

## **DIVORCE WITHOUT THE DEVASTATION**

**BY: VICTORIA SMITH\***

**The traditional process of ending a marriage can be financially and emotionally ruinous. Not so with collaborative practice.**

There's no getting around it – divorce is painful and expensive. But it doesn't have to be messy and financially ruinous. Collaborative Practice is a new way to resolve separation and divorce for a growing number of families in Canada, the United States, Europe, Australia, and New Zealand.

The traditional process offered to divorcing couples has been adversarial. Whether or not spouses end up in court, negotiations between lawyers under the implied or overt threat of litigation can be emotionally and financially devastating. Resolution often comes too late, costs too much, and falls below expectations. Moreover, intangible interests such as protecting the well being of the children, co-parenting without conflict, preserving relationships with extended family members and mutual friends, being treated with respect, and maintaining control over the process and the outcome are often ignored altogether. It goes without saying that an adversarial process escalates conflict.

Collaborative Practice is an enlightened alternative. The concept is simple: tailor the process to the parties, not the other way around, and give lawyers a joint mandate to empower their clients to create their own agreement. The parties and the professionals pledge not to go to court, agree to an honest exchange of information, and commit to work toward a solution that takes into account the highest priorities of both spouses and their children. Lawyers act as negotiation coaches, information resources, and advocates for the interests of their clients and the integrity of the process.

The underpinning of Collaborative Law is the Participation Agreement, a written contract stipulating that the collaborative lawyers are retained solely to facilitate the negotiation of a mutually acceptable agreement. If either party decides to go to court, both lawyers are disqualified from further representation.

Eliminating easy access to a judge requires that collaborative lawyers let go of being hired guns and gladiators, and become conflict resolution advocates. The most effective are skilful negotiators, empathic listeners, and wise counsel who encourage their clients to take reasoned and realistic approaches to problem solving. They explore goals and interests as well as legal entitlements, involve the clients as active participants, and focus on achieving timely resolution. Recognizing that separation has emotional, financial, and legal dimensions, collaborative lawyers often work together with neutral family professionals and/or financial professionals.

Family professionals are social workers or psychologists with a specialty in divorce, family systems, and children. They can fulfill various roles: helping the parties manage their emotional dynamics, improving their capacity to communicate, providing information about the children's needs during the separation process, bringing the children's concerns to the table, mediating parenting plans, facilitating collaborative meetings to keep focused on effective problem solving, and being an ongoing resource to parents for child-related issues.

Neutral financial professionals are financial planners with training in the financial aspects of divorce. They help the parties collect and understand their financial information, prepare budgets and net worth statements, and contribute to the development of creative, tax efficient options for various support and property division arrangements. Financial professionals can prepare future projections to allow spouses to assess how well options for settlement meet their immediate and long-term financial goals.

Collaborative negotiations are conducted in a series of face-to-face settlement meetings, with a minimum of paperwork. While timing varies with the complexity and dynamics of each case, settlement is often reached within six to nine months. A remarkable 90 per cent of collaborative cases result in agreement. In addition, the parties often gain an improved ability to communicate and co-parent and learn a process for resolving future issues. They achieve closure of their relationship with a measure of dignity, in a process that delivers value.

A separation and divorce is one of the most stressful life experiences. No process can eliminate the profound loss and cocktail of emotions – hurt, anger, guilt, regret, and fear – that come with ending a marriage or common-law relationship. However, the process the spouses choose and the philosophy and skills of professionals they retain can profoundly impact how costly, and how messy, the separation will be. Collaborative Practice can help spouses manage their emotions and make wise decisions in a dignified and cost-effective way. In the words of one collaborative client “You leave not being angry and you get to move on much, much quicker. Plus, the lawyers get far less money.”

**First Posted in The Marks News, December 16<sup>th</sup>, 2009 17:54 PM**  
**<http://www.themarknews.com/articles/760-divorce-without-the-devastation>**