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It's Not Just Them: The Social and Economic Consequences of Family Conflict

by [John-Paul Boyd](#)

Busy family law lawyers, myself included, live in a bubble of immediacy, a shroud of crisis that moves with us as we go forward in time and cross entry after entry off our calendars. This often has two consequences. First, it discourages us from enquiring into the past, into the roots and evolution of the law on domestic relations, for example, or the delightful but sadly defunct matrimonial torts, and from seeking to decipher the meaning of important statutory passages such as this:

Subject to this Act, a guardian of the estate of a child has all powers over the estate of the child as a guardian appointed by will or otherwise had on May 19, 1917 in England under Acts 12, Charles the Second, chapter 24, and 49 and 50 Victoria, chapter 27, section 4.

Secondly, it reinforces the time-honoured tradition that the interests we serve when acting for a client stop at the client.

It occurs to me, as we struggle to cope with access to justice issues and the rising tide of litigants without counsel, that our myopic focus on the present has allowed us to overlook the broader impacts that family law disputes have on separating families and on Canadian society as a whole.

(In this post I am, of course, not talking about parents who separate amicably and never darken the door of counsel or court, but those engaged in mid- to high-levels of conflict. To give some idea of the prevalence of such conflict, [Joan Kelly](#), a prominent American child psychologist, says that:

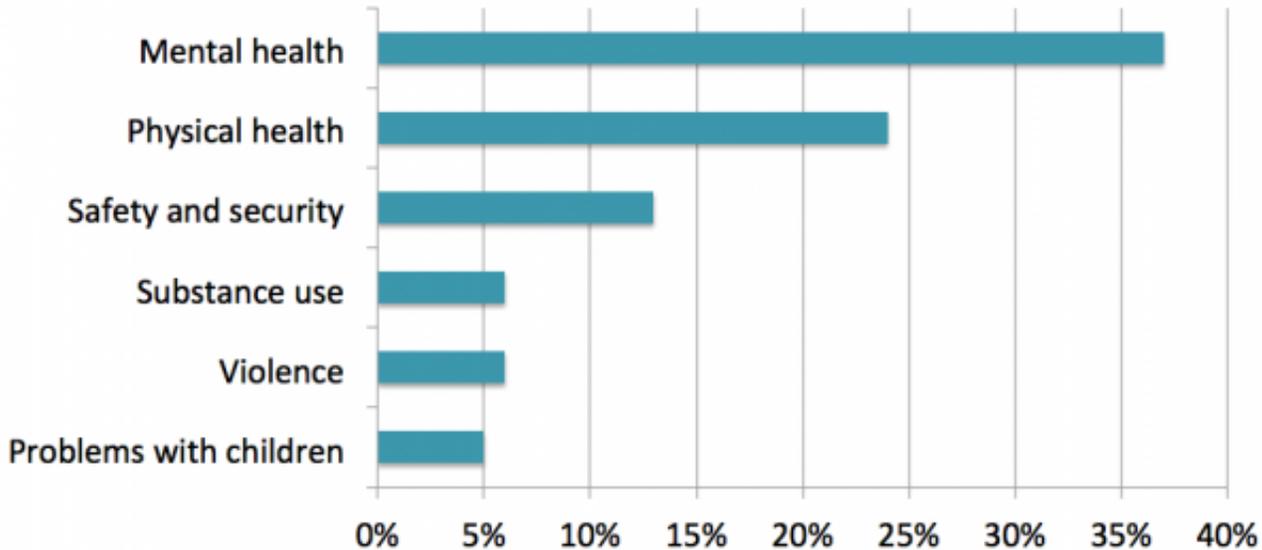
- 20 to 25% of children of divorced parents lived with parents in highly conflicted marriages before their separation;
- about 30% of separating parents report being in a “great deal” of conflict; and,
- 20 to 25% of parents remain in conflict with each other three to four years after separation or divorce.

We also know, from recent research undertaken by the [Canadian Research Institute for Law and the Family](#), that this sort of conflict only gets worse when one or more parties are without counsel, as a result of taking positions based on principle, having unrealistically high expectations of outcome and the much higher likelihood that trial will be necessary to resolve the dispute.)

In terms of separating parents, family law lawyers will be aware that the effects of their conflict are not confined to the legal arena; understanding the psychology of separation and the grieving process are key skill sets for counsel practicing family law. However, legal issues, particularly for low-income individuals, rarely come one at a time. The [Canadian Bar Association](#)'s [Equal Justice report](#) is one of many which note that the existence of one legal problem tends to beget others; in fact, a [background paper](#) (PDF) prepared for the [University of Toronto](#) Faculty of Law's [Middle Income Access to Justice Initiative](#) cites an Australian study which found that 22% of the population had 85% of the legal problems.

