THE SEPARATION GUIDE

KNOW YOUR OPTIONS, TAKE CONTROL, AND GET YOUR LIFE BACK

David Greig, LAWYER
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In some Mexican tourist destinations, the Customs and Immigration authorities at the airport use a very low-tech method of deciding which visitors will be searched. As travelers near the exit from the airport, they are required to push a large button adjacent to the exit turnstile. The button controls a mechanical device which illuminates a nearby light randomly. It resembles a big indoor traffic light. The light is watched closely by all. About half of the visitors will quite accidentally trip a green light. Their holiday starts immediately. They pass outside the airport and off to vacation spots in pursuit of happy times. The other half will get a red light. Their fun must wait while the family luggage is searched for contraband.

Marriage is like that. Half of all marriages in North America end in divorce. If you are married now, there’s almost a 50 percent chance that some random event which is about to occur will cause your red light to be illuminated. If that light goes on, then, like the unfortunate traveler, you’ll soon be victimized by an authority figure who will be looking through your underwear. But it won’t be a Mexican Customs officer — it will be your spouse’s lawyer. And the
lawyer won’t be looking for contraband — he or she will be looking for anything. Anything at all!

Here in North America, we’ve been marrying and divorcing with predictable regularity for many decades. You would think that high divorce rates would discourage marriage. Not so. Marriage remains extremely popular. In 2009, the marriage rate for those in the prime reproductive years in the United States was 6.8 per 1,000. The divorce rate? You guessed it: 3.4 per 1,000.

Couples prefer marriage to simple cohabitation. Although half of all married folk once lived with their spouse (in a common-law relationship prior to the wedding), only 9 percent of all couples in childbearing years tend to cohabit in the absence of wedlock. Marriage is still the preferred eventual course.

Interestingly, it’s believed that arranged marriages end with divorce rates which are actually slightly lower than the rate for couples who married for love, although there may be cultural explanations for that. We don’t really know, although we believe that marrying for love is just as risky as marrying for other reasons.

Similarly interesting is the fact that second-timers seem to fare better. The divorce rate amongst persons who have married more than once is about half that of the general population. It may be because being a good spouse is learned behavior. Perhaps spouses learn to get along better with each successive relationship. Or maybe second- and third-timers simply die before they have a chance to divorce. Nobody knows for sure.

What we do know is that marriage can be a wonderful thing, or it can be hell. There are probably more awful divorce stories than there are happy marriage stories. Everyone knows a tale about how a marriage failed and ended in disaster, causing immeasurable financial loss, trauma for children, and other miscellaneous and irreparable damage. The tales are widespread, and some are even true.

Just recently, someone asked me for some advice. I suppose he had heard from another person that I was a lawyer, and so he figured he’d tell me about his thoughts on the law. This happens quite a bit, actually. Even though I get the routine with some frequency, I must confess that I’m still amazed every time somebody decides to share his or her law story with me. It’s funny, really — I never want to discuss my sore knee with an acquaintance who’s a surgeon!
Anyway, the fellow began by explaining to me that he was aware that all men get the “short end of the stick” in divorces, and he wondered if I knew about that. Not actually interested in my answer, he began to wonder (out loud) how I could bear to work in such a corrupt system. Soon, he was telling me about the source of his knowledge (he’d been divorced twice) and he explained that his second wife “got the mine” while he “got the shaft”! He looked at me as though I must surely know the story; I think I was expected to laugh as he said it jokingly. The point is that everybody has a divorce story. Some are funny, some are sad, but few are intrinsically good or happy stories.

Despite all that, people marry and divorce with predictable frequency. The success and failure of relationships over time has been one of the most prominent and steadfast features of life in North America for at least 50 years. Even though most aspects of our culture have become almost unrecognizable in that same period, the basic concept of marriage remains virtually unchanged.

This point can be easily understood by thinking about how every feature of our culture and economy has changed. Compare the present-day world to almost any preexisting period. Think what music sounded like at the end of the seventeenth century and compare that to digitally enhanced rap. Think about the way Mickey Mouse appeared in the first Disney show, and then contrast that with the computer-generated creatures in *Shrek*. Consider the changes to the culture around storytelling and fiction in the days of Shakespearean theater versus film in the twenty-first century. Step outside of culture and think about science and technology from 8-tracks to iPods, carrier pigeons to cell phones, bloodletting to genetics, and horse-drawn carriages to hybrid vehicles. Every aspect of our world has changed radically. However, attend a friend’s wedding and you will immediately see something that really hasn’t changed lately at all.

