

Collaborative Law: Another Way to Resolve Family Disputes

by **Richard W. Shields, Judith P. Ryan and Victoria L. Smith**

326 pages, Thomas Carswell (2003)

Reviewed by Jennifer Jackson, JD and Anu Osborne. Winnipeg, MB, Canada

A collaboration by three prominent dispute resolution practitioners/trainers from Ontario who describe themselves as having "joined the revolution", this book is an excellent introductory guide for lawyers who wish to move from litigation to collaboration:

The Collaborative process not only benefits clients, it changes the lawyers as well. As we develop the skills and attitude required for effective collaborative practice, we become more self-aware, more skillful communicators and more sensitive to the real needs of our clients. Collaborative family Law allows us to reconcile our personal and professional values and to discover deep personal satisfaction in our work. Stu Webb is right about something else as well: Collaborative Law is just plain more fun (p. xiv)

Collaborative Family Law, as its name suggests, focuses on the lawyer-only model, although it contains references to the use of other professionals in the appropriate circumstances (the "referral" model). Anyone who has seen any of the three authors in action will expect this book to be well-researched, well-planned, organized, intelligent and instructive. And it is. In addition to being all of the above, it is an easy read, each chapter concluding with a useful bullet-point summary of key points covered in that chapter.

The first section of the book offers a contextual framework for Collaborative Family Law and contrasts it with the adversarial approach: an interesting and scholarly theoretical background of Collaborative Law is provided, with an explanation as to how and where it fits in the dispute resolution spectrum, and the differences between adversarial practice, mediation and Collabora-

tive Practice are clearly explained. Collaborating is described as both assertive and cooperative, but not compromising, and principled, interest-based negotiation rather than developmental or cyclical positional/adversarial negotiation, distinctions that are lost on anyone who has not experienced the paradigm shift so crucial to collaborating well.

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Collaborative Family Law offers a succinct and well-thought-out definition of collaborative family law:

Collaborative Family Law is a dispute resolution process in which the parties and their lawyers commit themselves to a negotiated outcome. They agree that litigation will not be commenced while they are negotiating, and that, in the event they are unable to negotiate a resolution of their dispute, neither lawyer will be able to represent his or her client in any subsequent litigation. The participants communicate to promote the maximum exchange of information, to reveal all concerns of the parties, to generate an array of creative ideas, and ultimately to

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agree upon the terms and conditions of a mutually acceptable agreement that satisfies the interests of both parties.

As the book proceeds through each phase of the process, it contrasts the "Collaborative Way" with the "Adversarial Way". The underlying assumption behind the "Collaborative Way" is that "people in conflict can, with proper support, make decisions for themselves" (bringing about a "client-centered" process). The Collaborative process is broken down into a clear, step-by-step approach, or six-stage model: 1) the first client meeting, 2) first contact with the other lawyer, 3) client preparation, 4) the first settlement meeting 5) subsequent settlement meetings, and 6) settlement and closure. The stages are thoroughly explained, the documents clearly described, and the text enhanced through mock conversations, illustrations and bullet-point lists.

After walking us through the process, the book provides useful information about the practice itself. It illustrates the application of the model to the issues that usually arise in separation and divorce: parenting, support, and property. It includes an excellent treatise on effective communication skills. Communication must be direct, clear, congruent, accurate, constructive, intentional and empathetic. Effective communication avoids word, emotional and physical barriers. The authors explain the power of non-verbal commu-

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nication, and lay out effective verbal communication skills such as how to ask questions, how to use "I" messages, and how to actively listen. Collaborative lawyers should put a bookmark in this chapter and re-read it continually.

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The book also offers negotiation and conflict management skills, including suggestions for dealing with barriers and impasses that arise: e.g. breakthrough strategies, process interventions, caucusing, and third party interventions.

Collaborative Family Law closes with a discussion of how to become a successful collaborative lawyer: training, practice groups, and marketing the Collaborative Law practice. The appendices contain useful materials and documents such as "questions clients ask", documents, links, protocols and a bibliography.

In sum, *Collaborative Family Law* provides the essentials of theory, skills and mind-set for collaborative practice and is an excellent resource for both Collaborative Law practitioners and trainers.