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Collaborative Practice: A New Opportunity to Address  
Children's Best Interest in Divorce

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I INTRODUCTION

The research literature concerning children who have experienced their parents' divorce is clear. Once basic financial needs are met, the greatest social risk to children is prolonged conflict between their parents.<sup>1</sup> Prolonged parental conflict has both direct and indirect negative effects on children and has been found to be predictive of many serious and on-going problems for children.<sup>2</sup>

Therefore, settlement is not enough. Addressing the best interest of children requires all possible efforts to reduce—or better, resolve conflict between their parents, thereby creating the highest possible level of family functioning in the post-separation family environment. A co-parenting relationship that includes a minimal level of conflict and maximum level of cooperation between parents could be considered the standard that satisfies the best interest of children.

Collaborative Practice has the potential to fulfill children's best interest following separation and divorce. Interdisciplinary practice groups create a rich pool of resources from which can be drawn the expertise and process options to help the family resolve the legal, emotional and financial problems of the separation. Interdisciplinary teams of collaborative lawyers, family therapists, child specialists and financial planners can work together in an out of court

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1 Paul Amato, *Children of Divorced Parents as Young Adults, Coping with Divorce, Single Parenting, & Remarriage: A Risk and Resiliency Perspective* 147-163 (E.M Hetherington, ed., Lawrence Erlbaum, New Jersey, 1999). *Also, see generally* Robert Emery, *Interparental Conflict and the Children of Discord and Divorce*, 92 *Psychological Bulletin*, 310 (1982); Michael Fendrich, Virginia Warner, & Myrna M. Weissman, *Family Risk Factors, Parental Depression, and Psychopathology in Offspring*, 26 *Developmental Psychology* 40 (1990); E.M. Hetherington, *For Better or Worse; Divorce Reconsidered* (Norton: New York, 2002); Joan Kelly, *Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research*, 39 *J. Am. Acad. Child Adolesc. Psychiatry* 963 (2000); Janet R. Johnston (1994) *High Conflict Divorce*, 4 *The Future of Children* 165 (2000).

2 Kelly, *supra* note 1.

process to address the unique needs of the family. In addition, the unique combination of advocacy and mediation offered by collaborative lawyers together with the combination of advocacy, mediation and therapeutic process offered by family therapists (divorce coaches) and child specialists creates coordinated forums in which the emotional and relational problems of the couple and of the family can be addressed. This offers the opportunity to create the highest quality post-separation family environment possible for all family members, especially the children.

#### A. Demographics

Divorce has become a mainstream event in Canada and the United States.<sup>3</sup> Roughly 1/3 of married Canadians and 1/2 of married Americans will experience a marital separation.<sup>4</sup> Estimates indicate that approximately 35,000 children in Canada and over one million children in the United States experience their parents' divorce each year.<sup>5</sup>

Though one might easily conclude that this indicates a profound flaw in the psyche of today's cohorts of adults, consideration of an important sociological fact indicates otherwise. A closer inspection of life expectancy suggests an influence rarely introduced into the discussion of separation and divorce.

#### B. Life Expectancy

The average length of a marriage in the late 1700s was only 7 years.<sup>6</sup> As life expectancy in 1850 was, on average, only 40 years, death of a spouse generally ended marriages before the 10-year mark.<sup>7</sup> Therefore, the surviving spouse did not face the burden of working out custody and access, child support and co-parenting relationships with the deceased. Remarriage rates were very similar to those today.<sup>8</sup> Furthermore, in the 1800s, 50% of children had lost one or both parents by the time they reached 13 years of age.<sup>9</sup>

In the past 150 years, the average life span has doubled, thereby making a commitment to remain in one marriage 'til death do us part' a much more

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3 Amato, *supra* note 1 at 147. See also Mary Whiteside, *The Parental Alliance Following Divorce: An Overview*, 24 *Journal of Marriage and Family* 3 (1998); Kelly, *supra* note 1.

4 For Canadian demographics, see *Divorce 2002 and 0002*, Minister of Industry (Statistics Canada) Catalogue no. 84F0123XPB at p. 2. For American demographics, see Amato, *supra* note 1 at 147.

5 Statistics Canada, *supra* note 4 at 26.

6 *Divorce and Remarriage in the American Family: A Historical Review*, Remarriage and Step-parenting: Current Research and Theory, at p. 5 (Marilyn Ihinger-Tallman & Kay Pasley, eds., New York: Guilford Press, 1987), *citing Calhoun---*

7 *Id.*

8 *Id.* at 3.

9 *Fox & Quitt cited in Ihinger-Tallman & Pasley (1987) p 6*

challenging proposition.<sup>10</sup> With an 80-year life span, we can consider the 40 - 60 year marriage as average.<sup>11</sup> Never before have so many had the opportunity to be married to the same person for so long. Never before have we faced the challenge of continuing to be involved with a former spouse through a co-parenting relationship.

As such, sociologists have referred to divorce as the functional substitute for death in western culture.<sup>12</sup> This raises the question of whether or not we now outlive our ability to choose a partner early on in adult life, possibly on some romantic whim, with whom we can grow and change in a compatible fashion considering the challenges and changes, both expected and unexpected, of the long lives we now have the opportunity to enjoy.

Never before have we lived long enough to have the problem of transforming a marital relationship to a functional co-parenting relationship. Historically our former spouse was in the cemetery rather than alive and well and wanting to remain involved with the kids. In some ways, we are all pioneers here.

### C. Risk and Resiliency

Nevertheless, divorce changes a child's family forever. It permanently alters the family structure. The future of the family system is impacted daily by the reality of the divorce, and with these changes come short term and long term risks and vulnerabilities. Hetherington suggests that the two main challenges for separating parents are to:

- a. minimize the conflict to which their children) are exposed and
- b. to maintain effective parenting,<sup>13</sup>

Kelly further elaborates on the impact of marital conflict on children. In a review of the literature on children and conflict, she suggests that marital conflict is a more important predictor of child adjustment than is divorce itself or post divorce conflict.<sup>14</sup> Further, Kelly suggests that "the intensity and frequency of parent conflict, the style of conflict, its manner of resolution and the presence of

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10 Richard H. Steckel, *A History of the Standard of Living in the United States*, EH.Net Encyclopedia, available at <http://www.eh.net/encyclopedia/?article=steckel.standard.living.us>, Table 2 (site last visited June 17, 2005), citing Michael Haines, *Vital Statistics*, Historical Statistics of the United States: Millennial Edition (Susan Carter, et al. eds., New York, Cambridge University Press, 2002).

11 Stephanie Coontz, *The Way We Never Were: American Families and the Nostalgia Trap* 16 (New York: Basic Books, 1992).

12 *Id.* at 16.

13 E. M. Hetherington, *Should We Stay Together For the Sake of the Children?*, *Coping with Divorce, Single Parenting, & Remarriage: A Risk and Resiliency Perspective* 93-116 (E.M Hetherington, ed., Lawrence Erlbaum, New Jersey, 1999). Hetherington describes effective parenting as high in warmth, communication, responsiveness, control, monitoring and low in coerciveness. *Id.* at 94.

