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When love goes sour / by Timothy McMichael

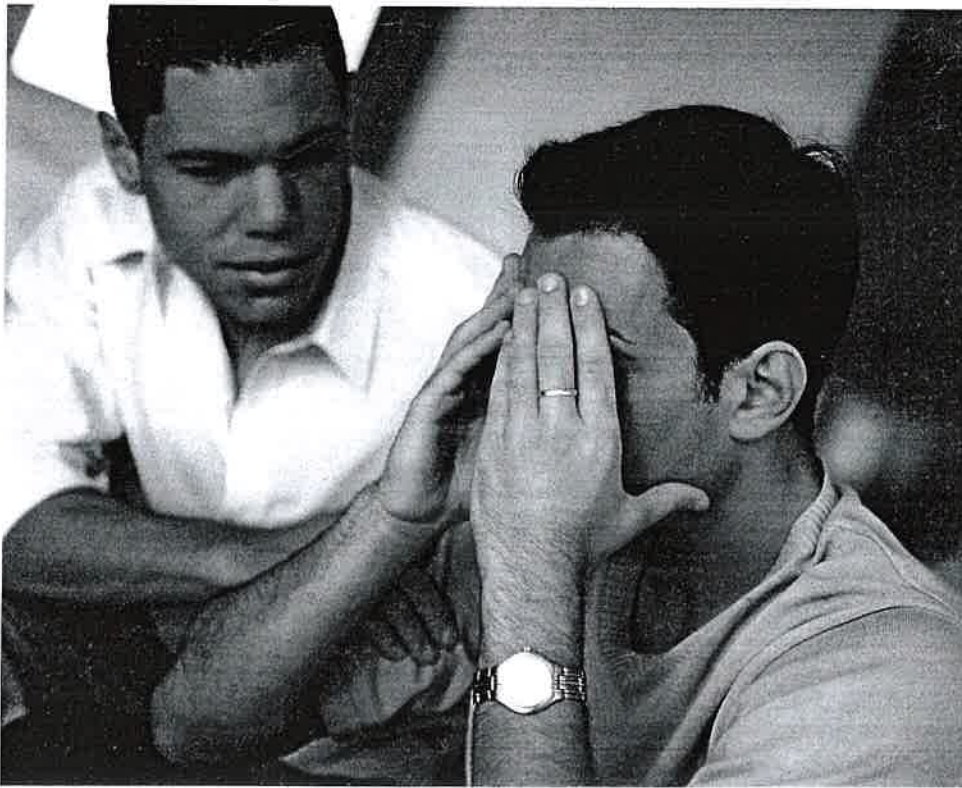
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Express (Auckland, N.Z.), 17 Oct 2012; n.536:p.11

Kind regards

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When Love Goes Sour

No matter how much love there is, how much passion, how much good intent of commitment, no matter how good even the sex is, the statistics speak for themselves; that most long term relationships will end - not through the death of a partner or spouse, but because one or more parties chooses to end it.

It's a fact of life, sad thought it may seem.

In those early, heady days of the relationship, even before a couple chooses to make a formal commitment to each other by becoming a de-facto couple, a civil union partnership or even a married couple, individuals seldom think about making plans in the event of the relationship failing. Some couples will occasionally enter into what is known as a 'pre nuptial' agreement, or something similar, which might state some intentions in the event of the relationship ending. Whilst these kinds of documents serve as a useful indicator of how assets may be divided at the time a relationship ends, in general they actually have very little formal legal standing.

At the end of a relationship, if both parties cannot agree on how to separate assets, The Property (Relationships) Act 1976 administered by The Family Court determines how assets are divided.

This Act provides legal rules on how property should be divided when a marriage, civil union, or de facto relationship ends. These rules are based on some general principles:

- Men and women have equal status and their equality should be maintained and enhanced, sexuality or sexual orientation makes no difference;
- Non-financial contributions, such as caring for children and running the home, are equal in value to financial contributions;
- Each spouse or partner has made an equal contribution to the relationship and therefore relationship property should be shared equally between them;
- Whether one spouse or partner may be more responsible than the other for the break-up of the relationship is not relevant to the division of the property, although in exceptional circumstances the Court may take the spouses' or partners' conduct into account in deciding how the division of property will be carried out;
- A just division of relationship property takes account of the economic advantages or disadvantages to the spouses or de facto partners arising from their marriage or de facto relationship or from the ending of their marriage, civil union, or de facto relationship;

- Questions arising about relationship property should be resolved as inexpensively, simply and speedily as is consistent with justice.

As this article goes to press there are some very significant changes happening in in The Family Court around how many aspects of the Court will function.

Up until now issues over contact with children have usually been taken to counselling. If there has not been a satisfactory outcome in counselling then the Court may order a 'non-Judge led' mediation or occasionally arrange a hearing in front of a Judge.

So far as relationship property is concerned sometime these issues may again, but only occasionally, be addressed in counselling. More frequently they are addressed through litigation which is where it gets expensive unless, as in exceptional circumstances, you qualify for help with legal fees. Again, mediation is sometimes suggested or occasionally ordered by the Court. Only in cases where assets are of a very high value or in other exceptional circumstances will a Judge hear the case.

All this is set to change, however, with proposals recently announced by the Ministry of Justice. Although the Ministry has yet to spell out in plain English exactly how disputes will be processed, essentially each town and city will have a number of Alternative Dispute Resolution Centres (ARDCs) established with ARDC practitioners who may be counsellors, mediators, social workers, lawyers or solicitors. They will work with couples to help them come to agreement without having to access formal court processes.

It's likely that unless there are exceptional circumstances (at risk children, domestic violence or issues of mental acuity), accessing these services will be mandatory and couples will be unable to file applications with the Family Court unless they can demonstrate they have exhausted all other attempts at resolving their dispute.

Overall this is good news. It puts far more responsibility on couples to take more control over their own agreements with the help of a neutral third party. It will also be considerably cheaper than traditional methods of resolving disputes and the whole process will be far quicker, thus freeing the Courts to deal with more urgent and complex matters.

This will be very significant for the Rainbow community, which has a disproportionately higher break up rate than heterosexual couples. It will be important that separating couples will be able to access services where practitioners will not only have the necessary legal and practical skills to help couples achieve the right outcomes, but where couples will be able to go to practitioners who have an understanding around some of the differences and sometimes complex dynamics of same-sex relationships.

Organisations like OUTLine will be well placed to act as Family Dispute Resolution Centres to the Rainbow community and are working to ensure that when legislation is implemented, they will be available to help couples work through the difficult issues that arise when love goes sour.

| Timothy McMichael

Timothy McMichael is a highly-experience Family Court practitioner and is an Accredited Panel Mediator with LEADR. He is currently the general manager of OUTLine NZ Inc.

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