

# COLLABORATIVE LAW: THE EVOLUTION OF A REVOLUTION

## The Emerging Trend of the Inter-disciplinary Team Model in the Collaborative Process

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The collaborative process movement continues to grow and gain momentum throughout the world. Similarly, the available tools and the recognized processes have also experienced growth and change. As a result, the way the collaborative model is being used has expanded to cover a wide variety of options, depending on the locale of the case, the availability of trained professionals and the needs of the individual clients.

With respect to the movement itself, the collaborative model has spread to Canada, England, Ireland, New Zealand, Australia, and now to Europe including Austria, Switzerland, Germany and France. In recognition of the international expansion of this movement, for the first time ever, there will be an international collaborative law symposium in Vienna this upcoming March 23-24, 2007<sup>i</sup>.

At the International Academy of Collaborative Professionals Annual Forum this past October, 2006, over 650 attendees from all over the world came together in San Diego for four days of education, networking and information sharing. In recognition of the growth and development of collaborative practice, this year's Forum was aptly entitled, "Taking Collaborative Practice to the Next Level: The Care and Feeding of a Revolution."

As with any emerging ADR method, the collaborative model continues to evolve. Depending on the professional resources of the jurisdiction where this form of dispute resolution is being practiced, a variety of models have emerged. One of the most exciting models to gain popularity and enthusiasm is the multi-disciplinary team model<sup>ii</sup>. This model is comprised of a team of collaborative professionals who assist the divorcing couple throughout their process. The team typically includes an attorney for each party, a neutral financial planner, a neutral child specialist, and-either one coach/facilitator for both parties, or an advocate coach for each party.

### **Collaborative Professionals**

Regardless of how the legal profession assists couples getting a divorce - either through litigation, arbitration, mediation, or collaborative law - there are professionals and experts available to provide information and guidance in how to handle the specific issues the separating couple is facing. Using the collaborative model, instead of each party hiring an expert, the couple jointly hires a neutral expert who will provide guidance and assistance to the couple as

they work through the myriad of issues to be resolved. These experts are typically grouped as follows: Financial Specialists, Child Specialist and Mental Health/Coach/Facilitators. Each specialist has a clearly defined role to assist the couple.

### The Financial Specialist

The financial specialist is the individual most intimately involved in assisting the couple with the disentanglement of their property, and helping them to create the maintenance and child support scenarios to ensure that both parties' interests are met. Financial specialists often include a Certified Divorce Financial Analyst, business evaluators, divorce mortgage brokers, accountants or other individuals who provide financial advice and assistance to the couple. Having been retained as a neutral by both clients, the financial specialist does not advocate for one over the other or represent either. Under the IACP Professional Protocols, financial specialist, including financial planners, are prohibited from providing investment advice to either party following separation to ensure their neutrality.

The Certified Divorce Financial Analyst (CDFA) will evaluate the parties' assets, investments, debts, income, budgetary needs, etc. He will listen to each party's short and long terms goals to help create a financial plan which will meet each party's goals. These specialists create model scenarios to show both parties what a proposed property division will look like for each individual one year in the future, five years and ten years in the future. Cost for education or re-training for either party can be incorporated into the final property and support calculation. Issues of maintenance, income equalization and child support are analyzed to ensure that there is sufficient income in both party's households as they move forward into their new lives. This individual does not advocate for either party or represent either party. Under the IACP Professional Protocols, the financial planner is prohibited from providing investment advice to either party post-separation, to ensure his neutrality.

Business evaluators are often employed to examine and calculate the estimated value of the business at issue. Unlike conventional litigation which pits experts against experts, in the collaborative model the business evaluator, having been retained by both parties will work with both parties, not just the individual who is running or managing the business. By being able to talk and work with both parties, the evaluator is able to develop a far more accurate understanding, assessment and valuation of the business.

Divorce mortgage brokers are often brought into a collaborative case during the early part of the process. If either or both parties wish to buy a house, refinance the current house to remove the other spouse from the mortgage, or sell and then purchase a new residence, the mortgage broker can provide invaluable insight as to how a proposed property division will affect the ability of

either party to qualify for mortgages. The mortgage broker can often make recommendations for how to maximize the existing property to protect each party's interests in home ownership. Since only one broker is working with both parties, he can look at the entire community estate and the parties' incomes to assist them in finding the most advantageous way through the real estate market.

Accountants always provide invaluable assistance such as valuing defined benefit plans, providing explicit tax advice on property issues, and the like. Again, the ability to look at the entire package and provide insight for both parties is invaluable and helps to ensure that they move forward in their soon-to-be separate lives collaboratively.

### Child Specialists

The child specialist can be used in a variety of ways to assist the family through the divorce transition. The extent of involvement depends on the specific needs of the family. The child specialist can simply act as a sounding board to answer the parent's questions, and to work with them to create a parenting arrangement that makes sense for that individual family. In more complex cases, which may involve impairment of one parent, the specialist can perform limited investigations, review medical records, request testing and make recommendations.