Despite all our cultural diversity, the advancement of science and the arts, revolutionary technological and massive ideological changes, marriage is one aspect of our North American way of life which remains almost completely untouched.

Think about the last wedding you attended. It’s likely the bride wore white and the men wore black. Everybody met on a Saturday, at the church. The parties signed papers, exchanged rings, feasted together, shared speeches, kissed in public, and then the couple went on a honeymoon. It’s pretty much the same in Fort Worth in 2010 as
what you’ll see in any version of Robin Hood. With no disrespect to newlywed lovers, almost all weddings are the same.

Marriage itself has not changed. Yet our perceptions about good and bad marriages have. True, those changes have not been the changes that we’ve seen in science, technology, and communications — but there have been changes.

For instance, loveless marriage is now almost universally considered intolerable. Spouses leave relationships for more money, better sex, less arguing, or just because they need a change. Husbands and wives seem to “check out” of a relationship more willingly, more easily, and more swiftly, and yet overall divorce rates remain surprisingly static.

Most significantly, the available statistical data shows that the process for obtaining a divorce, separating assets, dealing with children’s issues, and dividing liabilities and responsibilities remains relatively constant. We still argue, posture, negotiate, hire lawyers, negotiate some more, settle, or proceed to trial. We do so largely with the same systems and processes that existed when my dad practiced law in the late 1950s. Sure, some attitudes and principles of law have changed, but overall, the system remains surprisingly steadfast. Some would say it is still costly, cruel, and inconvenient.

This book is no valiant attempt to change all that. Better and smarter lawyers and jurists have change in mind, and many law societies, governments, and educators are now working on modifications to the system that will improve, streamline, and simplify divorce laws and processes. The program for change is underway, and it is likely to continue indefinitely.

Meanwhile, as that work continues, couples continue to marry, separate, and divorce. They need and deserve information about how to think, act, and behave in the process of separation. They need to understand that there are ways to increase the likelihood that the separation itself will be survivable.

This is what this book is about. Here, we’re going to explore a better approach to separation and divorce, and encourage parties to calmly negotiate a sensible resolution of their dispute without heartache and bloodshed. Done correctly, a separation and divorce can be an empowering, invigorating, and even liberating event.

Much of the information in this book will be applicable to common-law separations as well.
An Important Note about This Book

I have been practicing family law in Vancouver, British Columbia, for 25 years. During that time, I have met and worked with all kinds of clients, in all kinds of family situations. Some of the cases I’ve worked on have been unbelievable, while others follow a predictable pattern.

Along the way, I have been educated by the process and by the clients. I believe that what I have learned can save separating couples time, money, and heartache.

Some of the people I have worked with have been notorious and famous, while others have been quiet and humble. Many of my clients struggled with horrific spousal abuse, fraud, and secrecy, while others left relationships for financial, sexual, or other reasons. I have occasionally seen clients separate quietly, in peace, and part company as friends. They, truly, are the lucky ones.

Very often, drugs and alcohol are at the center of the trouble. Other times, it’s gambling, dishonesty, or other worrisome behavior that brings the relationship to an end. However, completely “normal,” balanced, stable, hardworking, and honest people also fall out of love. Sometimes, despite the best efforts of well-intentioned parties, spousal relationships end, and former lovers part ways.

I have seen this, in my career, thousands of times. Seeing it over and over again has taught me nothing about love and marriage. However, the specific stories I have heard and handled have taught me something about family law. What I’ve learned is something that cannot be taught in law school and isn’t easily absorbed from everyday life. The lesson that I have learned, and which I hope to share in this book, is that separation and divorce can be a good experience.

This is a book about a process that can lead to happiness from separation and divorce. It is about how parties can negotiate a solution to their matrimonial or spousal separation on their own. The book explains how and when expert help can and should be obtained to assist in the process; however, it encourages the parties to do the heavy lifting and most of the work.

