

## **COLLABORATIVE PRACTICE; PUTTING FAMILIES FIRST**

### **WHAT IS COLLABORATIVE PRACTICE?**

Collaborative Practice is a revolutionary new process that brings the best of legal, personal and financial wisdom to the process of separation and divorce in a humane and cost-effective fashion. This interdisciplinary model offers a process of separation and divorce that protects the dignity, integrity, and long-term best interests of all family members. This innovative approach can be beneficial when counseling individuals, couples, or families involved in a divorce process.

Most divorcing spouses are also parents. In Canada and the US, at least 30% of children have experienced the end of their parents' marital relationship. Research has shown that it is not the divorce itself that is the most destructive element but rather the distress, conflict, and loss that can occur as a function of the divorce process (Hetherington, & Kelly, 2002). Collaborative Practice safeguards children's needs for stability and effective planning throughout the divorce process and good working relationships between their parents post-divorce.

Collaborative Practice grew simultaneously from the work of two discrete groups. In Minnesota, Stuart Webb, a discouraged family lawyer, made a personal decision to no longer participate in the adversarial process of Family Law as he knew it opting instead to work collaboratively with his clients. In family law disputes, his goal became to create and practice collaborative, non-adversarial strategies to help clients achieve agreements in a dignified and respectful manner. His approach was well received. Currently there are practice groups in most major cities across Canada and the US working to bring this process to their community. Some family lawyers no longer take litigation clients. This approach to family law has been referred to as "Collaborative Family Law".

Simultaneously, an interdisciplinary team of professionals in California (psychologists, social worker, financial counselor) was developing strategies to work together to provide separating and divorcing families with constructive methods of working their way through the sometimes difficult family transitions that divorce can bring (Fagerstrom, 1997). Although many professionals are involved, this team has found that work is generally brief and therefore for more economical than adversarial methods. For example, the cost of the average collaborative process is a fraction of the cost of one day in court in California. This approach to working with divorcing families has been referred to as "Collaborative Divorce."

In the mid-1990s, these two initiatives met, recognized that they were complimentary, and integrated. Lawyers who practice Collaborative Law make ideal team members for Collaborative Divorce SM teams. Likewise, the interdisciplinary approach strengthens the work of Collaborative Family Lawyers.

Regarding Collaborative Divorce, teams of professionals made up of mental health professionals (divorce coaches) collaborative family lawyers, a financial specialist, and a child specialist can work together with family members for a dignified, healthy, and cost-effective resolution to the process. The degree to which each type of professional is involved will depend on the unique needs and circumstances of the family.

### **HOW DOES THE PROCESS WORK?**

There are many ways that a Collaborative Practice process can work. Creating a working team is the first step. Spouses can begin this process through a visit with either a participating mental health professional or a collaborative lawyer. All participating professionals will have names of others who are available to work in this process. Once all relevant professionals are on board, an agreement is then reached between the professionals and parents that allows the team to work together collaboratively. Again, the degree to which each type of professional is involved will depend on the unique needs and circumstances of the family.

As in any inter-disciplinary team, spouses are requested to waive confidentiality so that team members can communicate with each other. (All professionals involved are still held to the standards of confidentiality of their respective professions.) The roles of all parties are clearly laid out in a Participation Agreement and discussed until both spouses fully understand the process. The signing of this agreement means that the professionals can communicate with each other and that if the collaborative process is not successful, the spouses have agreed that all records are protected from future use in court proceedings. Relevant agreements also are made between each spouse and the professionals they work with directly. The team then meets, either in person or by teleconference to consolidate.

In the second phase, the unique dynamics of the particular family are understood and the problems worked through. This stage represents the bulk of the work. Information is gathered in one-on-one meetings between clients and professionals to assist family members to identify and begin working on pertinent issues. Various 4-way meetings are held. These can include both spouses and collaborative lawyers, or both spouses and divorce coaches. The financial specialist or child specialist can also be included as neutral third parties as necessary. Given their neutral status, these specialists are especially valuable if particularly difficult circumstances arise.

