

The Friendly Divorce

The end of marriage doesn't have to signal the beginning of war

By Randi Chapnik Myers, Today's Parent, September, 2007

In the early '90s, I was a young lawyer taking on my first divorce case. "You strong?" Mr. X asked, sizing me up. "Because her lawyer [big sigh] is a pit bull."

"Oh, come now," I soothed, fancying myself part teacher, about to insist my petulant students shake hands. "There's always a way to work things out."

That afternoon, a fax spat onto my desk: *Your client is hiding money; he was late picking up his son; he'd better return the TV or else...* Fuming, I fired back my reply. This, no doubt, was War.

Though I didn't know it then, a new movement called Collaborative Practice had already hit Canada. The brainchild of Minnesota lawyer Stu Webb, the process encourages divorcing couples and their lawyers to lay down their weapons and — gasp! — talk.

Taking a seat across from your soon-to-be-ex may seem impossible when you're so angry you could scream. But for more and more spouses, collaboration — working together, with your lawyers, to produce your own separation agreement — may be the best way to sidestep a needlessly bloody breakup. Read on to get a handle on whether it's the right path for you.

We've all heard the nightmare stories. Lovers-turned-enemies. Kids caught in a furious tug-of-war. It's no wonder so many couples, facing marriage collapse, find themselves scared silly. "Some fear that if they don't hire a barracuda to go in for the kill, they'll lose everything," says Christopher Arnold, president of the Ontario Collaborative Law Federation. Indeed, with about 38 percent of Canadian marriages doomed to end, our courts are overloaded with difficult support, custody and property division claims. The good news is, though, you do have a choice. Either take your chances and let some judge divvy up the spoils, or take matters into your own hands.

Most of us have false expectations about the results we'll get in court, says lawyer Judith Huddart, chair of Collaborative Practice Toronto, which includes a network of 75 specially trained lawyers and financial and family professionals. In her experience, once divorcing couples start feeling the costs — to their wallet, their health, their relationship — they're grateful for a more constructive and compassionate way to resolve their differences.

In fact, across Canada, the collaborative approach is steadily gaining momentum. In Toronto alone, about 30 percent of family lawyers have collaborative law training, and in Medicine Hat, Alta., collaboration, not litigation, is now the norm.

Separating spouses who:

Have nothing to hide To collaborate, you must first agree to exchange all information, including financial statements and report cards. If one of you is holding back, the process is likely to break down.

Want to find a solution in everybody's best interests If you cling to your rights — The house is mine! I don't owe you a cent! — you'll lose sight of your mutual interests, including a fair property split and determining the best custody arrangements for your kids.

Can get a handle on anger If there was abuse in the marriage, one of you will likely feel bullied into an agreement. In this case, going to court may feel safer.

Feel goodwill toward their ex To work things through, you have to talk to perhaps the last person in the world you want to talk to, ready or not. You have to be prepared to transcend the emotions inflamed by divorce.

The benefits are obvious. Without court dates to wait for, collaboration is a faster route to divorce, allowing you to make arrangements for your kids and their support right away. It's also cheaper, since you're paying your lawyer only to help you reach a settlement, not to gather financial information and draft endless letters. (While a highly contested traditional divorce can drag on for years, bleeding you out of hundreds of thousands of dollars, a simple separation agreement reached by collaboration may cost as little as a thousand dollars.) Finally, having learned how to problem-solve directly with your spouse, you won't pay a lawyer to race back to court as new problems crop up, like who will pay for his braces or her off-campus rent.

The fact is, as a parent, you're connected to your spouse forever. "In divorce, the family structure doesn't disappear; it just changes," Huddart says. No matter what caused the breakup, you both have a continuing responsibility to your children. Not only will there be decisions to make as they age — how to control his asthma or which high school she'll attend — but there are shared milestones ahead, from birthdays to graduations to weddings.

Like mediation (where a neutral third party guides you toward agreement), collaboration is an entirely consensual process. The big difference is that here, you each retain your own lawyer, specially trained in negotiation and communication, to sit beside you at the table.

Before you start talking, though, the four of you sign a contract establishing the ground rules. Basically, you agree to share all information, to work as a team to address your family's interests and, finally, during the process, to not take the matter to court. If negotiations do break down, and one of you decides to sue, both lawyers agree to resign from the case.

Bottom line: Your collaborative lawyer is not there to fight. Instead, she'll keep you on track by providing advice, narrowing the issues and brainstorming options. She'll also keep simmering emotions at bay, or at least control how they're expressed. Arnold has seen explosions, especially over spousal support. "Parents understand their obligations to their kids, but when it comes to supporting the ex, couples are often from different planets," he says. "One shouts: *'I gave up my career to raise the kids, so now you owe me!'* The response: *'Whoa! I've paid your way for years! I'm not your meal ticket for life!'*"

How do the lawyers keep the peace? “We walk the talk,” Arnold says, “by modeling positive behaviour rather than using the old tactics — threats, bullying, snide remarks. We also make sure each side feels heard, which works wonders.”

