

Collaborative Law and Social Work

Collaborative Family Law offers divorcing couples a new approach to untangling marriage. The traditional approach has family lawyers settle disputes with at least the threat of litigation. Collaborative Family Law takes the threat of litigation out of the equation to concentrate on helping the parties settle between themselves yet with legal support. Litigation is not an option. Lawyers practicing Collaborative Family Law report more satisfaction with this form of practice and believe that negotiated settlements leave the parties more intact as individuals and as parents.

Along with the new approach to settling disputes, there is a new role for those professionals who would otherwise practice divorce mediation or provide custody and access assessments.

These professionals, often social workers and psychologists, are being reenlisted by Collaborative Lawyers as Divorce Coaches and Child Specialists.

In traditional family law a Divorce Coach may be hired to prepare one parent for court in order to gain a strategic advantage in the litigation process. In the Collaborative Law context, the Divorce Coach helps the parent to understand emotional issues that could cause him or her to be unreasonable. In other words, in the former context the coach helps make a better warrior for the battle of litigation, while in the latter context the coach helps make a better conciliator to facilitate settlement. Within the Collaborative Law model each parent has his or her own Divorce Coach.

The “Child Specialist” is generally described in therapeutic terms, working with the children directly. In this context, the Child Specialist meets with the children to help them deal with the impact of the parents’ divorce on their lives. The Child Specialist may also share information with parents to help them protect the children from untoward outcomes.

There can be challenges arising when using individual Divorce Coaches and Child Specialists as described. Each coach may provide perspectives or information to their respective client that pulls them in different directions, confounding settlement. Certainly “over-identification” with one’s client is a risk inherent in any form of individual support. Further, when a Child Specialist meets alone with children, there can be

conflicts of interest and confidentiality issues if the Child Specialist then reports to parents. Some jurisdictions have confidentiality rules for counsellors working with children, particularly early adolescents.

There are ways to mitigate these issues. Social workers have a rich tradition in working with entire families. As such, the social worker can engage the entire family in a consultant role. Within this role, perhaps titled Family Divorce Consultant, one social worker would be assigned, rather than two coaches. Working from a system’s theory perspective and using clinical discretion, the social worker would have latitude to meet with the entire family system and/or pertinent subsystems (marital, sibling, parent-child and even individuals) as necessary.

The Family Divorce Consultant’s involvement would be time limited and goal directed. The goal is to facilitate transition to a new family structure (pre-divorce to post divorce) whilst maintaining the integrity of pertinent relationships. Further, the consultant would provide education to the parents to facilitate their mutual interest – the well-being of their children now and developmentally.

Social Work has much to offer Collaborative Family Law. Social Work is built on a tradition of interdisciplinary teamwork with the goal of win/win outcomes. The structural changes sought to facilitate post-divorce adjustment meet well with the training and values of social workers. Collaborative lawyers and social workers make a natural team.

Collaborative lawyers looking for social workers should consider those with; a “systems” perspective; custody and access experience; current knowledge of relevant theory and practice of divorce and child development; and good inter-personal boundaries. Collaborative Law marks a revolution in thinking. Next will be interesting to view the evolution. Social work is a good fit.

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Gary Direnfeld is a social worker. Courts in Ontario, Canada, consider him an expert on child development, parent-child relations, marital and family therapy, custody and access recommendations, social work and an expert for the purpose of giving a critique on a Section 112 (social work) report. Call him for your next conference and for expert opinion on family matters. Services include counselling, mediation, assessment, assessment critiques and workshops.