The third phase involves coming to agreements and signing documents. Parents meet with lawyers and/or coaches to reach the final settlement.

It is interesting to note that there have been cases in which the couple has reconciled in the process of working through a collaborative process. Although not a frequent occurrence, it is a credit to the process that the emphasis on communication skills and problem solving in this model can encourage this possibility. In the event that reconciliation occurs, the improved interpersonal skills of the couple will continue to benefit them in their post-separation co-parenting relationship.

## THE BENEFITS OF THE COLLABORATIVE PROCESS

The collaborative approach to separation and divorce responds to many of the issues that we face as this relatively new social phenomenon called “divorce” becomes a mainstream event in our society. This process helps us to understand divorce as an important social phenomenon that deserves to be dealt with in a way that assists separating spouses to create honorable and life-enhancing results for themselves and for their families.

Historically, for a divorce to be granted, one spouse had to be found “at fault”. The judge then proclaimed a punishment for the guilty party. The advent of the “no fault” divorce challenges us to find ways to assist families to move through this transition without fueling the fires of blame and shame.

Another important cultural change is that of increased life span. Our life expectancy has doubled since 1850, making ‘til death do us part’ a very different proposition. In the 1700s, the average length of a marriage was only 7 years because of the death of a spouse. Today, we have the opportunity to be married to the same person longer than ever before in history. During the 1940s and 1950s, divorce overtook death as the leading cause of the termination of a marriage leading sociologists to consider divorce as a functional substitute for death. As such, continued co-operative relationship between former spouses is a new social phenomenon. It is no wonder that as a society, and as individuals. We struggle to understand and support positive relations between former spouses.

## WHAT ABOUT THE CHILDREN?

Although we know that the event of a divorce is only very loosely associated with children’s well-being, we do know that there are many risk factors and vulnerabilities for families as they go through this transition. As mentioned previously, it is not the divorce itself that is the most destructive element, but rather the level of distress, conflict, and loss that can occur as a function of the divorce process.

Nevertheless, next to death or disability, divorce results in the most radical and permanent reorganization that a family is likely to face. If divorce is necessary, we owe it to our children to do it sensitively and as sanely as we can.

The collaborative approach to separation and divorce protects children in several ways. First, it is cost-effective thereby protecting the financial resources of the family. Second, the non-adversarial approach safeguards the common ground of the separating spouses building on the available goodwill, and recognizing that their co-parenting relationship will go on forever. Every effort is made to protect family members from the fear and anger that can be a part of the divorce process, and to encourage and foster the best possible relationships post-divorce. Third, divorce coaches work to create the best possible family environment post-divorce. Parents are fully informed of the risk factors of divorce and how to protect their children through this process. Parenting plans that actually work are developed. Should there be any future problems, or if developmental changes require adjustments, family can return to their divorce coaches for additional assistance. Finally, and perhaps most importantly, Collaborative Practice can include a Child specialist whose job is to understand the children's perspective and to advocate for their best interests throughout the process.

Collaborative Practice allows for a process to be created that meets the needs of the family. Although it is possible to conduct a divorce with only collaborative lawyers (generally called Collaborative Law), it is highly recommended that the inter-disciplinary team be used when there are children involved for all the reasons described earlier. Divorce represents a radical and permanent restructuring of family life and deserves to be done properly. When separating parents are highly co-operative, divorce coaches can 'bookend' the process with a meeting early in the process once again at termination. The early meeting provides an opportunity for the parents to connect with the divorce coach and to receive general information about the process. This then creates a safety net that may or may not be used throughout the divorce process. When the divorce is settled, a final meeting debriefs the process and provides information about what the parents can expect in the future. For example, roughly 80% of divorce parents will remarry. The quality of both the former spouse relationship and parent-child relationships will exert a powerful influence on the well-being of the stepfamily. Families, divorced or not, go on forever. The collaborative approach to separation and divorce can help to create the most life-enhancing future for the family.