I am writing this book to share the lessons I’ve learned and to explain how the process works. From time to time, as a part of that explanation, I expect to tell you about examples and cases I’ve handled which have some educational value. All of the stories must, however, remain private, due to solicitor-client privilege. I can,
however, tell readers about known facts, reported cases, and other “stories” so long as the privilege is protected. To do that, I must change the names, of course, and sometimes alter some of the facts to keep identities secret.

Sometimes, the language of the examples may appear and sound slightly sexist. I mean no disrespect by this, and apologize in advance for any insult I may cause. The biological fact is that so far, only women bear children. The social and historical corollary of this seems to be that there is a difference between women and men in the law, in respect to children’s issues. Maybe that’s good or maybe that’s bad. Maybe that will all change soon. I don’t know. For now, to be brief, I have used examples that I think best illustrate real principles concerning separation and children’s topics, and in the process I may use some generalizations that could conceivably appear sexist. Sorry, that is not my intention.

This book is not about the specific laws that apply in your state, province, country, or region. There are good (and bad) sources available on the Internet and in print which can assist you with understanding the governing legal principles in your jurisdiction. You can obtain that advice on the Internet, in your library, or from various legal clinics, lawyers, and other resources in your community. This book won’t help with the particular laws that apply to your case.

Instead, here I offer advice and information about the process for negotiating a mutually satisfactory end to your separation. That resolution is going to be achieved by communicating with your spouse. You may or may not be able to have that communication directly. Perhaps it will be in writing, with a friend, or through a mediator. It doesn’t really matter how you resolve your issues, as long as they are resolved in the absence of litigation.

Before you finalize or sign anything, I will remind you (several times) that you must obtain independent legal advice about the deal you are making. Getting proper, competent, and local legal advice about your situation is imperative, and it is imperative you get that advice before you sign or sell anything.

I believe this book can be helpful because although every divorce is unique, there are common themes and principles at play in all cases. Knowing these common themes from my experience in law has provided me with the opportunity to explain so that newcomers to separation can avoid common mistakes that others have made. At the same
time, I can describe some of the positive steps that can be taken to increase the likelihood of early resolution of the case. I'll also explain how to discourage costly rancor and acrimonious litigation.

Knowing something about how other family cases have ended badly or resulted in lengthy and costly litigation can help you avoid a similar fate. Having that knowledge at the outset is important because the litigation process can be self-perpetuating. Once parties start down the litigation path, it’s often difficult to get off that path.

When a dispute escalates due to litigation, or because the parties simply don’t know how to get out of the bickering cycle, there are several options and methodologies available to overcome the blockage. Some are better than others. Each of the options is easy to see from the outside, but sometimes impossible to imagine for the participants at the center of the dispute. It is for that reason that parties in a dispute need to get advice from outside the dispute. Referring a friend or family member to a lawyer, mediator, arbitrator, or even a book takes some courage. It’s not easy to tell a buddy that he or she needs help.

Legal rules and principles about practice, procedure, and substantive law vary throughout North America. The laws that govern divorce and separation in Alaska have no application in British Columbia or California. Having said that, the same basic issues and disputes arise in most cases, and do so with repetitive frustration, over and over again. This book can help you avoid making those same patterned mistakes. It can help you reach a settlement that is timely, inexpensive, and survivable. As you continue on in your reading, keep in mind that regional (jurisdictional) changes and subtle differences in the law may require careful consideration.
When I graduated from law school in 1986, the economy in my hometown was poor. The real estate market had just struggled through a major adjustment, unemployment was high, and interest rates were creating market uncertainty. It was not a great time to be starting a new career.

In my case, that career started at a small local firm in which the partners were friendly and the atmosphere was collegial. I wasn’t planning on getting rich immediately, and so financial issues weren’t really on my mind. The staff was great, and everyone was welcoming. Since the firm was already established, I was given the opportunity to try almost anything that came in the door. I tried my hand at several different kinds of law. Sometimes, I would land a criminal case or a construction law matter. I even incorporated a few companies and learned a bit about real estate law.

