



## Separating/divorcing? Collaborative Law, Mediation and Beyond...

If you are going through a separation or divorce, you need to know this before you go on to settle parenting, financial or property issues:

Imagine a lawyer fed up with the family court system as far back as 1990.

That is when a fellow by the name of Stu Webb in Minnesota sent a letter around to the the judges and fellow lawyers advising he would no longer go to court.

Webb indicated he would only help people resolve their family dispute in direct meetings between the parties with their lawyers. He was so insistent that family matters be resolved out of court that he also advised that if in meeting with the parties and their lawyers the matter couldn't be resolved, those lawyers would be disqualified from going to court on the parties' behalf. He felt people wouldn't want to have to start all over with new lawyers and the added expense. His thinking was that the disqualification agreement would create the conditions to keep people working within that group to arrive at a settlement between themselves.

The other benefit of Collaborative Practice is that the disqualification agreement mitigates the [inherent conflict of interest](#) in traditional litigation (going to court). In traditional litigation, a lawyer's income is directly related to the degree of conflict between the parties. The greater the conflict, the more intense and long lasting the litigation. This drives up legal fees and lawyers' income. Your fight is their bread and butter.

However, in Collaborative Practice, a lawyer's incentive is to help parties reach a settlement as peacefully and expeditiously as possible. The revenue model and income of the Collaborative lawyer rests on seeing more satisfied clients the result of reasonable settlements. So lawyers trained and practicing Collaborative Law gain their income over many clients versus those who only practice litigation (going to court) who see less clients – each spending more... much more.

That concept spawned a movement and today thousands of lawyers/attorneys worldwide have been trained in what has become known as Collaborative Law or Collaborative Practice.

The training and practice of this approach to settlement has evolved to include mental health professionals, parenting experts, separation/divorce coaches and financial divorce professionals. Indeed there are even business evaluators and real estate agents who have also come on board to help separated couples more reasonably resolve disputes that would have otherwise fallen to the courts.

It has long been determined that those agreement reached between people themselves are longer lasting and better followed than Court orders that are imposed. It is also the case that money spent on supportive services such as divorce coaches and financial professionals, while creating more expense, is still less than the cost of litigation and particularly in view of the fact that those litigated outcomes may not be followed anyways.

Despite this tremendously advanced settlement process, it still remains that lawyers are not necessary for all settlement discussions.

To mitigate costs further, many people opt to meet with a mediator first. So instead of paying two lawyers throughout the entire settlement process, the parties share the expense of single mediator. Once a settlement agreement has been reached through mediation, the parties then take

their agreement to Collaboratively trained lawyers for “Independent Legal advice” (ILA) in order to have their mediated agreement converted into a legally binding contract.

The benefit of seeking out Collaboratively trained lawyers for the ILA process is that they are generally less inclined to provoke conflict to then undo a reasonable agreement in their own interest of turning the party into a litigation client.

The most recent movement in family law is towards peacemaking. Peacemaking is a concept promoted extensively by Forrest (Woody) Mosten, a lawyer in California.

In peacemaking, we see helpers demonstrating even greater creativity in terms of their settlement processes. Those lawyers, mediators, mental health professionals and financial professionals that don the peacemaking hat have had multiple training in Collaborative Practice, mediation and conflict resolution as well as family systems theory and child development - to name only a few areas of their cross training. As such these professionals bring a broader array of strategies to not only help separating or divorcing couples reach agreements but often improve the quality of their post-separation/divorce relationship.

In the event the separating couple has children, this is a remarkable benefit to the children of the couple. It has long been established that parental conflict presents the greatest risk factor to the development and mental health of children. To the degree to which separated parents can care for their children more peacefully, their children are better served.

When you go to a lawyer who has not been trained in Collaborative Practice or mediation, rarely will you be told about their benefits. Firstly, that lawyer who has not been trained in those processes cannot represent them as well as those persons who have been trained. Further though, it is not in that lawyer's interest to lose

you as a client to those with additional training. That is why you need to know this.

In the unfortunate event that your relationship has broken down, seek help from persons whose training is as inclusive as possible versus exclusive. If you go to a lawyer whose only training is exclusively in going to court, you will get litigation - you will likely be court involved and conflict will escalate. If you go to a lawyer or mediator or mental health professional whose training includes Collaborative Practice, mediation and peacemaking, you will be in the hands of a person who can bring a broader array of strategies to help mitigate conflict, facilitate a settlement and help you better get on with life.

These are not guarantees, but about you getting the best shot at the kind of outcome you, your family and children deserve. Even if in the end, you are the 1.5% of persons who obtain a Court order the result of a trial, you will still be better served by working with people whose objective is to limit conflict. These approaches typically cause people to appear more reasonable in the eyes of the court.

Now you know.

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