14 Kelly, *supra* note 1 at 964.

buffers to ameliorate the effects of high conflict are the most important predictors of child adjustment."<sup>15</sup>

Conflict has both direct and indirect effects on children. The direct negative effects include "modeling of parental behaviors, failure to learn appropriate social interaction skills and physiological effects."<sup>16</sup> Conflict indirectly influences children through parenting relationships by "undermining the quality of parenting and by the spill over of negative emotion, especially between parents and their cross-sex children."<sup>17</sup>

Fortunately, even though divorce indelibly alters the family structure, the changes do not have to be fatal. Research has clearly shown that it is possible for parents and children to navigate this transition, safely growing into two-household family systems that provide a high quality family environment for both children and adults.<sup>18</sup>

A balanced view of the impact of divorce on children must be maintained. Hetherington points out that children whose parents are divorced are twice as likely to have serious emotional, social or psychological problems, an increase from 10 - 20%.<sup>19</sup> However, most children in divorced families, 75%, are above the clinical cut offs.<sup>20</sup> Sadly, 10% of children are below clinical cut-offs, even when living in one household with both biological parents.<sup>21</sup> Regarding these same statistics, Amato points out that a different picture is created depending on whether the focus is on the differences or the overlap between the two groups.<sup>22</sup> Interestingly, Hetherington also reports that some young adults emerged from their parents' divorce enhanced.<sup>23</sup>

What encourages resiliency in children?

1. Sufficient economic resources<sup>24</sup>
2. The resolution of parental conflict<sup>25</sup>
3. Separating children from parental conflict<sup>26</sup>
4. Competent, involved parents, especially Mom<sup>27</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 965.

<sup>17</sup> *Id.*; see also Hetherington, *supra* note 13 at 94 where the author describes effective parenting as high in warmth, communication, responsiveness, control, and monitoring, and low in coerciveness.

<sup>18</sup> C. R. Ahrons & R. Rodgers, *Divorced Families: Meeting the Challenge of Divorce and Remarriage* (Norton: New York, 1987); E. M. Hetherington, *For Better or For Worse: Divorce Reconsidered* (Norton: New York, 2002).

<sup>19</sup> Hetherington, *supra* note 13 at 7.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Paul Amato, *Father-Child Relations, Mother-Child Relations, and Offspring Psychological Well-Being in Early Adulthood*, 56 *Journal of Marriage and the Family* 1031 (1994).

<sup>23</sup> Hetherington, *supra* note 18 at 7.

<sup>24</sup> *Id.* at 87, Kelly, *supra* note 1 at 966.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

5. Access to both parents<sup>28</sup>
6. Successful co-parenting<sup>29</sup>
7. A network of pro-social friends<sup>30</sup>

*D. Settlement is Not Enough*

The literature on children and conflict strongly suggests that prolonged exposure to conflict has serious negative consequences for children no matter what the family structure.<sup>31</sup> On-going conflict between parents negatively influences both the post separation family environment and divorce. Further, on-going conflict hinders the parents' ability to respond to life 'as it happens' for their children, interrupting the flow of decision-making and distribution of resources in the family environment.

Therefore, settlement is not enough. Negotiating issues and settling current problems is necessary but not sufficient to address children's best interests. The literature reviewed here suggests that we must raise the standard to the minimal resolution of conflict that facilitates the best possible co-parenting relationship between the most competent parents possible.<sup>32</sup> Only then are children protected from many of the most hazardous risk factors of separation and divorce, and only then will their best interests be protected. Interdisciplinary Collaborative Practice offers separating parents the comprehensive support, not only to resolve the issues of the divorce, but also to 'retool' their relationship to create the highest quality post separation family environment.<sup>33</sup>

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27 Hetherington, *supra* note 18 at 133.

28 *Id.* at 159.

29 *Id.* at 138.

30 *Id.* at 145.

31 Kelly, *supra* note 1 at 964, citing E. Vanderwater & J. Lansford, *Influences of Family Structure and Parental Conflict on Children's Well-Being*, 47 *Fam. Relat.* 323 (1998). See also P. Amato & B. Keith, *Parental Divorce and Adult Well-Being: A Meta-Analysis*, 53 *J. Marriage Fam.* 43 (1991); Nicholas Zill, Donna R. Morrison & Mary J. Coiro, *Long-Term Effects of Parental Divorce on Parent-Child Relationships, Adjustment, and Achievement in Young Adulthood*, 7 *J. Fam. Psychol.* 91 (1993).

32 Kelly, *supra* note 1.

33 See discussion of Collaborative Practice, *infra* § II. Currently, only 4 published books describe Collaborative Practice or Collaborative Law in detail: Nancy J. Cameron, *Collaborative Practice: Deepening the Dialogue* (Continuing Legal Education of British Columbia, 2004); *Collaborative Law: A New Method of Dispute Resolution* (Sheila Gutterman, ed., Bradford Publishing, Colorado, 2004); Richard Shields, Judith Ryan and Victoria Smith, *Collaborative Law, Another Way to Resolve Disputes* (Thompson Carswell, Toronto, 2003); Pauline Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation* (ABA Publishing, Chicago, 2001). The two earlier publications, Shields et al., 2003 and Tesler, 2001, include a description of Collaborative Law for lawyers. As the movement has evolved, greater interest has been directed to the Interdisciplinary model. The two later publications, Cameron (2004) and Gutterman (2004), discuss Collaborative Law as well as the interdisciplinary model which includes mental health practitioners and financial professionals working together with collaborative lawyers in interdisciplinary teams.

## II COLLABORATIVE PRACTICE

*A. Dispute Resolution Continuum*

Collaborative Practice provides a fourth alternative in the dispute resolution continuum.

**The Kitchen Table Divorce** – This describes spouses who are essentially doing their divorce themselves, often around the kitchen table. Spouses are in direct communication with each other and there are few if any professionals involved.<sup>34</sup>

**Mediation** – In mediation, spouses work with a neutral third party to resolve the problems of the divorce. Spouses meet with the mediator together and individually. The clients are in direct communication with each other in the presence of the mediator. Mediation stresses good communication and conflict reduction. The mediator does not advocate for either party. Each party must receive independent legal advice regarding the final settlement.

**Collaborative Practice** – In collaborative practice, a combination of Collaborative Lawyers, Divorce Coaches, Child Specialists, and Financial Specialists help the spouses address the issues related to the divorce. All are trained in mediation. All parties agree not to go to court. All parties will resign from the case should the collaborative process derail. Collaborative Practice teams provide comprehensive support to children and adults navigating the transition through separation and divorce.

**Litigation** – Each spouse works with a traditional lawyer who acts for him/her. Spouses may meet in settlement meetings or have their lawyers communicate for them thereby avoiding direct contact with each other. Lawyers do not necessarily share information. As the conflict increases, litigation practices may become progressively more adversarial, ultimately ending up in court.<sup>35</sup>

*B. Paradigm Shift in Family Law*

From gladiator to guide. From white knight on a steed to compassionate consultant, sitting along side clients at the table. This summarizes the paradigm shift for family lawyers from litigation to collaborative practice.<sup>36</sup> While many

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34 The term “Kitchen Table Divorce” is commonly used to describe this type of divorce and is discussed in Cameron, *supra* note 33 at 150.

35 The exact percentage of divorces that use traditional litigation is illusive, given common-law unions and, in Canada, provincial and federal court systems. However, a recent study in British Columbia found that more separating spouses are proceeding through the court system without counsel and that there is no correlation between net worth and whether or not counsel is hired. Cameron, *supra* note 33 at 5.

