

Putting It All Together: Strategies for Negotiating and Creating Matrimonial Property Agreements That Work

Advanced Matrimonial Property

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PUTTING IT ALL TOGETHER

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STRATEGIES FOR NEGOTIATING AND CREATING DEALS THAT WORK

“Ah! Don’t say you agree with me. When people agree with me I feel like I must be wrong”

Oscar Wild, Intentions, 1891

This paper and presentation provides no statutory analysis, no case law summaries, and no useful precedents. Rather, I have been asked to share with you some of the negotiating strategies that I have seen used effectively in my more than three decades of practice. In no particular order, my observations are set out below.

A GOOD DEAL IS USUALLY WITHIN THE PARAMETERS OF THE LAW

The best negotiators do not try to get the best possible deal for their client, no matter what the cost. They negotiate the best resolution they can for their clients, that is within the parameters of an adjudicated outcome, or deviates from this for some practical reason. A trial involves the application of the law to the facts, and that is what we should be doing when we negotiate. Good negotiations are principled, and conducted with integrity.

EXPECTATIONS MUST BE MANAGED

The client should be provided with an objective and realistic opinion regarding their best and worst outcomes on each issue. This enables the client to provide instructions during negotiations. For them, global settlement is what matters, and clients are often prepared to seriously compromise some issues, if they can reach a desirable outcome on others.

KNOW WHAT THE CLIENTS WANT

Negotiating a good deal involves not only knowing what is most important to your own client, but what is most important to their spouse. If either spouse has a significant emotional investment in a particular asset, such as a home or a vacation property, they may be prepared to value it at a premium in order to keep it. It is sometimes effective to “flip the deal” and offer to take an asset you know that the other spouse wants at a particular value.

When negotiating matrimonial property division, it is important to remember that clients may be prepared to get less than their legal entitlement on the property side, in exchange for increased or decreased support.