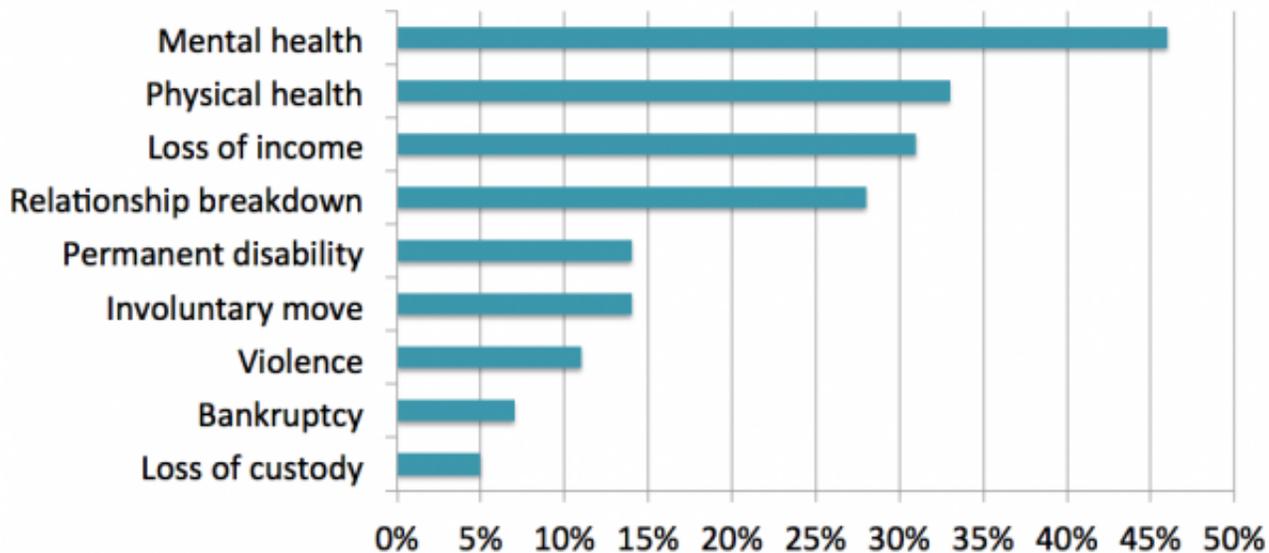
Furthermore, the existence of a legal problem often has a spillover effect onto people’s health, finances, relationships outside the nuclear family and general wellbeing. A 2006 [study](#) (PDF) by the federal [Department of Justice](#) asked litigants about the impact that their legal proceeding had on them; almost two-fifths said that their mental health had been compromised, and almost one-quarter said that their physical health had been affected:

Adverse effect of legal problems on other areas of respondents’ lives



Similar results were found in the 2009 [report](#) (PDF) of the [Law Society of Upper Canada’s Ontario Civil Needs Project](#). In addition to adverse impacts on their physical and mental health, respondents also identified loss of income and loss of relationships as among the more significant consequences of their legal problem:

Adverse effect of legal problems on other areas of respondents’ lives



Other family members are also affected by separation. Grandparents can lose contact with their grandchildren or, conversely, find themselves suddenly saddled with the grandchildren as their primary caregivers. Nieces and nephews, aunts and uncles can all suffer from the loss or attenuation of important relationships. Grandparents may also find their financial stability and retirement plans are threatened if asked to bankroll parents' litigation.

The children of separated parents are of course most affected by conflict. Separation is distressing for all children, and certain adverse effects are common, including:

- mental health issues, such as depression and anxiety;
- emotional problems like sadness and anger;
- problems in school, such as falling behind, truancy and dropping out;
- social problems, such as delinquency and petty criminality; and,
- higher rates of substance use and abuse.

Although all of these reactions are normal and usually fade with the passage of time, as Dr. Kelly points out, the likelihood of their occurrence, and the severity of their impact when they do occur, increases with the duration and intensity of parents' conflict.

As if these immediate sequelae of separation weren't bad enough, researchers like [Robert Emery](#) point to serious potential long-term impacts of parental conflict on children's behaviour, including higher levels of aggression and acting out, problems resolving disputes, and difficulties forming stable, trusting relationships as adults. [Amy Baker](#) and [Naomi Ben-Ami](#) have found that adults who were alienated from a parent as a child, a phenomenon associated with intense parental conflict, have reduced rates of self-sufficiency, higher rates of depression and insecure adult attachments, and higher rates of drug and alcohol dependence. The [Norlien Foundation](#), through its remarkable [Alberta Family Wellness Initiative](#), has shown that parental conflict and other adverse childhood experiences can actually change the way children's brains develop, with significant lifelong consequences including a predisposition to addiction.