36 An in-depth discussion of the role of family law lawyers in Collaborative Practice and its implications for practice is beyond the scope of this paper but can be found in

traditional family law attorneys may have tried to provide compassionate consultation to their clients from within the traditional family law environment, they were nevertheless obligated to work from a litigation template and as such were still tied to the responsibilities which that approach requires, i.e., to be prepared for court should the 'nicey, nicey' wear off. Equally, the litigation template provides few resources for family lawyers or their clients that actually help clients in problem-solving or decision-making.

Very few families now actually go to court.<sup>37</sup> Nevertheless, a settlement on the courthouse steps does not mean that the family got the help it needed to resolve the conflicts that were in the way of making decisions, nor that the family system has been restructured to create a healthy family environment or to facilitate successful co-parenting that can respond to children's needs into the future.

Collaborative Practice provides these 'family friendly litigators', and others who may want to use a more peaceful approach, with a template that supports them in creating safe, productive forums for themselves and for their clients. The process of Collaborative Practice has the necessary structures that create environments to deal with difficult situations and with impasse without the knee jerk reflex of 'let the judge decide' or the more subtle, quiet drift toward the courtroom.

The Participation Agreement (PA),<sup>38</sup> the cornerstone of the collaborative process, stipulates that if the matters cannot be resolved collaboratively, both collaborative lawyers will resign from the case and the parties will be referred to trial lawyers. If the lawyers and clients have not signed a PA, it is not a collaborative file. Collaborative Practice Groups offer additional resources to

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Cameron, *supra* note 33; Gutterman, *supra* note 33; Shields, Ryan & Smith, *supra* note 33; and Tesler, *supra* note 33.

<sup>37</sup> Though unable to determine the exact percentage of families that go to court, the author's interviews with attorneys suggest the number to be around 7 percent.

<sup>38</sup> Pauline Tesler describes the Participation Agreement as a "written contract governing the negotiation process, in which they undertake to engage in respectful good faith bargaining, to provide early and complete voluntary discovery, and to protect the interests of children." See Tesler, *supra* note 33 at 4. She further suggests that this contract helps to create the 'container' in which the collaborative process takes place. *Id.* at 78. If a lawyer learns that a client has withheld or misrepresented information and chooses to continue to do so, then the lawyer is obligated to withdraw from the collaborative process and to inform the other lawyer that the process is over. Cameron, *supra* note 33 at 7. The Participation Agreement also includes a waiver of confidentiality such that the two lawyers can speak to each other. *Id.* at 201. When clients work with coaches, a participation agreement specific to the divorce coaching work is signed. The coaching participation agreement includes the points described above for the collaborative lawyers' contract. Both contracts also include a description of the collaborative lawyer, the divorce coach, the child specialist and the financial specialist. In Vancouver, a committee was created to draft Participation Agreements. This contract is now available to all group members to use as a template for their own contracts. The lawyers' participation agreement is approximately six pages, and the divorce coaches' is about four pages. *Id.* at 273 - 286.

provide comprehensive support to all professionals and their clients as the families navigate the sometimes treacherous terrain of separation and divorce.<sup>39</sup>

A central issue for family lawyers in the transition to Collaborative Practice is the new definition of advocacy. Cameron (2004) describes it this way:

- Working individually with the client
- Educating the client
- Assisting the client to articulate and prioritize needs
- Giving legal advice
- Building a good relationship with the other advocate
- Facilitating process
- Co-managing the four-way meetings with the other advocate
- Identifying when independent, objective criteria are needed and developing processes for gathering them
- Exercising self awareness to that we do not become the problem
- Offering process-specific skills
- Empathic listening
- Moving from debate to dialogue
- Reframing issues<sup>40</sup>

The new advocacy allows Collaborative Lawyers to work toward successful outcomes for the family. Cameron (2004) suggests that such outcomes must:

- Meet the highest prioritized needs of each client
- Protect and safeguard the children's well-being and security
- Maintain (or if necessary repair or create) a working relationship between the clients
- Be practical enough for clients to live with and carry through
- Be informed enough by the legal backdrop to withstand judicial scrutiny
- Do no harm<sup>41</sup>

This definition of advocacy takes us to a possible 'stage 2' of the paradigm shift.<sup>42</sup> Not only do we need the gladiators to get off their magnificent steeds, but

39 See Cameron, *supra* note 33 at 173 - 176 for a brief review of the roles of the different professionals. More in-depth descriptions are also included in chapters on each team member written by a member of the respective profession: the divorce coach and the child specialist by Dr Susan Gamache, the financial specialist by Doreen Gardner Brown.

40 *Id.* at 124

41 *Id.* at 126.

42 In this author's opinion, the paradigm shift for lawyers may include many layers. The decision to work outside the court system is the first step. Once that commitment is made, then the second step is the realization that there is a lot to learn about this territory 'outside the court house'. While mediation skills may transfer over to this new territory, there are still unique features, such as: how to combine neutrality and advocacy; how to maintain good relationships with our colleagues and team members while carrying the conflict of the families with whom we work; and, how to recognize our own values and knee jerk reflexes as we work and then learn what to do about it. Perhaps the first step is an intellectual one, the decision not to go to court. However, in this author's opinion, the second step is a personal one; the willingness to attend to our own emotional processes



we also need them to take off all that armor. Collaborative Practice requires that collaborative Lawyers learn a new set of skills in order to understand the subtleties of the clients' concerns, to provide the new style of advocacy, and be tuned-in, creative problem solvers in conflicted situations.

### *C. Therapist Response*

Collaborative Family Law represents a massive paradigm shift for family law lawyers.<sup>43</sup> This shift brings lawyers into 'therapeutic territory.' While the lawyers are not becoming therapists, they are now working in a way that is consistent with therapeutic processes in many ways.

Collaborative Law holds a positive view of human nature, assuming that clients are essentially good, and that given the appropriate tools and opportunities, they will move in a positive direction. The practice of Collaborative Law seeks to 'do no harm.'<sup>44</sup> The well-being of all family members is essential. Further, the collaborative process seeks to be a 'self-determination model' in which the clients control the outcomes. The clients have a key role to play in both the process and successful outcome. Collaborative family law assumes that clients are active participants in the process, similar to a vehicle in which everyone has a steering wheel. Finally, the collaborative family law process is transparent. The work of the team is observable by the clients and open to their scrutiny.

Therefore, the shift from adversarial to collaborative processes in family law brings collaborative lawyers into therapeutic territory and creates a forum in which lawyers and therapists work together to assist their clients through the sometimes-difficult transition of separation and divorce. Like the therapeutic process, Collaborative Law creates a safe forum in which clients can combine the tools and opportunities of the collaborative process with their own personal resources to work through the problems of the separation. In the collaborative process, clients are part of the team working toward unique solutions for their family.

Further, Collaborative Practice allows the juxtaposition and integration of Family Law and Family Therapy. Both disciplines serve the same population.

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and our professional relationships as we work in these highly charged family environments.

43 Many collaborative lawyers were interested in and pursued mediation when mediation first became popular. Collaborative Law allows lawyers to work both as lawyers and as mediators at the same time. Some feel that the rapid growth of Collaborative Family Law is due, at least in part, to the mediation movement that preceded it. Mediation training changed attitudes and developed skills that are directly transferable to the practice of collaborative law.