Within a short time, however, I discovered that the interesting thing about the practice of law had almost nothing to do with “law.” The principles and rules of the work were actually quite dull. Instead, what was interesting was the clients — the people who had real problems and needed help. They had wild stories, interesting
lives, and complex challenges. I soon learned to enjoy being a professional who was able to help real people solve real problems in their lives. It made me feel useful and satisfied, and so for that selfish reason I persisted.

In those years, while there was no shortage of work, there was a shortage of high-paying work. The huge “shopping center” solicitor cases and the major-loss car crash claims were few and far between. Those cases paid big money, but there was stiff competition for them, and I was new to the business. I soon found, however, that even though the big sought-after cases were in short supply, there was an abundance of family law cases and claims, and very few lawyers who were keen to do that work.

Now, 25 years later, the world has changed radically, but this aspect of the practice of law remains unchanged. Today, perhaps more than ever, there are thousands of families all across the continent with a variety of family law problems. And believe it or not, there’s a shortage of competent, caring family law lawyers who are willing to help.

Maybe young lawyers don’t go into the practice deliberately because divorce law isn’t really all that sexy. Aside from some interesting fictional insights offered long ago when L.A. Law romanticized the glitz and glamour of divorce practice, there’s never really been any doubt that divorce law is the least popular kind of work in the field. Really, no law student lies awake at night dreaming about being an advocate in a custody case. Instead, the law student’s dreams are focused on constitutional change in the Supreme Court, or winning a huge environmental challenge, or freeing an innocent person. Arguing over the daycare arrangements for Sally Smith just isn’t that glitzy. Tom Cruise would never have to do a case like that in a movie!

Moreover, if you are a young lawyer with $100,000 in student loans and a group of friends who have already been in the labor market for four or five years, you need to practice in a remunerative area, and recoup your expenses.

Although many films and series have depicted legal careers as easy pathways to exciting cases and the effortless accumulation of unimaginable wealth, anyone on the reality side of the room knows that family law is not like that. Most divorce lawyers work long, hard hours in difficult circumstances, with challenging clients, and earn a modest income. It’s a difficult job that requires special skills. Sometimes, it just doesn’t pay well. As a result, it’s not seen as an attractive kind of practice.
For that reason, family law is underpopulated by lawyers. That may be one reason why many litigants choose to represent themselves — there just aren’t large numbers of available divorce lawyers around, and those that are skilled and experienced are not inexpensive. Really, it’s the law of supply and demand.

As well, because family law cases are expensive and seem to arise at a time when a family is already experiencing economic (and emotional) turmoil, many spouses facing family law cases do so without any legal help whatsoever. It’s not that they want to act for themselves — they simply do not have the money for counsel. The erosion of legal aid for family law clients has caused even more warring spouses to act alone.

This trend cannot be seriously challenged. More and more, separating spouses are finding it impossible to pay lawyers for help. This creates challenges for society generally, and for judges and the development of legal precedent.

The number of unrepresented divorce litigants has been on the rise for some time, and in my jurisdiction at least, it seems unlikely to change any time soon. The result is that many family law cases are decided by judges who have not heard all the facts or all the arguments, simply because the parties are self-represented and lack the training necessary to explain their side of the story in a convincing and persuasive way. Not having an experienced divorce lawyer on your side can have disastrous effects which may last forever.

In the years that I have been doing this job, I have seen many self-represented litigants. Some have been surprisingly professional and persuasive. Most, sadly, lack the skills and objectivity to do a good job with their own case. You don’t need to be foolish to miss facts and destroy a case. Some very clever people have managed that.

By acting for yourself in litigation (and sometimes even during difficult negotiations) you can miscalculate. What matters in law or fact can be overshadowed by your concern over an insignificant detail. In court, presenting your own argument can often prove disastrous. You may, in the process, alienate the judge or destroy your own argument. When you act for yourself, you take the “arguing lawyer” who acts as a buffer out of the equation. Usually, your proximity to the sensitive issues and your complete lack of objectivity is enough to ruin your chance of a fair hearing.
What is really unfortunate about self-represented litigants is that most of them don’t understand enough about the system to appreciate which tasks they can safely do on their own and which tasks truly require legal advice.