The child specialist can assist parents in developing a collaborative and effective co-parenting style that strengthens the family system both during and after the divorce process. The child specialist also acts as an advocate for the children, focusing on their needs during and after the divorce process. They can assist parents in supporting their children through grief and loss and can help the family embrace the concept of a "binuclear family". They can be used as a "voice for the child", providing a unique and safe environment for the child's input to be valued and considered during the creation of the parenting arrangement.

The child specialist takes into consideration the unique temperaments of each child, along with their stages of development and diverse cultural factors. The agreements which emerge are therefore more unique and creative since they include the child's perspective in the shaping of the parenting plans.

Most child specialists that are involved in this process appreciate the fact that they do not need to prepare a lengthy written evaluation. Instead, they are able to work directly with the parties and attorneys to assist the family in creating their parenting arrangement. Since the parenting specialist is directly involved with the parties, their input and comments during the negotiations for the parenting plan are provided real time and in a context of resolution, not litigation.

## Mental Health/Divorce Facilitator/Coach

As the use of collaborative law has spread, the collaborative professionals are discovering that the cases we are handling are becoming more challenging. The issues are more complex and the emotions are higher. The mental health professionals are typically brought in as Family Systems Facilitators and Coaches. Their role provides education and coaching about many levels of the divorce and related life transition issues. In addition, they may provide assistance to the parties and attorneys during the collaborative process. Their role is to assist the parties with stress management, grief counseling, improving communication skills, explore parenting concerns and to help ensure that each of the parties' needs, concerns and feelings are understood and expressed in positive ways. This can be particularly helpful during 5 way meetings, held with the parties, attorneys and facilitator, particularly when the couple is still in need of emotional containment. The facilitator works either jointly or individually with the parties and to advise the attorneys as to when the parties are ready to proceed with negotiations or when things should slow down.

Though the Facilitator/Coach does not provide therapy in the traditional sense, they do employ therapeutic modalities in their work to assist in the healing, visioning and empowerment of each member of the family. Because emotions are addressed and guidance is given during the unfolding of the divorce process, decisions made about living separately, co parenting and even financial issues are more durable. The impact of this role is to support and help the process move forward in a productive and efficient manner.

Facilitative mediators can be employed to help the collaborative team and their clients hold the difficult conversations that are part of any collaborative process. As third-party neutrals, facilitative mediators bring a variety of mediation tools that foster productive discussions, minimize the risk of positional bargaining and impasse and model new ways of communication and negotiation.

## Other Potential Collaborative Professionals

As in any case, there are numerous other professionals who can be brought in to assist either or both parties making this transition. For example, a vocational rehabilitation specialist may be extremely helpful and important if either party has been out of the workforce for any period of time. If either party is already receiving counseling or therapy, that work can, and should, certainly continue. Any other expert who could be brought into a litigation case, can and when appropriate, should be utilized. Again, remember, however, that typically only one expert is hired for both parties to jointly use.

## **Collaborative Models**

There are several different models which have emerged as the collaborative movement has developed and changed.

### Attorney Referral Model

The initial model, frequently used by attorneys in small jurisdictions is the *attorney referral model*. The attorney referral model is one in which the attorneys control the process. They meet with their clients and work through the case in a series of four way meetings. The attorneys assist the clients with each of the legal and emotional issues facing the parties, including the creation and implementation of the parenting plan, child support, maintenance and property items. When the attorneys believe that an outside professional can provide assistance to the parties, they will refer the individuals to the specific neutral professional. This is the standard model which is used throughout the country as a baseline for parties using the collaborative law process.

### Team Model

In this model, the attorneys work with a series of known experts who provide a team structure for the clients. Usually the attorneys will work together to assemble a team consisting of the financial specialist, child specialist and coach, which the attorneys believe will best suit the needs of the parties. The number of specialists on the team is determined between the attorneys and the parties. One team may consist of only the attorneys and a financial specialist. Another team may have attorneys, a coach or coaches, financial specialists and parenting specialists. The parties are intimately involved in helping to create the team that is going to support and work with them. In some cases, the parties will rely heavily on the advice and recommendations of the attorney or coach. In other cases, they may wish to interview several independent specialists and bring them onto the team.

### The Interdisciplinary Team

The evolution of the collaborative model includes several organizations which put into place for the client a full team for every case. This model creates a strong structure for the client. The initial meeting involves an 8-way meeting with the clients, attorneys, coaches, and specialists. The meeting is designed to allow the clients to establish relationships with the team simultaneously. Homework projects for each phase of the case are assigned to clients or professionals and a roadmap is clearly established for how the case will unfold. Typically this model requires a “team manager” to help the case run smoothly, stay on track, communicate concerns or issues, keep contact information, forms, reports, set agendas, etc. The benefit of the interdisciplinary team model is it

that allows for maximum use of a broad mix of skills and knowledge to assist the parties during their life transition.