44 "Do no harm" is, of course, commonly associated with the Hippocratic Oath of physicians. It is also a central feature of the professional ethics of psychologists. See Susan Gamache, *Therapists As Collaborative Team Members*, Collaborative Law: A New Model of Dispute Resolution 181 (S. Gutterman, ed., Bradford Publishing, Colorado, 2004).

When combined, they offer both a breadth and depth of understanding regarding couple and family dynamics in separation and divorce that can form a powerful vehicle for families in transition.

#### *D. The Role of the Divorce Coach*

The divorce coach is a licensed mental health practitioner and therapist well versed in separation, divorce and remarriage issues. Their training could be in clinical psychology, counseling psychology, marriage and family therapy, social work, nursing, or any other counselor-training program that provides in-depth training in therapeutic process, including family therapy. In addition, divorce coaches receive training in mediation and in Collaborative Practice.<sup>45</sup>

The divorce coach is included in the Participation Agreement, the contract signed by both parents and divorce coaches that defines the assumptions and outlines the agreements of the collaborative process. The Participation Agreement states that both parents and all team members agree that all discussions involving the divorce coaches are part of the collaborative process and therefore protected from any future adversarial action. The participation agreement also states that, in the event that the parents withdraw from the collaborative process, no team members will be involved in any future adversarial action.

The role of the divorce coach has been described as brief, goal-oriented, and systemic.<sup>46</sup> (Roussos, 2002). Unlike a typical therapeutic process, the work of the divorce coach is brief in that she works to the task of a successful separation. Once this task is complete, the client-coach relationship ends. However, the client has the option to return to the coach for additional assistance with separation-related concerns later on.

The work is goal-oriented as opposed to open-ended. Divorce coaches focus on completing the tasks and solving the problems of the separation. The process is also systemic, in that the whole family system is considered. The interdependent relationships of the family system as is relevant to the separation process are considered.

The divorce coach assists the client(s) in five general areas:

A Divorce coach helps a client clearly identify his/her experience and clearly articulate it to the other spouse.

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45 In Vancouver, divorce coaches are required to: (a) be licensed mental health professionals with substantial clinical training; (b) receive 3 days of mediation training or conflict resolution training; and, (c) receive 2 days of Interdisciplinary Collaborative Practice training.

46 In fact, the work of all the collaborative professionals, collaborative lawyers, child specialists and financial specialists could also fall under the umbrella of 'brief, goal-oriented and systemic.'

This aspect of divorce coaching is most similar to individual therapy. Divorce coaches use their highly developed listening skills to work with the client to articulate difficult or vague experiences that underlie their separation experience. Intense emotional experiences can be addressed in order to understand them, to help reduce their intensity, and to enable the client to communicate them to the other spouse.

A divorce coach helps the client to understand his/her impact on the other spouse.

This aspect of divorce coaching is most similar to couple or family therapy. These approaches view the family as a system in which all members influence each other. In family therapy, therapists help clients understand their impact on the way in which the family or couple functions.

Divorce coaches work with clients to increase awareness of their impact on their spouses and to help them appreciate the reciprocal nature of intimate relationships. Because both coaches work with their respective clients in this way, the couple begins to understand the dynamic operating between them. As their understanding and awareness increases, they can become less reactive to the other spouse.

Coaches can also work in 4-way meetings (4-ways) wherein they assist the clients in recognizing destructive communication patterns. With practice, clients can make significant changes in how they relate to each other in a surprisingly short period.

These therapeutic approaches allow the clients to 're-tool' their relationship from spouses to former spouses. As they work through the tasks of separation, they simultaneously create a new way of relating to each other that facilitates ongoing communication to serve the needs of the family in the future.

A divorce coach exposes the client to appropriate information regarding marital transitions.

Divorce coaches also offer their clients information on marital transitions that can help reduce the anxiety and uncertainty of the process. This information may include family history, research findings, typical experiences, long-term vs short term perspectives, etc.... The goal of this information is to educate the clients on issues of importance and to help normalize the experience of separation and divorce.

A divorce coach helps the clients understand the needs of their children, and assists in the creation of an appropriate parenting plan.

Divorce coaches offer general information on child development and on children's needs through separation and divorce. In addition, divorce coaches help the couple work through differences and concerns regarding their future parenting plan. In this way, when the parenting plan is finalized, both parents have had the opportunity to articulate their concerns, to receive relevant information from informed professionals, and to come to agreements that work for each of them.

A divorce coach acts as a member of the collaborative team.

This team may include the other coach, both collaborative lawyers, a child specialist and a financial specialist. Working with the other coach is similar to

co-therapy or co-counseling in that each coach works both individually with a client, and together with the other coach in 4-way meetings.

The team works similarly to other interdisciplinary teams such as school based resource teams or residential treatment teams.<sup>47</sup> Information is shared with the rest of the team in order to facilitate the forward movement of the family. Team members work together in various arrangements, depending on the needs of the family to help the family move towards the resolution of relevant concerns.

Specifically, divorce coaches can help the collaborative lawyers understand the individual experiences of each client and understand the couple and family dynamics. This allows the lawyers to work more effectively with their clients in the legal process. Similarly, other team members can assist the coaches by keeping them up-dated on the legal or financial aspects of the process that impact their work.

The process of divorce coaching is most similar to couples co-therapy.<sup>48</sup> Each divorce coach has a client for whom he holds primary responsibility, and

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47 School based resource teams are groups of professionals brought together to assist a student. The teams are made up of various professionals within the school system such as the classroom teacher, the school counselor, the principal, the district counselor, the special education teacher, or any other member of the school system who is relevant to the concerns for the given student. Parents or guardians, and/or the student in question may or may not be included. Residential treatment teams are brought together in a similar manner to assist a resident or family. In these cases, the resident is often a ward of the court. Team members may include childcare staff from the treatment resource, the social worker, the district resource manager, and any professional involved with the child such as a play therapist, speech therapist, classroom teacher etc. Again, the parents or guardians and/or the resident may or may not be present. In both cases, the perspective of each team member addresses one or more aspects of the problem. Together, all these perspectives create a rich, comprehensive view that allows for decision-making that is sensitive to the complexity of the situation, and helps create positive movement without inadvertently damaging one aspect in order to benefit the other.

48 The goal of couple therapy, whether in a co-therapy model or using one therapist, is to facilitate the growth of intimacy and attachment in the couple relationship. The process may include problem solving, communication skill building, exploring the childhood experiences of either or both members of the couple, amplifying emotions, or any other aspect of individual or relationship experiences of the couple. In its generic form, it is not necessarily brief or goal-oriented although by definition it is systemic in that, at the very least, the couple itself is a dynamic system whether or not children are involved. Divorce coaching is similar to co-therapy in that there are two coaches, one allied with each partner. The process may include aspects similar to co-therapy, but with a different focus. The goal of divorce coaching is to assist the couple to create a co-parenting relationship and parenting plan that can respond to the needs of the children in the present and future with minimal conflict and maximum co-operation. While some historical issues may arise, they should be addressed relatively briefly and the focus returned to the main goal of addressing the problems of the separation. Given that divorce coaches often work in high conflict environments, they may spend less time working to amplify emotionality and more time working to contain or calm strong emotions. Divorce Coaches may also have to be more directive than their co-therapy counterparts. Lastly, clients sometimes reconcile as a result of the work with divorce coaches. The majority do not. However if the divorce coaching has been successful, the quality of the relationship will improve although not to the same level of intimacy as a primary

who begins by meeting individually with his respective client to establish the working alliance. Simultaneously, the story of the relationship unfolds and the current issues are identified by the two clients.