Consider the following examples:

- Most lawyers will perform task-based assignments, and are willing to work on a piecemeal basis. Some call this “unbundling,” meaning the lawyer does not act for the client generally, or on all matters, but is only retained for a specific purpose. For instance, sometimes I am hired to review a separation agreement (and “fix it”), or for the purpose of opposing one part of a court case. Other times, I’m retained only to conduct a trial. In this way, the client has the benefit of counsel for part of the case, but does not suffer the expense of a general retainer.

- Some of the work that lawyers and their staff perform (and charge for) is work that the litigant can do without any risk and without any legal knowledge. For instance, the client can organize documentary materials, provide witness summaries (outlining the personal particulars of each helpful witness and providing a summary of what the witness will say, etc.). This can and should be done by the party — not the lawyer.

- Another alternative is to retain a lawyer to give advice, but to conduct the hearings yourself. I recently did this on a case involving a local father, and it worked wonderfully. The father was a sensible man and had a reasonably strong case. He was quite able to conduct the trial himself and only needed guidance with the procedure and the legal principles. He retained me for general advice, and I talked with him a half dozen times before the trial and every day during the trial. He succeeded, as I thought he would, in his claim for custody. By acting for himself, he probably saved $25,000. This is a risky prospect, and should be reserved only for certain scenarios, but it can always be considered and kept in mind as one option.

What I am suggesting here is that there are alternatives to the traditional lawyer/client relationship. It’s not an “all or nothing” proposition. Each case is different. What worked for your friend may not work for you. Many of my most reasonable clients would be disasters in court and would be easy prey for the most junior lawyer. Other clients can do most of the work themselves and need me only for specific
tasks. Still others can negotiate and settle a case, and want me only to
review their agreement or assist in drafting it. Gone are the days when
every separating spouse needs $25,000 and an aggressive lawyer.

Still, understanding the concepts and putting them into play are two
very different things. In order to achieve your separation objectives
without breaking the bank and without nasty litigation, you need to
be committed to the process. You need to understand that if you play
your cards correctly, you can have a “happy divorce.” It’s not a result
that is available to everyone, but you will never know unless you try.

1. Similar Cases; Extremely Different Results

I was quite a distance into my career before I realized that the con-
cept of a “good” separation or divorce was realistic.

The event unveiled itself rather innocuously, on a rainy Tuesday
morning in November. I had started early that morning, as I usually
do, preparing for appointments, upcoming court cases, and answer-
ing electronic and snail mail. At about 8:00 a.m., my first appoint-
ment arrived. The client, a pleasant looking, middle-aged woman
with a small briefcase and a quiet demeanor introduced herself and
came to sit in my office. I’ll call her “Mrs. G.”

She described her circumstances calmly and carefully, and ex-
plained that she had separated a year earlier. She told me about
her two children, her financial situation, her husband’s career, and her
aspirations for the future. Mrs. G then described how she wanted a
serious and aggressive lawyer who could “handle” her husband —
someone who wouldn’t be afraid to stand up to him. The client told
me that her husband was a financial bully, had several good lawyers
and accountants at his disposal, and she warned me that he could
put up a good fight. In essence, she wanted me to “undress” him and
in the process obtain a favorable order or settlement. Her objectives
were clear — she was sure that spousal support was her entitlement
and she wanted more than half the family assets. She then flattered
me with a comment about how she had heard good things about me,
and turned the discussion to fees, the time line for progress, and
other matters. Throughout, she was clear, concise, and businesslike.

I kept notes, asked questions, and gave some advice to Mrs. G.
At the end of the interview (about 70 minutes later), she gave me a
check for the retainer and left the office apparently pleased. I dic-
tated a memo about the facts, organized the file materials and the
documents she’d left, and then asked my legal assistant to open a file. My final instructions were marked in the right-hand margin at the bottom of the fifth page, which said, “Litigation matter — client wants divorce, custody, and spousal support, plus 75 percent of the assets.” I then went on with the rest of my morning, and dealt with a variety of other issues.

After lunch, I had another appointment with a second potential female client. Again, I introduced myself in the lobby and escorted the lady to my office. This client looked and sounded somewhat like Mrs. G. As her story was presented, I was surprised to find that, in fact, some of the basic family information was similar to the story Mrs. G had told. Here, there were also two kids, an ambitious and well-off husband, and concerns about custody, money, and the future. At the outset of the interview, I knew the new client’s first name only, and used it judiciously, but when it came time to get the critical and essential information necessary to open the file, I asked for her surname. As she pronounced it and then spelled it out for me, I was astonished to find that there was but one letter which distinguished her name from Mrs. G. Not only were the facts and stories strikingly similar, they had almost the same name! What a coincidence!

