



Collaborative family law and collaborative divorce are viable—and increasingly popular—alternatives to using the courts to facilitate changing family relationships. **BY CRYSTAL REEVES**

Collaborative Family Law

An Alternative Approach to Family Justice in British Columbia

ACCORDING TO A RECENT REPORT, the rate of divorce in B.C. in 2003 was approximately 40 divorces for 100 marriages, which gave B.C. the fourth highest divorce rate in Canada. This number did not include the dissolution of relationships among co-habiting couples in B.C.¹

Most experts agree that separation and divorce can have negative consequences for both adults and children. These range from health impacts, decline in economic well-being and lowered parenting capacity for adults, to increased anxiety, depression, and lower educational achievement for children.²

The negative aspects of divorce and separation can be exacerbated by the adversarial nature of family law proceedings, where the focus is on using the courts to facilitate the end of the family relationship and to determine the rights of each party.

Collaborative family law and collaborative divorce have emerged as an alternative to using the courts to resolve issues resulting from divorce and separation. Below, we provide an introduction to collaborative law and a brief interview with Nancy Cameron Q.C., a leader of

collaborative family law in British Columbia

What is Collaborative Family Law?

Collaborative Process is a way for divorcing couples to work together, with trained professionals, to resolve their disputes without going to court. The lawyers and the clients together comprise the Collaborative Law component of Collaborative Practice.

There are three key elements to collaborative law: 1) the voluntary and free exchange of information; 2) the pledge not to litigate and the withdrawal of both attorneys—and in most cases all of the other professionals on the team—should either party initiate litigation in spite of this pledge, and 3) the commitment to resolutions

¹ Focus Consultants for the Ministry of Attorney General Justice Services Branch, “The Family Justice System: A Review of the Metrics and Impacts of Separation and Divorce” (Victoria BC, 2006) at viii; <www.ag.gov.bc.ca/justice-services/publications/fjsd/divorce/metrics.pdf>

² *Ibid.*

³ International Academy of Collaborative Professionals; <www.collaborativepractice.com>

that respect the parties' shared goals.³

While Collaborative lawyers are always a part of the collaboration, some models provide child specialists, financial specialists, and divorce coaches as part of the clients' divorce team. In these models, the clients have the option of starting their divorce with the professional with whom they feel most comfortable. Then the clients choose the other professionals they need. Therefore, the clients benefit throughout collaboration from the assistance and support of all of their chosen professionals.

To ensure that the process remains collaborative, the clients and their chosen collaborative professionals make a contractual commitment where the parties agree to: negotiate a mutually acceptable settlement without using court to decide any issues for the clients; the withdrawal of the professionals if either client goes to court; engage in open communication and information sharing, and create shared solutions that take into account the highest priorities of both clients.⁴

Interview with Nancy Cameron, Q.C.

In your view, what are some of the key differences between Collaborative Family Law (CFL) and traditional family law practice?

CFL combines both client advocacy (each client has their own lawyer working with them) and at the same time has lawyers that have committed not to be adversarial. The key component of collaborative practice is a signed contract

between the two clients and their lawyers which states that, in the event either party decides to proceed to court on a contested matter, both clients must retain new lawyers. For the lawyers, this shift clarifies that they have been hired by the clients to assist them in resolving matters.

In traditional family law matters, although most matters settle without a trial, lawyers usually utilize the court process (filing court documents, using the courts to resolve matters before trial, using the court rules for discovery processes) to some degree before settling. CFL is unique in that all of the work that lawyers do is settlement-oriented. Since the lawyers have been hired to assist clients in settlement, there are none of the tactics and strategies that lawyers working in an adversarial model may employ. The research is very clear that the most detrimental impact on children is conflict. Often, the adversarial forum escalates conflict, which can have extremely negative effects on children.

In your experience, how does a collaborative approach help clients deal with conflict?

In traditional family law practice, the professional's first aim is to advocate for their client's best outcome. In collaborative practice, all of the professionals are committed to assisting in de-escalating conflict. In an interdisciplinary collaborative model (where lawyers work together with mental health professionals) mental health professionals can assist the clients with communication, with recognizing the negative impact that

⁴ *Ibid.*

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conflict between parents has on the children, and can give clients specific skills to help de-escalate conflict. When collaborative lawyers bring in the assistance of a financial specialist, this person can help show the clients what different financial settlements will look like as they are projected into the future. Having this information often helps people work cooperatively towards a settlement that meets both parties' needs.

In your experience, why are people turning to a collaborative approach to deal with family law issues? Are there any situations where a collaborative approach may not be appropriate?

Most people want to resolve matters without going to court, and assume that this will happen. Thus, it makes sense for clients to hire lawyers that are committed to assisting them in resolving matters without going to court, and to hire lawyers that are trained in non-adversarial negotiation. Most parents want to have a working relationship with the children's other parent. Collaborative practice is comprised of practitioners who are committed to not making matters worse between parents.

Many people have heard stories about people who have spent inordinate amounts of money on legal fees at the end of a marriage. The cost of collaborative law depends on a number of things, including how complicated the issues are, how high the conflict between the parties is, how difficult it is for the parties to communicate.

What people pay in fees when they work collaboratively is payment for work that is centred on moving towards resolution. Clients are not paying for Affidavits, court fees (except for fees for an uncontested divorce at the end of the process), transcripts for discovery, or other matters that are geared towards litigation, not settlement.

If people want to know more about collaborative process, where can they go?

For more information about collaborative process, the website of the International Association of Collaborative Practitioners is <www.collaborativepractice.com>.

The website for the Vancouver collaborative organization is:

<www.collaborativedivorcebc.org> ■

Crystal Reeves is the legal researcher for the Family Law Innovations Project at SPARC BC. To find out more about this project, visit our website at <www.sparc.bc.ca>.

Nancy Cameron Q.C. is a lawyer, writer, and educator. She sits on the executive of the Board of the International Academy of Collaborative Practitioners. She has led and designed training in collaborative process, and has been a speaker and trainer in the area of collaborative law to groups across Canada and the United States. She has been an adjunct professor teaching a course in Collaborative Practice at the University of British Columbia Law School. She has written a book on interdisciplinary collaborative practice, titled: *Collaborative Process: Deepening the Dialogue*.