Subsequently, the two divorce coaches consult to create the 'unified story'. This is the systemic view of the entire system, which includes the perspectives of both parties without making one right or wrong. This allows the divorce coaches to use family and couple therapy skills to begin mapping the dynamics of the couple relationship that underlie the presenting conflict and issues.

When ready, both clients and their respective coaches meet altogether in coaching 4-ways. The 4-ways provide a safe and contained forum for the couple to begin addressing the issues that stand between where they are at the moment and a successful co-parenting relationship.

The 4-ways also allow the coaches to witness the couple relationship first hand. Here, the divorce coaches 'coach' their client in expressing their concerns and in listening to the other party. Having two family therapists in the room allows for a carefully controlled process. Perhaps more importantly, both clients have their advocate in the room with them. This generally allows the clients to feel safe and supported, even in relatively high conflict situations.

Clients and divorce coaches meet in additional individual and 4-way meetings as is required to move through the concerns facing the family. In my experience, there are usually one or two highly contentious issues. Once the couple begins to communicate sufficiently to create progress in these areas, there is a release of tension and an increase in trust and good faith that allows the remaining items to be dealt with quickly or even to be resolved by the clients without the aid of the divorce coaches.

How much 'relationship rehabilitation' must occur before the issues can be resolved depends on the couple. Sometimes the forum itself is sufficient for the clients to begin working better together. Sometimes substantial work is necessary in order to address the topics at hand. In these situations, every attempt to address a topic bogs down in strong emotion and conflict. The minimal resolution of one issue then indicates sufficient rehabilitation of the relationship such that the other issues can often be dealt with more quickly.

The two main products of the divorce coaching process are the co-parenting relationship and the parenting plan. As the co-parenting relationship improves, the clients are able to take more control over the process. Parents can then be provided with guidelines to begin drafting their parenting plan, and difficult issues can be brought to subsequent 4-ways to provide benefit from the structure and assistance of this forum. At the end of the process, each client receives a copy of the parenting plan to take to his or her respective collaborative lawyer for review. Then, with any further changes, this plan becomes part of the couple's separation agreement. More importantly, clients also develop a co-parenting relationship that continues to benefit from the communication skills and

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relationship. If successful, they will have 'retooled' their relationship from an intimate primary relationship to that of a co-operative, co-parenting partnership.

strategies learned in the coaching 4-ways. This, in turn improves their ability to respond to their children's future needs.<sup>49</sup>

### 1. Is Divorce Coaching Therapy?

The Dictionary of Psychology defines therapy as “An inclusive label for all manners and forms of treatment of disease and disorder. Because the term is so broad, both connotatively and denotatively, it is typically used with qualifiers to designate the form of therapy referenced.”<sup>50</sup> (p. 769)

If therapy is the treatment of a disorder, what then is a disorder? This same author defines disorder as “Generally, and literally, lack of order, disruption of order once present.”<sup>51</sup>

From this perspective, divorce coaching would seem to be defined as therapy to the degree that it addresses disorder. If the clients are distressed at the beginning and less so or settled by the end of the process, it could be argued that this has been therapy. Given that the relationship included a marriage or common-law commitment (presumably a state of being ‘in order’), then re-tooling the couple relationship to create an effective co-parenting relationship could indeed qualify as re-establishing order, and therefore qualify as therapy according to this definition.

Further reflection on this question raises two issues of interest. First, is divorce coaching for the individuals, or for the relationship between them? Second, is the purpose of divorce coaching to repair that which has been ‘damaged’ (i.e., in disorder), or is it to assist clients in developing new, extraordinary skills for dealing with a new sociological phenomenon, the former spouse relationship?

### 2. Is Coaching for the Individuals or for the Relationship?

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49 Each parenting plan is unique as is each family. However, parenting plans generally include agreements on living arrangements, child care, day-to-day decisions, personal care, schedules, activities, clothing, health, education, religion, other traditional days, holidays, extended family, new partners, travel, parent moving, communication between parents, and review and evaluation. The higher the conflict, the more detailed the parenting plan must be and the longer it takes to create it. My experience in Vancouver is that a moderately conflicted couple may take 3 - 9 months to develop their parenting plan. See Mimi Lyster, *Child Custody: Building Parenting Agreements that Work* (Nolo: Berkeley, 3rd. ed. 1999). See also Shirley Thomas, *Parents Are Forever: A Step-by-Step Guide to Becoming Successful Co-Parents After Divorce* (Springboard Publication: Longmont, CO, 1997).

50 A. Reber, *Dictionary of Psychology* 206 (Penguin: Ontario, 1st ed. 1985).

51 These questions are often followed by – “No, you don’t understand, it’s my husband/wife who is crazy, not me!”

Clients in the Collaborative process often ask their lawyers (who may be desperately trying to get them to see a divorce coach) “Do you think I need therapy?” or “Are you sending me for counseling?” One response to these questions is, “No, I don’t think you are crazy but your relationship needs some help.” In many cases this is true. Many people going through separation are very functional in their individual lives.<sup>52</sup> They may see divorce coaching as a type of personal growth work and choose it themselves. Even though they are not distressed in other areas of their lives, they recognize the potential for growth. An understanding of one’s choice of a partner, as well as an understanding of what happened in the relationship over time such as to lead to the couple’s separation, is likely to benefit anyone in such a situation. However, I would not suggest that every Collaborative Law client needs individual therapy. For these clients, the work may focus more on communication skill development and problem solving around parenting.

On the other hand, some clients clearly fail to function well in other areas of their life, either because of the loss of their marriage or because of other issues that predate the separation. Likely, these clients are also in relationships that need help, but their individual concerns may dominate the process. For them, the divorce coaching process is much more therapy-like and is apt to require more individual sessions.<sup>53</sup> The relationship between the client and coach in these cases will be like that of client and therapist, and the coaching takes place on the foundation of the therapy work. Over time, both individual and relational processes move forward in an integrated fashion to the creation of a mutually agreeable separation agreement. These clients may need a therapist external to the Collaborative team during the Collaborative process, or may need a referral to a therapist once the separation process is complete. Divorce coaches do not continue on as therapists to their Collaborative clients. That said, the coaching team can be re-activated at any time in the future to address new concerns in the post-separation family.

Regardless of the emotional state of the individuals involved, separation means, by definition, that the relationship between the two parties is not ‘in order.’ Though the relationship may be calm after its equilibrium is re-established, the relationship is still not what it once was between the parties. Again, some couples have sufficient self-awareness and self-esteem to make the transition relatively gracefully. On the other hand, others do not. While the former group may choose coaching to enhance their post-separation relationship, the latter group will likely struggle to create a co-parenting relationship that creates a life-enhancing family environment (including both households) for their children. These couples could greatly benefit from coaching.

In general, the divorce coach responds to what is needed or chosen by the client. All therapists use clinical techniques from their personal ‘bags of tricks’

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<sup>52</sup> See Tesler, *supra* note 33 at 18.

