



Lawyers say names shouldn't be public in divorces



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TORONTO -- When it comes to divorce, some family lawyers are wondering: what's in a name?

Openness is a fundamental principle of Canada's court systems, but some are questioning whether that transparency should extend to the identities of the individuals involved in family law cases.

"I don't need my neighbours to know the details of my divorce," is a regular complaint received at an online repository of court and tribunal decisions, says the site's president and CEO.

Colin LaChance of the Canadian Legal Information Institute mused about whether the rest of the country should follow Quebec's model of only referring to parties in family law decisions by their initials.

"It's a constant source of debate," he said.

"There's significant sensitivities. I think for the most part an excellent balance has been struck, but with respect to family law it's not necessarily something that lends itself to an easy resolution."

Nothing is lost when family court decisions refer to participants only by their initials, argues lawyer Fareen Jamal.

The public can still see what issues were litigated, any precedent-setting decisions and generally how custody, divorce and other family law cases are handled in the courts, she wrote in an Ontario Bar Association newsletter.

"This is an appropriate method to sanitize all family court files, protecting the identity and privacy of the parties and children, while allowing the file to be accessed for other reasons," she wrote.

There may not be much appetite for change from the top down. Various judicial research papers have stressed the importance of the open court system and it is enshrined time and time again in rulings of the courts.

A spokesman for the Ministry of the Attorney General in Ontario, home to the country's largest court system, said a court can already order that any document in a family case be treated as confidential.

"Members of the public are entitled to see any current list maintained by the court of family cases started, any documents filed in a family case, or any orders signed, unless a statutory provision, common law rule or court order restricts access," Brendan Crawley said in a statement.

Not every case finds its way to CanLII and gets posted online, LaChance said, but for those that do the people involved can be surprised to find their dirty laundry pop up through a Google search of their name.

In an era in which an ever-growing repository of personal information is available at a keystroke, it may be time to re-think the balance of privacy and openness in family court decisions.

Family lawyer Andrew Feldstein notes that divorce decisions often include financial information and he suggests it's only a matter of time before that's used in identity thefts.

Aside from that concern, a judge's ruling will often contain a recitation of the allegations each side has made against the other, he said, and it can get ugly.

"It's a very frustrating feeling if your spouse is going to make all sorts of horrendous allegations against you and there's nothing that you can do to stop it," he said.

"The court file is open to the public and anyone can come and read the allegations that their spouse has made about them. The perfect example is Vic Toews."

A Liberal party staffer was fired after leaking detailed allegations from the public safety minister's wife based on court documents found in Toews' divorce file at the Winnipeg courthouse.

"There can be a very big tactical advantage by one side making absolutely horrendous allegations about the other side for sheer embarrassment," Feldstein said.

And often it's the kids who suffer, Feldstein said, raising the divorce case of former NHL player Tie Domi. His wife alleged in court documents that Belinda Stronach, then a Liberal MP, was the other woman and the catalyst for the end of their marriage.

"Picture the kids when they have to go to school and that's on the front page of the newspaper," Feldstein said. "The kids are going to pay a price because of the parents' fighting."

Read more: <http://www.cp24.com/mobile/news/lawyers-say-names-shouldn-t-be-public-in-divorces-1.968049#ixzz27lyccvly>