couples who separate without assistance**

- Maintenance of civility.
- Good communication around children.
- Children maintain good contact with both parents.

2. Couples who need some assistance

- Legal advice.
- Advice on impact on the children.
- Some mediation.

3.   Low conflict cases

- Some issues in dispute.
- Mediation required.
- Commencement of legal proceedings, but early settlement.

4. Medium conflict cases

- Fundamental issues about custody and access in dispute.

- Legal proceedings required.

- Compromise of legal proceedings close to or on day of commencement of court hearing.

5.   High conflict cases

- Ongoing dispute about custody and access.

- No constructive communication.

- Numerous court hearings.

- Breakdown of custody and access orders.

Alternate dispute resolution

- Mediation.

- Colloborative law.

- Facilitation.

Alternate dispute resolution

- Importance of communication of information about A.D.R.

- Requirement to have a practitioner with good expertise.

Difficulties of A.D.R.

- Unequal parties.

- Lack of disclosure.

- Lack of frankness about problems.

- Overbearing personality where other party is not comfortable.

- Allegations of violence, abuse, addiction.

Impact on children

- Ideal solution constructive shared parenting.

- Destructive impact can be avoided.

- The importance of differentiating the needs of children of different ages.

Young children

- Need for a structured environment.

- Shared parenting does not mean equal time.

- Good communication, which does not need to be direct oral conversation.

- Difficulty of telephone and skype communication with young children.

Communication with child

- Respectful communication to children.
- Explain what is going on, to child of suitable age.
- Avoid undermining other parent.
- Avoid discussing court hearing, other than to explain outcomes.

High conflict cases

- Impact on children severe.

- Amounting in many cases to emotional abuse of the children.

- No easy solution.

Impact on parents

- Loss of contact with a child can have severe impact on non- custodial parent.

- The importance of ensuring each parent has sufficient leisure time with the children.

- Impact on the parent of protracted and repeat court proceedings.

Personality issues in high conflict cases

- Narcissistic,self referenced personality.
- Lack of insight of impact on other party and children.
- Children become the battleground.
- Concentration on parental rights to the detriment of the interests of the child.
- Overprotecive behaviour towards the children.
- Undermining of court orders.
- Inability to communicate and compromise except on parties own terms.

How the child's voice is heard

- Written reports by suitably qualifed people who interview the children.

- Direct written communication from the child to the judge.

- By direct interview when the judge speaks to the child.

- Through the parents who are in agreement on the custody, and future welfare of the child.

Difficulties about hearing the voice of the child

- The impact on children of multiple interviews.

- The expert being cast in the role of "enemy"

- The interviewing skills of the judge.

- Child being coached or influenced on what to say.

Hearing voice of child

- Susceptibility to sugestion by and adult with particular status.

- Difficulty for a child when confidentiality cannot be maintained.

Supervised access

- Appropriate option in a limited number of cases.

- Need for child contact centres, as a free service or at reasonable cost.

- Ability to progress supervised to unsupervised access with the assistance of suitability qualified people.

Guardian ad litem in private family law proceedings

- Section 28 of the Guardianship of Infants Act 1964 has not been commenced.

- Very useful in high conflict cases.

- Expertise of guardian.

Issues re guardian ad litem

- Cost.
- Duplication of matters being presented to court.
- Legal representation of guardian ad litem.

Facilitation

- Very useful when communication has broken down.

- Very useful to have a system where confidentiality can be maintained but with a facility to report back to court.

Family therapy

- Important facility.
- Difficulty marrying it with court proceedings.
- Issues of confidentiality.

Self represented litigants

- Self represented by necessity.
- Self represented by choice.
- Subgroup of self represented litigants who present a challenge to the court system.
- Need to respond by the provision of good quality information.
- Need for respect for rules of court.

My recommendations for improvement

- Ancillary services required by family courts to enable reports to be procured on any aspect of the welfare of a child, if necessary without cost to the parties to the proceedings.

Recommendations

- Mandatory referral to an information meeting on A.D.R. before proceedings are commenced.

- Facility of courts to refer to A.D.R. after issue of proceedings without cost to the parties if necessary.

Recommendations

- Inquisitorial role for judges at an early stage of proceedings, to advance settlement.

- Ability to interact with other services without compromising judicial independence.

- Access for judges and courts service staff to expert training.

Recommendations

- Development of centres where all relevant services are in one location.

- Completion of courts building programme for county towns.

- Good court facilities for all family law litigants.

Recommendations

- Co-ordination of different services dealing with children's issues.

- Better lateral communication between services.

- Apropriate financial resources for the proposed new family court structure.

- The inclusion of certain types of juvenile justice cases within the family court structure.

Thank You