<sup>53</sup> See Susan Gamache, *The Role of the Divorce Coach*, Collaborative Practice: Deepening the Dialogue 193, 195, 199, and 193 n.5 (N. Cameron, ed., Continuing Legal Education Society of British Columbia, 2004).

to help clients move through their unique experience of separation with grace and dignity, working to achieve the most life-enhancing outcome possible. For some, the focus is on both individual and relational concerns, while for others relational issues are the prime concern. For some, the process is stressful but not life-changing; for others it is profoundly transformative.

The divorce coach works to balance two agendas simultaneously. On one hand, the coach works toward resolving the problems of the separation and divorce. On the other hand, he responds therapeutically to clients in any way possible to create life-enhancing outcomes from the separation process. Along the way, the therapist constantly makes decisions about what should happen next: Is this a point in which a piece of therapeutic work would be useful? On the other hand, is this a time for addressing tasks? The therapist works in a right foot, left foot type of process, going back and forth between the two sometimes competing, but ultimately complementary processes. This creates a 'both-and' type of process which addresses therapeutic issues while at the same time resolving the problems of the separation and divorce.

### 3. Is Divorce Coaching Repairing Damage or Meeting Higher Standards?

Research clearly demonstrates that very little about the well-being of a child can be determined simply from the fact that his parents have undergone a divorce.<sup>54</sup> In sharp contrast, knowing that the child has been exposed to prolonged conflict and/or parental depression tells us a lot about a child's well-being.<sup>55</sup> Equally, long-term marital conflict negatively affects adult health and well-being.<sup>56</sup> Moreover, the children's well-being is influenced by the quality of their relationships with their parents.<sup>57</sup>

Divorce can be done well. At the same time, it is a tall order. Clients must overcome the demise of the marital bond and still appreciate and care for each other as former spouses, often despite a negative social context or interfering extended family and friends. They also must learn to parent co-operatively across two households, which is generally harder than within one household with someone you love. Many people can do this well on their own or with very little support. For these clients, divorce coaching (if chosen) is about meeting a higher standard of parenting practices and communication skills.

On the other hand, some clients are so devastated by the end of their marriage or so entrenched in conflict, that they, and particularly their children,

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<sup>54</sup> Amato, *supra* note 22 at 83.

<sup>55</sup> *Id.* See also, Hetherington, *supra* note 13 at 97; Kelly, *supra* note 1 at 963; Fendrich, *supra* note 1.

<sup>56</sup> Sybil Carriere & John Gottman, *Coping with Divorce, Single Parenting, & Remarriage: A Risk and Resiliency Approach* 7 (E.M. Hetherington ed., Erlbaum : NJ, 1999).

<sup>57</sup> Hetherington, *supra* note 13 at 209; Hetherington, *supra* note 18 at 126; Kelly, *supra* note 1 at 963.



are extremely vulnerable to the damaging effects of high conflict.<sup>58</sup> For these clients divorce coaching is about damage control to begin with, moving through personal crises and intense couple dynamics to finally reach the ‘work’ of sorting out the pragmatics of the separation. In these cases, mediation skills augment the therapist’s repertoire by allowing her to include interest-based negotiation skills when the conflict is too high for therapy techniques. Once the level of conflict comes down even a little, therapy skills can seamlessly merge with interest-based negotiation to help clients with communication skill development or any other process that may seem appropriate. For these clients, divorce coaching is, first, damage control, then, hopefully, moving on to help them meet the higher standards required for successful two-household parenting.

In summary, divorce coaching responds to the needs of the clients. For those clients who are generally self-aware and open to learning about their impact on their spouse, divorce coaching is less like therapy and more like parent education or general support through a stressful and very important time. For those clients who are deeply distressed, not self-aware or sensitive to their impact on their spouse, the process may look very much like therapy (in conjunction with some mediation) applied to the context of high conflict separation. Regardless of where they begin, the desired outcome is for the separating couple to meet the higher standards of two-household parenting in order for the children to experience a family environment that can respond to their needs. For couples without children, this process can assist them to learn about themselves and their relationship in order to achieve closure and move on into their future in the most life enhancing way possible.

#### *D. The Child Specialist*

The advent of Collaborative practice allows us to bring together the best of traditional therapeutic practice and legal decision-making regarding children’s issues through the role of the Child Specialist<sup>59</sup>. The child specialist is a licensed mental health practitioner who is a member of the Collaborative team. In addition to training in Collaborative Law, mediation and professional training as a therapist, the child specialist has additional training and/or experience working with children. Child specialists may be affiliated with the disciplines of child psychology, family therapy or play therapy.

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58 Hetherington, *supra* note 13 at 209; Hetherington, *supra* note 18 at 126; Kelly, *supra* note 1 at 963.

59 The term ‘Child Specialist’ is not intended to convey special designation with a registration body but rather to indicate the role of the professional who fulfills this role for the Collaborative team.

Like the Divorce Coach, the child specialist is included in the Participation Agreement. This protects the parents, children and child Specialist from the possibility of involvement in any future adversarial process. This agreement also waives confidentiality within the team so that the child specialist can exchange information with other team members.

Within the Collaborative team, the Child Specialist is a neutral third party who focuses exclusively on the children's concerns and/or their interests. The task of the Child Specialist in relation to the team is to keep the children's interests in the picture while the issues of the separation are resolved. Similar to the type of work that therapists have been doing with children and families around separation and divorce within traditional therapeutic practices, the child specialist role includes therapeutic assessment of the children, direct observation of children and parents, and consultation with extended family or community members as necessary. It also includes reporting back to the parents and to the team. The child specialist may work with the parents to create the parenting plan.

For the children, speaking to the Child Specialist can be a welcome relief. Generally, children are only too aware of how their parents are feeling. Children can sometimes feel as though they must tell each parent what that parent wants to hear. The Child Specialist can provide a safe place for the children to share their story, ask questions and discuss their concerns.

Depending on the level of conflict, the child specialist may avoid establishing a therapeutic relationship with either parent in order to remain in the advocacy position for the child(ren). The Child Specialist's neutral position in relation to the parents allows her to address highly contested issues from an independent perspective that focuses more clearly on the children's actual needs or concerns. This often serves to defuse the tension between the parents on children's issues. In situations of relatively low conflict, the child specialist may have more direct contact with the parents. Further, parent education on child development and/or separation and divorce issues from a neutral third party in a supportive environment can help clients soften their positions and shift into more thoughtful and reflective perspectives regarding their children.<sup>60</sup>

The child specialist reports to the team and the parents. As such, the children must understand that the child specialist is a member of the collaborative team and will report important information to the team and their parents in order to assist their parents in making the best possible decisions about the separation for the family.

Although this may appear to create an ethical dilemma regarding confidentiality for the children, in essence it is no different from any other

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60 Robert Emery, Katherine Kitzmann, & Mary Waldron, *Psychological Intervention for Separated and Divorced Families*, Coping with Divorce, Single-Parenting and Remarriage: A Risk and Resiliency Perspective 332 (Lawrence Erlbaum: New Jersey, 1999).

therapeutic environment that involves children.<sup>61</sup> Therapists cannot keep secrets from parents of young children. For older children, the team works to help facilitate conversations about sensitive topics between parents and teens. Equally, it is possible to communicate about general concerns that parents can address rather than to disclose details that the child or teen may wish to keep private.

