

Focus FAMILY LAW

Collaborative approach to divorce solution oriented



Brian Galbraith

One day Stu Webb, a soft-spoken family law practitioner in Minneapolis, Minn., finished a long custody trial and felt he had not been helpful to the family. Webb admitted to being “burned out” by the adversarial approach to separation and divorce. He felt like he was part of the problem rather than the solution, and that there must be a better way. So, on Jan. 1, 1990, he wrote a letter to the local judge announcing he had become the first “collaborative law lawyer.”

For lawyers who don't know much about collaborative practice, here's what it looks like. The separating couple each sign a commitment not to go to court. The issues are resolved through a series of meetings and negotiation. The focus is on the client's core concerns, but the law is not ignored. It is similar to mediation in that both use interest-based negotiation skills and techniques. The difference is that in collaborative, each party has



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his/her own lawyer who is advocating and advising them throughout the process. In mediation, the mediator is a neutral participant and thus cannot advocate or offer advice. The other advantage that collaborative has over mediation is the interdisciplinary nature of the

team of professionals. The family coach and the financial specialist offer advice and support to the parties so that they will make the best decisions for their family. I see mediation and collaborative practice as kindred spirits.

Collaborative practice, often called collaborative family law, is 25 years old this year, but don't break out the champagne just yet. Although it is a much better process than traditional separation and divorce, it has not received as much traction as it should. As a family law lawyer with more than 20 years of experience, I would like to help change that. And, full disclosure: I teach collaborative practice internationally, and all 10 lawyers at my firm are trained in it (there are no training requirements by law, but the general practice is five days of basic training plus an additional 40-hour mediation course).

What are the changes that I'd like to see? There are three parts to my answer.

First, we'd like more family law lawyers to be trained in collaborative practice. Second, we'd like all family law lawyers to explain

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the benefits to their clients. Third, we'd like the provincial governments across Canada to be more progressive, and embrace collaborative practice.

The number of collaborative practitioners worldwide has grown to an estimated 22,000 in 23 countries, but only 5,000 are registered (registration is not mandatory) by the International Academy of Collaborative Practitioners (IACP). Of those, 675 are registered in Canada by IACP. In Ontario, there are about 500 practitioners, including about 130 in Greater Toronto. Although our numbers continue to grow, we are far from mainstream, and that's a shame.

A major benefit of collaborative practice is that it acknowledges that divorce is more than just a legal process. As a result, family coaches help the parties deal with the parenting and inevitable emotional issues. Financial specialists help sort out the financial issues. This way, collaborative practice can actually address all of the problems and not pretend away the non-legal ones. Lawyers continue to advocate for their client, but clients have the right

experts helping them make good decisions. It just makes sense. For clients, what are the benefits of collaborative practice?

To start, separating spouses retain more control than the traditional, rights-based, adversarial court system. Ultimately, the clients make the decisions, not the judge. They also retain more privacy over their separation, so collaborative practice is a better option for public figures, high-net worth individuals, or those concerned about details of their separation leaking out into the media.

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Some point out that collaborate divorce is an oxymoron — if the couple was getting along, they would stay together, wouldn't they? Not necessarily. People grow apart. People can agree to disagree and want out. Courts are about pitting one party against the other. Who says that's necessary? Collaborative practice is about problem-solving. Clients just want closure and to minimize the cost and time to achieve it. They don't want a divorce from hell.

Family law in Canada is broken: as many as 80 per cent of Canadians in family law court represent themselves. Why? Because clients see traditional lawyers as making things worse.

The backlog and delays of family court are legendary. And while lawyers run around with smartphones and iPads, the court system still wants paper. It's 2015 folks, not 1815. Collaborative practice is different. Today, clients want lawyers to solve problems, not create them. We need to get with the times.

Brian Galbraith, who teaches collaborative practice internationally, is the owner of Galbraith Family Law, with offices in Newmarket, Orillia and Barrie, Ont.

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