When Lisa Tarshis,* a sales rep at a Canadian airline company, heard she could have an amicable, lower-cost divorce that prioritized the needs of Emma, 10, and Simon, eight, she and Joel, her husband of 10 years, each hired a collaborative lawyer. “Friends of ours had thrown away thousands on lawyers who just made them fight,” she says. “Sure, our split was emotional. But it wasn’t nasty, and we wanted to keep it that way.”

The couple got down to business, first figuring out how much it would cost each of them for Lisa to remain in the house with the kids. Five meetings later, they finally signed their agreement. “Even with goodwill on our part, tallying up all the costs you take for granted — not just taxes, heat, hydro, but dentist, camp, haircuts, everything — takes time,” Lisa says. She credits the lawyers with keeping her and Joel on track. “They kept us calmly focused on the issues and our goals. It was a very peaceful way of handling an otherwise scary time.”

**Names changed by request.*

Harvey Steinberg, a child development expert and divorce specialist who heads the Parents Are Forever program at Catholic Family Services in Toronto, has helped countless couples park their emotions at the door and set their minds to customizing their parenting plans. “There’s no one-size-fits-all,” Steinberg says. “Every family has different issues to address.”

For Angie Monterro,* the hardest question was her daughter’s residence. After 14 years of marriage, her husband, Frank, asked for a divorce, prompting the 36-year-old physician to pack up for her hometown of Calgary, with seven-year-old Joelle in tow. “I was well aware that he could have fought the move,” Angie says. Instead, with their collaborative lawyers by their sides, Frank listened to Angie’s reasons (her family network back home, a job opportunity there), and they ultimately decided Joelle would live with Mom and visit Dad in Toronto.

As always, the agreement contained a provision allowing the couple to revisit the issue should circumstances change. Because, inevitably, they do. Parents move, they remarry, they lose or land jobs. Just like the issue of child support, the parenting plan is a moving target that will bring ex-spouses together again and again.

In Angie’s case, visitation suddenly became a flashpoint when a few months after the move — just before Joelle was to spend Christmas in Toronto with her dad — Angie heard that Frank’s new girlfriend was living in fear of her own ex-husband. Angie immediately emailed Frank about her concerns for their daughter’s safety, and he agreed to fly to Calgary for the holidays. But the couple did not permanently change their visitation schedule. Once the situation was resolved, the Toronto visits resumed. “Still,” Angie says, “it’s comforting to know that we can always return to the table and talk.”

**Names changed by request.*

When it comes to determining what's best for your kids, it can be hard to separate your interests — who will live where, who gets the dog — from theirs. "Kids want to feel they're still part of a family," Huddart says. So you may want their input in the parenting plan.

"Children's views and preferences are often very different from those of their parents," says Barbara Landau, a psychologist, lawyer, mediator and co-author of *The Family Mediation and Collaborative Practice Handbook*. Talking with them may reveal, for instance, your daughter's desire to stay at the same school, or the fact that Dad's visitation schedule fails to account for your son's hockey practices. It may also raise special concerns your kids may be harbouring, such as where they'll sleep in Mom's new apartment or who will feed the dog when they're not there. Giving kids a voice, however, doesn't mean handing them decision-making power. It simply helps bring their confusions and concerns to the fore.

But are lawyers equipped to elicit information from kids? No, Landau says. She suggests that in the midst of collaboration, you partner with a child expert, such as a therapist or family mediator, who understands the impact of separation and divorce at different stages of development. Most lawyers recommend experts, who interview the kids, then openly share their findings with both parents and their lawyers. Then it's up to you to decide if and how to incorporate them. Says Landau, "The question to keep asking is: As our family changes, how can we best support our child?"

For many parents, divorce is a profound life crisis that can create rippling damage to children for years to come. It's how you manage this difficult time that makes all the difference. "When you are committed to co-parenting — despite your personal feelings — you are making a phenomenal investment in the mental health of your kids," says Steinberg.

Collaboration encourages you to accept the fact that although life evolves, the person you're so angry with is still the person you once loved, and someone who loves your kids as much as you do. "You may believe she was a dreadful wife," he says, "but chances are, in your children's eyes, she's a wonderful mother."

Finally, at one of the lowest points of your life, collaborative practice can be hugely therapeutic. "I've seen separated spouses yell, cry, grow and laugh," Arnold says. "I've even been hugged by my colleague's client." Huddart has enjoyed similar breakthroughs. "Divorce is both an ending and a beginning," she says. "When you close the past with dignity, you're free to transition, smoothly, to the next stage of life."