### 1. Therapeutic Assessment

In general, child specialists are free to gather information as they see fit. Meetings with the child specialist provide an opportunity for the children to talk. Equally, the child specialist may be asked to give general feedback on the children. At other times, the team may have specific questions in mind. Relevant information can include:

- Family dynamics
- Sibling dynamics
- Alliances within the family
- Parenting practices
- Attachment to parents
- Individual well-being
- Temperament
- Experience of the separation
- Experience of conflict
- Resiliency
- Bonding with grandparents and extended family
- Peer relationships
- Preferences for living arrangements of other aspects of the post-separation family

The process can include:

- Interviews with the children (in the sibling group and/or individually)
- Interviews with parents (separate or together),
- Meeting with children and each parent separately
- Consultation with teachers
- Consultation with extended family and relevant others.

Therapeutic techniques for younger children could include:

- Play
- Sand tray

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<sup>61</sup> Therapists working with children must also have a good working relationship with the parents. Parents generally want more feedback regarding younger children and most therapists who work with younger children meet with parents. For older children, confidentiality becomes a greater concern. Regardless of the age of the client(s), therapists must always balance the needs of the children for privacy with the needs of their parents to care for them. In our informed consent procedure the exceptions to confidentiality must be discussed, i.e., child protection and risk of injury to self or other. The role of the child specialist is a unique therapeutic environment, yet is more similar than different to pre-existing models of child and family therapy.

- Drawing the family
- Painting
- Family sculpting techniques
- Psychotherapeutic games
- Reading children's books on separation and divorce (i.e., Dinosaurs' Divorce, I don't want to talk about it)(FN)
- Puppets
- Doll house play

The amount of testing and measurement use depends on the child specialist. Unlike the tradition of custody and access assessments in the litigation process, many therapists do not use pencil and paper assessment techniques to gather information. Instead, they use relational methods such as interviews and/or play.<sup>62</sup>

## 2. Feedback to the Team

The manner in which the child specialist communicates information back to the team and parents is a critical part of the process. The involvement of the child specialist, almost by definition, means that significant tensions exist between the spouses around the children's experiences. Usually they feel vulnerable and reactive as a result of blame and shame from one party to the other.

Sometimes the child specialist simply provides a forum for the children in which they can relax and talk about their family. In such cases, the child specialist provides observations for the other team members. Other times, specific questions need to be addressed, in which case the specialist can provide the team with very specific information regarding those concerns.

No matter what the issues, the child specialist provides the information to the team first. The team then determines the most constructive and least destructive way to present this information to the parents. It is important to note that the purpose of this process is not to block information from the parents, but rather to create a forum that supports both parents while the team provides them with the information. Parents need to: (1) hear what is said; (2) be able to ask questions until they are satisfied they understand the information; (3) integrate sometimes very painful news; and (4) ultimately, be able to act on the information in way that is life-enhancing for the family, particularly for the children.

Generally, the child specialist provides this information to the team in a 3-way or 5-way teleconference similar to the one in which she was briefed before meeting with the children. If the issues remain close to the parenting plan, or perhaps general parenting issues, the lawyers are not likely to be involved.

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62 See Rodney A. Nurse, *Family Assessment* (Wiley: Toronto, 1999) for the use of standardized measures in collaborative separation and divorce practice for child specialists.

However, if these issues play into larger legal or financial concerns such as relocation or selling the family home, then involvement of the lawyers will likely be necessary.

As in the initial briefing of the child specialist, the feedback from the child specialist to the team occurs in one conversation that includes everyone. The higher the stakes, the more important this is. A single conversation between all parties minimizes the possibility for misunderstanding and allows the team members to hear all the questions and answers that arise. Equally, this assures that both parties hear the information at the same.

The child specialist, by avoiding written reports to the team, saves time and money. More importantly, however, the information remains fluid rather than becoming locked into a document. The child specialist acts, not as an assessor in the traditional sense, but more as a consultant to the family and a voice for the children. Avoidance of a written report also precludes argument on the nuances of language and refocuses attention on the general themes—particularly what can be done to address the concerns identified.

The meeting generally ends with a discussion of ‘What next?’ Who will communicate what to whom and when? In one effective method, the child specialist attends the first half of the next coaching 4-way, gives the information to both parents at the same time, and remains available for questions from the parents. Then, in the second half of the 4-way, the coaches work with fall out from the information to help clients integrate what has been said and work out ways to respond in the best interest of their children.<sup>63</sup>

### 3. How Long is the Child Specialist Involved?

Similar to the divorce coach, the child specialist’s work is generally “brief, goal-oriented and systemic.”<sup>64</sup> In most cases, the child specialist meets with the children only a few times, but may remain available to the family throughout the process as necessary. The issues addressed relate to the marital separation in the family system. Like the divorce coaches, the child specialist can be available to

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63 These straight-forward steps can become more difficult in cases where the conflict is more intense. If the information appears to vindicate one spouse at the expense of the other, or if the information seems too difficult for either spouse to hear in the presence of the other, alternative arrangements can be made. The coaches might begin such a process by meeting individually with their respective clients in order to bring the difficult information forward in a more private setting. Then the two coaches, two clients and child specialist would meet immediately afterward. This is important because it prevents the couple from encountering each other without the assistance of the coaches and child specialist. During this 5-way meeting the team reviews the information, helps the clients absorb it, and allows them to ask questions of the child specialist. Then, as described above, the child specialist would leave to allow the coaches and clients to work together to integrate the information and determine what needs to happen next to address the concerns raised.

64 P. Roussos, *It is Therapy*, 5 *The Collaborative Review: Journal of the International Academy of Collaborative Professionals*, 24 (2002).

the family after separation to help resolve problems that may arise due to developmental changes or changes in circumstances that require an adjustment to the parenting plan. Again, like the coaches, the child specialist is generally not available for long-term work with the children or for work on issues unrelated to the separation.

#### *E. The Financial Specialist*

The financial specialist is the one true neutral on the team. She provides education on financial matters, assists in preparing budgets and net worth statements, and provides future-focused projections that allow the spouses to see how the decisions made at the time of the separation will impact the financial situation of each spouse in the future.<sup>65</sup>

The financial specialist may have one of the following professional designations:

- Certified Financial Planner
- Certified Public Accountant
- Certified General Accountant
- Certified Management Accountant
- Certified Public Accountant
- Chartered Accountant
- Chartered Financial Consultant<sup>66</sup>

The involvement of the financial specialist with the family, like the divorce coaches and child specialists, is “brief, goal-oriented and systemic.”<sup>67</sup> First, the work financial specialist, like the other Collaborative Practice team members, is brief. The role of the financial specialist has been described as financial counseling, as opposed to the more traditional interpretation of financial planning.<sup>68</sup> Mason and Poduska<sup>69</sup> distinguish Financial Counselors from Financial Planners in three aspects:

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65 A detailed description of the role of the financial specialist is beyond the scope of this paper. For a more comprehensive description of the role of the financial specialist, see Doreen Gardner Brown, *The Role of the Financial Specialist*, Collaborative Practice: Deepening the Dialogue 223-232 (N. Cameron, ed., Continuing Legal Education Society of British Columbia, 2004).

66 There seems to be a number of designations for potential financial specialists. See generally Gardner Brown, *supra* note 65 at 223; Deb Johnson, *Financial Specialists as Collaborative Team Members*, Collaborative Law: A New Model for Dispute Resolution 140 (Sheila Gutterman ed., Bradford Publishing: Colorado, 2004).