Pulling the focus back somewhat, this research strongly supports the inference that the effects of family breakdown and family conflict extend far beyond the court arena and have ripple effects that spread from parents to their children, their extended families, their employers and the economy, never mind the consequences to be visited upon their children's future families.

Our economy most certainly suffers from lost productivity as employees and the self-employed cope with the emotional consequences of relationship breakdown and take time away from work to write affidavits, assemble documents, argue applications, attend examinations for discovery and attend trial. One wonders how many jobs are lost when vacation time is exhausted and employers can no longer accommodate the absences necessitated by the litigation process.

The loss of employment or diminution of income can trigger a cascade of other consequences, including an inability to make payments to mortgages, leases and utilities, an inability to pay car loans, car leases or insurance premiums, and an inability to meet a support obligation. This can result in litigants becoming unhoused or losing their transportation. Child and spousal support enforcement programs can much produce the same result, as well as job loss, when collection efforts deprive payors of passports and drivers' licences, and impact payors' credit ratings and ability to obtain loans.

Further predictable downstream impacts include a heavier demand on physical and mental health resources,

child protective services, and a higher reliance on social assistance, unemployment relief and housing programs. The [Canadian Forum on Civil Justice](#) has been researching the costs to the state of civil litigation since 2012, and has summarized some of the initial results of their work in a recent post on [Slaw](#):

“Beyond the impact on the individual, everyday legal problems can potentially lead to considerable ‘knock-on’ costs to the state. That is, they can increase the cost of publically funded services and programs ... over the three years covered by our study,

- over 200,000 people reported receiving social assistance as a direct result of their legal problem,
- almost 1,000,000 people reported losing employment because of a legal problem they experienced, and
- over 900,000 reported visiting physicians more frequently than usual as a consequence of having an everyday legal problem.

“When these numbers are used to calculate ‘knock-on’ costs to the state, what we see is that unresolved legal problems can potentially result in an estimated

- \$248 million in additional social assistance costs,
- \$458 million in additional employment insurance costs, and
- \$40 million in additional health care costs.

“When combined this amount is approximately 2.35 times greater than the annual direct services expenditures on legal aid.”

These numbers border on the incredible! I wonder, however, what the final numbers would be if the cost of maintaining the courts, and the abundance of ancillary services necessary to keep them operational, were factored into the equation? Either way, the irony that the state spends less than half on legal aid than it does meeting the added costs incurred as a result of litigation is palpable.

To be blunt, it seems to me that family law lawyers and the family justice system in general, must broaden their understanding of the profound socioeconomic effects of family law disputes and account for them in their day-to-day business.

From the point of view of counsel, it is critical to recognize that the extent the interests relevant to our clients does *not* begin and end with their personal legal interests. Although sociopaths would understandably disagree, we must consider the multifaceted effects conflict has on our clients and, more importantly, on our clients’ children. If children’s best interests is the predominant factor in decisions affecting their welfare and care arrangements – which arguably all decisions in a family law case do – we must manage our clients’ conflict with greater tact, skill and care. The near-term negative outcomes experienced by our clients’ children pales in comparison to the potential long-term effects on their wellbeing and their own future families; surely the effect of family conflict ought not be passed from generation to generation like sickle-cell anemia.

From the point of view of the system, it is long past time to take a holistic approach to legal conflict and recognize that the costs of litigation are not limited to the budget of the various ministries of justice. At a minimum, unbuffered family conflict comes at a massive additional price to our spending on health care, child protection, welfare, employment insurance and human services, and to the overall vigour of our

economy.

I understand the territoriality with which government departments husband their budgets and acknowledge that it is a flight of fantasy to imagine that health, education, child protection and human services would ever remit a penny from their budgets to improve the delivery of services by justice. However, in my view the astonishing breadth and depth of the consequences of family law disputes must stir the federal, provincial and territorial governments to finally [devote the necessary resources to family justice reform](#), and, even if not, these issues must certainly be taken into account in developing justice reforms.

We must stop thinking of family law conflict as a private dispute affecting only the separating parents or spouses. An improved, less adversarial justice system will benefit us all.

John-Paul Boyd is the executive director of the [Canadian Research Institute for Law and the Family](#). The Institute is a federally-incorporated charity established in 1987 and is affiliated with the [University of Calgary](#).

Comments

John

[May 22nd, 2015 at 10:01 am](#)

The beginning of your discussion recalls Ian MacNeil's "presentation" as it figured in his early work on relational contracts. One piece of the puzzle then might be placed if courts continue in their gradual march toward a more relational view of contract — here the marriage contract and whatever one wishes to call the mess of agreements underlying any cohabitation.

http://www.jstor.org/stable/1072414?seq=1#page_scan_tab_contents