

COLLABORATIVE SEPARATION AND DIVORCE

by Susan Gamache, Ph.D., R. Psych

Collaborative Divorce 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 multi-disciplinary model offers a process of separation and divorce that protects the dignity, integrity and long-term best interests of all family members.

Most divorcing spouses are also parents. In Canada, roughly 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. Collaborative Divorce safeguards children's needs for stability and effective planning throughout the divorce process and good working relationships between their parents post divorce.

Collaborative Divorce 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 agreement in a dignified and respectful manner. His approach was well received. Currently there are 45 family lawyers in Minnesota who practice what has been called "Collaborative Family Law", some of whom no longer practice any adversarial law at all. Collaborative Family Law can be utilized to address any type of situation in family law. For the purposes of this article, we will focus on separation and divorce.

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

Recently, these two initiatives met, recognized their complementarity, and integrated. Lawyers who practice Collaborative Family Law make ideal team members for Collaborative

Divorce teams. Likewise, the interdisciplinary team strengthens the work of the Collaborative Family Lawyers. For example, the lawyers receive instructions from clients who are making well-informed decisions clearly and calmly.

Regarding Collaborative Divorce, teams of professionals made up of mental health professionals (divorce coaches), collaborative family lawyers, a financial specialist and a child advocate 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 each family.

What do all of these people do?

The Collaborative Lawyers. In the collaborative process, each of the divorcing spouses has a lawyer committed to their needs. However, the lawyers must agree in advance to set aside adversarial strategies and preparations for trial. This then frees the collaborative lawyers to work toward positive, family-friendly solutions without the burden of preparing for trial. If the collaborative process fails, the collaborative lawyers must retire from the case and refer the family to a trial lawyer. Also, the couple agrees that all records, correspondence, case notes and discussions from the collaborative process are not to be used in any future legal action, other than documents required to be produced in court (i.e., financial statements).

The Divorce Coaches. Each spouse can work with a divorce coach to provide a safety net for the difficult times that may be a part of the divorce and to develop the new co-parenting relationship. This process helps spouses to recognize the end of their marriage and to move on to create fulfilling lives post divorce. When children are involved, divorce coaches teach divorcing parents how to best protect themselves and their children from the risks associated with divorce in the present and to look to the future needs of their family. This work also includes assisting spouses to clarify how they feel and think about issues, improve communication about sensitive topics, and to develop a parenting plan

Financial Specialist. The financial specialist is a neutral third party who helps sort out the family finances. Divorcing spouses get help with handling immediate financial concerns as well as long-range planning. Parents get help addressing immediate concerns of children and anticipating future financial considerations. The financial specialist helps the couple understand and organize their financial information in advance of meeting with the lawyers. In this way, the lawyers can focus on finalizing a settlement efficiently thereby making the best use of lawyers' time.

Child Specialist. Most divorces include children. The child advocate is a neutral third party whose job is to understand the situation from the perspective of the children and to advocate for their best interests. Although all team members keep the children's best interests in mind, the child advocate maintains this focus exclusively throughout, thereby assuring that during complicated and sometimes chaotic divorce processes, concerns of the children are not overshadowed by other, equally important considerations. The child advocate provides an opportunity for the child(ren) to ask questions and to identify problems or worries, and provides information and suggestions to the parents and to the team, especially in the development of a parenting plan.

How does the process work?

There are many ways that a collaborative divorce 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. The degree to which each type of professional is involved will depend on the unique needs and circumstance of the family.

As in any interdisciplinary 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 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 teleconference, to consolidate.

In the second phase, the unique dynamics of the particular family are understood. Information is gathered in one-on-one meetings with professionals to assist family members to address pertinent issues and to assist all professionals in making respective recommendations. Various 4-way meetings are held. These can include both spouses and collaborative lawyers, or spouses and divorce coaches . The financial specialist or child advocate can also be included as

neutral third parties as necessary. Given their neutral status, these specialists are especially valuable if particularly difficult circumstances arise. These meetings allow for brain-storming and problem-solving in difficult situations.

The third phase involves negotiating and settling issues. Parents meet with lawyers and/or divorce 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 Divorce. 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 a reconciliation occurs, the improved interpersonal skills of the couple will continue to benefit them in their spousal relationship.

The Benefits of Collaborative Divorce

Collaborative Divorce responds to many of the issues that we face as this relatively new social phenomenon called 'divorce' becomes a mainstream event. 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 honourable 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, thereby 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 relationships 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.

But 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 navigate this process. 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 as sensitively and as sanely as we can.

Collaborative 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 good-will and recognition that their co-parenting relationships will go on forever. Every effort is made to protect families 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 best 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, families can return to their Collaborative Divorce team to make any necessary changes. Finally, and perhaps most importantly, Collaborative Divorce includes Child Advocates whose job is to understand the children's perspectives and to advocate for their best interests throughout the process.

Collaborative Divorce 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 interdisciplinary 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. Also, the cost of mental health professionals can often be reimbursed through extended medical benefits.

When separating parents are highly co-operative, divorce coaches can 'bookend' the process with a meeting early in the process and once at termination. The early meeting provides an opportunity for the parents to connect with the divorce coaches 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 divorced parents will remarry. The status of the former spouses can exert a powerful influence on the well-being of the stepfamily. Families, divorced or not, go on forever.

Collaborative Divorce is now available in the Greater Vancouver area. A dedicated team of mental health professionals and collaborative lawyers are currently implementing this model. If you would like more information about this innovative and ethical approach to supporting families through these delicate transitions, please call: The Collaborative Group at 878-1498, or go to our web site at www.CollaborativeDivorceBC.org.

References

- Fagerstrom, D. (1997). Divorce; A problem to be solved not a battle to be fought. Brockwood: Orinda, CA.
- Tessler, P. H. (1999). Collaborative Law: What it is and why family law attorneys need to know about it. American Journal of Family Law, 13, 215 - 225.
- Thompson, P., & Nurse, A. R. (1999). Collaborative Divorce: A new, interdisciplinary approach. American Journal of Family Law, 13, 226 - 234.