## **Evolution of the Models**

As collaborative attorneys, we have learned that the most effective way to help our clients is to be flexible and open to new adaptations and options. Most of us started with the attorney referral model. The first several years of case work involved attorney referrals based on a specific as-needed basis. We were limited by the lack of availability of trained collaborative professionals and by our own desire to help our clients in what we perceived was a cost efficient manner.

After handling these cases for a couple of years, we discovered that, for example, bringing in a parenting specialist whenever there were parenting plan issues in dispute made a lot of sense. It was far more cost effective for two clients to meet in a 3-way meeting with one specialist to discuss the specific concerns about the parenting arrangements with the person who's skill and expertise could best help them. The attorneys were consulted for the legal information and were brought back into to help create the final parenting plan structure once the parties had worked through a schedule that met the needs of that exact family. The parenting plans became more creative, more flexible and met the needs of the children and parents in a far more deliberate manner. Our client's reported back that, by not using the attorneys to work through the specifics of the parenting arrangement, their cost savings were significant.

Similarly, when we started using a CDFA who was trained in the collaborative model, he was able to work with the clients directly to gather the necessary records, to create reasonable budgets and to look at short and long term goals. After the information had been received and input, a 5-way meeting with the attorneys and the financial planner is scheduled to begin to analyze the data, ask questions, and ensure that both parties have a complete understanding of their financial picture. The attorneys and financial planner work in tandem as the division of assets, debts, structure for maintenance and child support are each discussed, analyzed and negotiated. Usually, an agreement on the financial division of the marital estate happens within just a couple of meetings. Again, clients report greater satisfaction as they understand their asset division more, and understand each person's needs and interests as they create a financial division that will meet their goals and expectations. Further, by working primarily with the financial planner and only bringing the attorney in for the discussion and negotiations, clients again report a cost savings.

Finally, in the evolution of our use of team members, many of our cases became much more complex. Although many of our clients were clear in their strong desire to avoid using court, or the threat of court, they were unable to work together, to communicate with their partner or to resolve their disputes. As a result, we began to seek out collaboratively trained mental health professionals

and facilitative mediators to serve as coaches and facilitators.<sup>iii</sup> In doing so, the collaborative attorneys have discovered a whole new level of assistance and benefit to their clients. Although many clients prefer not to use a facilitator, those that do agree to this model, find themselves supported and helped through the challenges of a divorce in a new and proactive way. They are able to not only work on stress management, but they also learn communication techniques to help move their case forward. On occasion, the communication techniques include communication problems which they may have with the other team members, including their own attorney or the other attorney.

The team gains valuable insight into how to best assist the clients when there is a facilitator/coach involved in the case. The facilitator is usually able to determine underlying issues or areas of concern that the attorneys would not typically be aware of as part of their legal analysis. The facilitator can make recommendations as to when to slow a case down and when to move it forward. They help the other team members communicate with the parties in a way that is most effective and efficient and allows the clients to feel heard and understood.

### **Where Do We Go From Here?**

Each type of case management has its strengths and weaknesses. The beauty of a flexible and evolving model such as collaborative law is that the professionals can choose the approach that best serves the needs of the clients in creating a cost effective, time efficient process that is going to ensure the best solution to the client's individual and joint needs and interests. Most attorneys who are practicing the team model still have cases which are attorney referral only. Some cases have a full interdisciplinary team and some have only specific team members.

In her presentation to attorneys in Washington State last winter, Pauline Tesler, an early founder of the collaborative law movement, indicated that

There are no conflicting or competing models. It is simply a question of when a community is ready for collaborative interdisciplinary resources and what resources that the community can offer the clients will accept. Collaborative lawyers can work with or without interdisciplinary teams. Similarly interdisciplinary teams always work with and refer to collaborative attorneys. Either way, what the lawyers do is the same – collaborative law.<sup>iv</sup>

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<sup>i</sup>See [www.avm.co.at](http://www.avm.co.at) for more information about this Symposium.

<sup>ii</sup> Also known as the interdisciplinary team model.

<sup>iii</sup> Many areas do not have qualified, trained collaborative coaches. A well trained facilitative mediator who can act as a communication facilitator is often an excellent choice to work with couples in this somewhat unique role. Facilitative mediators do not engage in evaluative negotiation techniques as is often the case in conventional litigation when “mediation” means settlement conferencing. The role of facilitative mediator is facilitate the communication between

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the couple and among the collaborative team to ensure that the needs of the clients are identified and recognized and that all participants are provided opportunities to speak, are effectively heard and are genuinely understood. An added benefit is that using a mediator invokes the privilege and confidentiality protections of the Uniform Mediation Act, chapter 7.07 RCW.

<sup>iv</sup> “Achieving the Collaborative Paradigm Shift: Retooling Yourself from Traditional to Collaborative Family Law Advocacy.” By Pauline Tesler, 2002;