My second client was Mrs. B, and she too (like Mrs. G) needed a lawyer. She and her husband had been negotiating for some time, but they were apparently at a stalemate. Although Mrs. B had hoped for an amicable resolve, the battle lines appeared to be drawn. She too was resigned to litigation and hoped I could help.

Mrs. B did not, however, tell me that she wanted litigation. Instead, she asked if there was anything I could do — “even a last-ditch settlement offer” — that might result in a friendly resolution. She was quite sure that her husband would not budge or reconsider the offers, but she asked me to try one more time notwithstanding. I could tell she was tired and anxious and felt weakened, but still there was hope.

I told her I would do my best, and she seemed somewhat reassured. Mrs. B left me a retainer, and I prepared to open the file and provide instructions to staff. This time, however, the final instructions at the bottom of page five said, “Client convinced it’s hopeless but wants to try last-ditch settlement offer as per instructions above. Try letter to husband before and give it one last shot.”

After the Mrs. B file had been opened, I drafted that settlement letter to the husband. I did so in nonconfrontational language,
and described some concessions and options that the client had explained to me. I asked the husband to give the proposal careful consideration, particularly since it seemed likely that litigation would follow if we were unable to settle soon. I asked him to talk to other lawyers, and I gave him the names of some colleagues. I expected the letter to achieve nothing, but I gave it a try. It was what the client wanted.

The next day, I prepared the court pleadings and documents necessary to start the lawsuit in the Mrs. G versus Mr. G case. A process server was contacted, and the stage was set.

The Mrs. G case finished about six months ago. In the end, I extracted a judgment that was favorable to the client, and managed to obtain an order for spousal support and a significant reapportionment of family assets. It was a substantial victory — she had been a good witness and we had done a good job. The client was relatively sympathetic and the husband behaved poorly. The evidence had come out perfectly, and we were lucky with the judge who was appointed to the case. Overall, it was a fantastic outcome.

The case had, however, been costly. The legal fees were several tens of thousands of dollars, and the case had occupied a great deal of time. There were several experts, some nastiness in the evidence, and more than a few tears along the way. It had been an exhausting experience for the client, and even though she obtained the desired result, the price paid had been very high indeed. In the end, it had been an emotional bloodbath for the parties, although we had achieved for the client exactly what she wanted.

In my final meeting with Mrs. G, I gave her copies of the order of the court, the documents she’d need, my account, and the various other key aspects of the file materials. She was grateful enough, and paid the bill in full. Still, she seemed oddly unhappy and unsettled. Unable to extract a heartfelt confession from her as to the exact source of the discomfort, I left her and wished her the best, hoping that her world would be better from the service we provided. My job was done. Or so I thought.

Mrs. G returned a few short months later. She had problems with access and support. The checks were late and the ex-husband was not showing up for the access he had fought so hard for and been granted. There were verbal altercations at pick-up and drop-off, and he was using her tardy support payments as a way of “getting back.”
In about four months, the ex-Mrs. G had been back into the office three times, on each occasion asking for help. I called counsel for the ex-husband, until he removed himself from the case. Then I called the husband. He seemed okay on the phone, but always had a long explanation. I wrote letters. He ignored me. Within about five months of the trial, we were back in court again, on a motion about support and access. We got our way on the support issue, but the court reminded us that they could not force Mr. G to use the access, and the judge made ancillary orders about how canceled access would require advance notice. Still, the trouble continued.

I did what I could, but the client’s insatiable appetite for continued litigation was too much, and I told her so. I reminded her that just before trial, we had been close to settlement, and that the husband’s offer was quite fair. I had suggested she take it, even though the support was a little “light.” She had refused, insisting on trial. I had said that a support settlement (paid on time, because it’s agreeable) is better than a court-ordered settlement for a higher amount, paid irregularly and begrudgingly. She didn’t recall that conversation. She demanded to get back in court. I said I thought she needed to consider her options. Shortly thereafter, I received a request from another lawyer for the file to be transferred. Mrs. G had found someone new to fight the good fight. The war continues to rage.

