

Family Matters:

If Silence is Golden, then What is Gossip?

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¶ 1 It may appear old-fashioned to object to Gossip. Everyone does it, right? It's fun. Life would lose its zest without the thrill of discussing someone else's misfortunes. The Jewish faith has something to teach family law lawyers about drafting.

¶ 2 In family law, lawyers are often paid to formulate incisive affidavits or prepare a witness to give oral evidence about someone other than their client. This evidence is filed as a public document in open Court.

¶ 3 However, sometimes clients in family law cases use the opportunity not just to prove a point, but indeed to destroy the character of their opponent. Revealing a deficiency in the other party's parenting skills may strengthen their case.

¶ 4 But is it really necessary to generalize and imply or say that the same individual is a monster - a terrible father or mother? The father may owe the mother money, but does that make it okay for the mother to state that he has "defrauded me of my entire inheritance"? It may be crucial to show that your opponent earns more or spends more than he or she claims. But does that give you license to claim total dishonesty?

Grave Sin under Jewish Law

¶ 5 In Jewish law, Gossip (known as Ioshon hora in the Jewish religion) is one of the gravest sins. A Jew is normally forbidden by the Torah to say anything about a third party lest it destroy that person's reputation.

¶ 6 But is this kind of evidence submitted in Court "Gossip" in the way most people in modern Canadian society understand the word? Obviously not. Notwithstanding Jewish law, people are usually free to say anything they wish in Court to try to prove their case, even if what they say may appear to be defamatory. Even in a Jewish Court, a witness is permitted to give honest evidence about direct observations (not hearsay) if what he has to say is relevant.

Statements Calculated to Hurt

¶ 7 So why should anyone be concerned with some quaint, antiquated notion of "Gossip"? We're not living in Puritanical times, ancient Israel or Mea Shearim (the very observant neighbourhood in Jewish Jerusalem).

¶ 8 However, many Judges and responsible counsel in family law have become increasingly alarmed at the extent to which clients unnecessarily exaggerate or complain about their spouse's conduct in these

affidavits or open Court.

¶ 9 Master Cork is a Toronto judicial officer who for several years adjudicated many family law hearings. He often pleaded with lawyers to restrain their clients from attacking each other needlessly when giving evidence, especially when that evidence was submitted in writing. Children and other concerned parties often read this stuff during the dispute. This happens when a parent carelessly - or deliberately - leaves such written statements on the coffee table. Often years after the dispute is over, children or others will discover these damning allegations of duplicity dishonesty, child neglect, abuse (physical, emotional and/or sexual), and depravity, which may be exaggerated or unnecessarily stated. Whether the statements are true or not, they are often calculated to be vindictively hurtful.

¶ 10 This practice is particularly reprehensible because it violates the unwritten rule that, in a visitation scenario, neither parent should speak ill of the other in the other's absence. So these statements do hurt - but they often hurt the wrong people.

¶ 11 The pain children feel when seeing their parents rip into each other is sickening. Yet not only do many fighting parents appear oblivious to these concerns, their lawyers often fail to advise their clients to adopt a more restrained approach.

Friends, Relatives Forced to Take Sides

¶ 12 It gets "better". The parents then "recruit" their friends and relatives into their own camp. These "significant others" sign similar affidavits or give oral evidence to prove their allegations. The friends and family members, who may have previously been neutral, are now involved in hurling insults and derogatory statements, not because they want to, but because they were asked to.

¶ 13 Unfortunately, it is sometimes necessary to obtain evidence from third parties that is relevant to a custody dispute. But unless the allegations are "documented" or focused with considerable detail on a truly serious allegation that a Judge must know about (such as child neglect), the process can be unnecessary and destructive.

¶ 14 Some of the allegations that I have seen in such materials are more than a complete waste of time; they trivialize the entire Court system. An unsupported allegation is one made without proof, i.e. without documents like a police report or a medical report. A parent who hurls that type of allegation may not be able to persuade a Judge. More importantly, if the allegation is exaggerated, the Court will not be pleased: it is a criminal offense to bend the truth in an affidavit or in Court. It's called perjury. Moreover, exaggerated statements will be considered Gossip - not evidence. Gossip can be damaging, both legally and spiritually.

¶ 15 Restraint, on the other hand, can be a "mitzvah" (a positive moral commandment). As incongruous as it may sound in a legal context - especially a custody case - the exercise of restraint may allow you and your counsel to prove a point without annihilating your "opponent" Restraint also garners the Court's respect and immeasurably enhances the client's credibility.

* This column was originally published by Mr. Syrtash in the Canadian Jewish News on February 28, 2002 as part of a series of articles comprising researched commentary and informed by over twenty three years of practice as a family law lawyer in Ontario. The issues and the laws he researches and discusses all have current application and were again reviewed by Mr. Syrtash before re-publication in this series. Mr. Syrtash invites the reader to send all comments and questions to the email address provided above.

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