After that file was transferred out, I left the office, heading out for a quiet lunch. I found myself wondering if in fact Mrs. G ever really, truly wanted closure at all. It occurred to me that perhaps what she really wanted was the fight itself — that perhaps she needed a hard-fought battle with the man who had done her wrong, and that she hadn’t wanted it all to end with the judgment. She found ongoing complaints and topics of concern because she really had not finished with Mr. G, and she wanted me to prolong the entire conflict and contact. Maybe it was her way of maintaining some control, or some semblance of a relationship with the man who once loved her and let her down. Then, at that very moment, as these thoughts were swirling around in my mind, I rounded a corner deep in thought and ran almost headlong into Mrs. B.

“Sorry!” I shouted, simultaneously surprised at my own recklessness and the sight of my former client. Mrs. B stood before me, shopping bags in hand, looking so very different from the way she had appeared when I last saw her many months earlier. Now she looked bright, happy, and full of energy.
We exchanged some simple pleasantries, and then I asked her how she was (in a serious and businesslike way). She took a big breath and looked at me, unsure whether I was a friend, previous business associate, or former lawyer. After a moment of apparent consideration, she said she was “honestly, very happy.”

Her manner of speaking made the comment redundant. It was obvious to anyone that Mrs. B (now going by a different name) was clearly happy and content by any measure. She looked good.

We stepped out of the main concourse to talk. She told me how things had “come together” for her in the aftermath of resolution. She said that when her case ended, she wasn’t sure if she’d be able to manage, but she had some remaining confidence that stayed with her even though she had felt vulnerable.

She said she remembered that I had told her an average settlement was twice as good as a great victory at trial. She remarked that her ex-husband, once a fierce combatant, was actually being almost easy to deal with, and had been cooperative on several children’s issues lately. He had found a new woman, and my former client found it surprisingly easy to communicate with this new woman.

She was glad that the case had settled, and even more pleased that the resolution had been achieved without huge expense or acrimony. She seemed genuinely happy and settled. Although she had not recovered everything she wanted, she had found some peace and had moved on. Getting perfect financial justice had, in the end, proven to be relatively unimportant. For her, the settlement and eventual divorce had been invigorating and uplifting, and she and the kids were happier than they had ever been.

As I walked away, I began to think about her happiness, and the very different and very unhappy experience that Mrs. G had gone through. Although no two cases are ever the same, I began to consider the similarities of the issues, the topics that were argued, and the results obtained. As I did, I realized that while there were some obvious differences between the two families, the parallels were remarkable. Mrs. G and Mrs. B had nearly identical cases and claims, and almost opposite experiences and results. I started to wonder why that was so.

My thinking about this issue is primarily what has led to the development of this book. For, in considering the cases side by side, I came to realize that the factor that brought Mrs. G such misery and Mrs. B
such calm was not the process itself, the minutiae of the detail, or any other difference or distinction; it was that a fundamentally different approach had been taken from the outset. Mrs. B came to my office with a desire to settle and resolve the dispute in a non-acrimonious way. She did so understanding that litigation might result, but committed to avoiding that (probably because she knew it was undesirable, unaffordable, and impractical). Mrs. G, on the other hand, started the process wanting blood, expecting justice, and demanding litigation. Hell-bent for some inarticulate and insatiable objective, she could not be satisfied even when the litigation went exactly as she had wanted. No fair or even generous judgment could satisfy her desires because fairness was not the objective.

The lesson learned from these two files has taught me three things that are worth knowing and sharing:

• When it comes to negotiating a settlement, never say never. Do not leave the world of negotiation because you believe that the case will never settle. Sure, it may settle even after you start the litigation, but once litigation has commenced, the stakes are much higher and the sensitivities are extremely heightened.

• When you are negotiating and trying to settle, you must never believe that litigation is a practical alternative — litigation is not a reasonable option. It may be absolutely unavoidable in some cases (when there’s violence or hidden assets), but for most separating spouses, litigation just doesn’t make sense.

• Remember that you may be happier if you settle and miserable even if you win a lawsuit.