67 Doreen Gardner Brown - personal communication, June 13, 2005, Vancouver, B.C.

68 Gardner Brown, *supra* note 65.

69 See J. Mason and B. Poduska, *Financial Counselor or Financial Planner: The Differences are Significant*, 20 Journal of Consumer Affairs 142-147 (1986); cited by Brown, *supra* note 65.

Success: financial counselors consider growth of self-esteem associated with ability to cope with financial problems whereas financial planners look at satisfactory growth rate of monetary assets.<sup>70</sup>

Services provided: financial counselors clarify values, identify financial problems, enhance communication skills, explore alternatives, assist in problem resolution, teach money management skills and refer to other professionals. Financial planners assess risk tolerance, clarify financial objectives, set up and implement detailed financial plans and refer to other professionals.<sup>71</sup>

Client professional relationship: Financial counselors increase client self-reliance whereas financial planners are looking for a long-term relationship with their clients.<sup>72</sup>

Second, as described above, the work of the Financial Specialist is goal-oriented. It serves the process of the separation and does not include financial services beyond the separation. As such, Financial Specialists do not seek to add their Collaborative Practice clients to their regular client base nor do they sell financial products to their Collaborative Practice clients.<sup>73</sup>

Third, the work of the Financial Specialist is systemic in that the mutual influence of the two parties, as well as the influence of the children's needs in the process, is central to their work. They assist the clients to find the solutions that best meet everyone's needs, given the resources available. The Financial Specialist does not set the levels of child or spousal support, but rather works in conjunction with the Collaborative Lawyers to help clients explore options and understand their implications.

A Collaborative Practice group can include a number of financial professionals working in different capacities with different families. For one family, a financial professional may act as the Financial Specialist. For another, she may accept a referral as a financial planner to implement the plans made, including the placing of the necessary products identified in the collaborative process.

#### *F. Screening*

As much as Collaborative Practice is a wonderful addition to the dispute resolution continuum, it cannot reach everyone. Practitioners must conduct basic screening in order to create safe and effective forums for families. Some of the issues that may screen a family out of the Collaborative process include:

- Family Violence
- Mental illness
- Extreme power imbalance in the couple relationship

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Brown, *supra* note 65. This is an ethical requirement of Collaborative Practice.

Unwillingness to disclose information relevant to the separation process  
Profound and pervasive distrust of the other party<sup>74</sup>

At the same time, these issues do not automatically disqualify a potential collaborative client. The interdisciplinary process often offers the support necessary to address these issues, given the appropriate attitudes and willingness of the clients. Careful assessment of the magnitude of the problem, the client's willingness to commit to the process, and the professionals' experience and comfort with the issues must also be conducted.<sup>75</sup>

Issues of screening can also include the therapist and the team. New coaches and teams are encouraged to begin with relatively simple family situations.<sup>76</sup> For example, clients who present with a relatively low level of conflict or families in which the separation is relatively straightforward are an ideal place to begin. More seasoned collaborative professionals can work with higher levels of conflict and more complicated situations.

#### *G. The International Academy of Collaborative Professionals*

The International Academy of Collaborative Professionals (IACP) currently provides supportive structures to collaborative practitioners in Canada, the US, England, Ireland, Austria, Australia and many other countries where new groups are forming.<sup>77</sup> Membership in this organization has doubled during each of the past three years.<sup>78</sup>

IACP sponsors an annual International Networking Forum, a National Training Institute, and The Collaborative Review. In addition, IACP has developed standards for practitioners and trainers as well as training and ethical standards for Collaborative Practice.<sup>79</sup>

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<sup>74</sup> Kelly, *supra* note 1 at 28.

<sup>75</sup> Family Court Services in Connecticut, in consultation with experts in the field, has developed an empirically supported screening tool that combines critical aspects of clients' experiences of separation and divorce in order to assist Family Court Counselors to direct the family to the appropriate process. This screening tool will undoubtedly have applications in other areas outside of court services. See K. Ceruti, S. Grant, J. Johnson, D. Kulak & A. Triage in Family Court: Using Research to Inform Case Management, Paper presented at the Association of Family and Conciliation Courts 42nd Annual conference, Seattle, May 2005.

<sup>76</sup> Cameron, *supra* note 33 at 157.

<sup>77</sup>For more information on IACP go to <http://www.CollaborativePractice.com> (Site last visited June 20, 2005).

<sup>78</sup> Statistics from IACP show the following membership information. 2001 - 150 members, 2002 - 330 members, 2003 - 565 members, 2004 - 1050 members, 2005 (to June 12) - 1365 members - Report from Paula Jackson - IACP Administrator, June 12, 2005.

<sup>79</sup> These standards can be found at the IACP website, *supra* note 77.



### III. BENEFITS TO CHILDREN

Collaborative Practice creates opportunities for parents to address many of the risks to children through separation and divorce and to create the highest possible quality of family environment after divorce. In addition, clients concerns, be they legal, relational, relating to children, financial, or all of the above, are addressed in a coordinated fashion, thereby providing comprehensive support to the family.

#### *A. Child Specialist*

The Child Specialist provides a direct channel for children's voices and experiences to be heard in the separation process. Children can experience a warm, supportive environment with the Child Specialist in which to explore sensitive aspects of the divorce. By remaining neutral to the parents and advocating only for the children, the Child Specialist provides the expertise and the vehicle to keep the children's interests in view. In some cases, the Child Specialist may work directly with the parents to address the children's concerns.

#### *B. Divorce Coaching*

Collaborative Practice also provides a strong container for the parents' conflict and the necessary forum to create opportunities to sufficiently resolve it so as to create a functional co-parenting relationship.

The two-coach model: The two-coach model is an important development in the field of separation and divorce services.<sup>80</sup> Two coaches, both trained in family therapy, mediation and Collaborative Practice can provide an important forum for clients with unique properties not found in existing models.

Advocacy: Each client has their advocate in the room. This is perhaps one of the most important aspects of divorce coaching. The strength of the working alliance created between divorce coach and client reassures the clients that their experiences will be included. This can make all the difference in a client's ability to engage in their conflict. Without advocacy, they may find it too difficult or anxiety provoking to actually engage in the conflict, leaving the resolution of the conflict much less likely.

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<sup>80</sup> For a more thorough discussion of this model, see Susan Gamache, *One Fish Two Fish, Old Fish New Fish*. Paper presented at Summertime Harvest of Collaborative Skills, IACP Core Collaborative Practice Skills Institute, Dallas, TX, June 3- 4, 2005. [Manual Tab 13](#). (On file with Author). El stoppo

Advocacy in this sense also includes what I call the “tough love of divorce coaching.”<sup>81</sup> This involves providing clients with compassionate yet honest feedback about their contributions to the very conflict by which they often feel victimized. In its extreme, this could also include an exploration of how the client chose this person as a partner in the first place. These are very sensitive questions and must be asked from a place of humility and genuine compassion for the client. After all, we all must be responsible for our relationship choices—clients and professionals alike.

**Mediation Skills:** Divorce coaches have training in mediation and can seamlessly weave mediation into therapeutic processes and therapeutic processes into mediation to allow clients to address the concrete concerns of the separation, simultaneously gaining insight and understanding into the relational dynamic that holds the conflict in place.<sup>82</sup>

**Systemic perspective:** Holding a systemic perspective, foundational to family therapy, allows consideration of the interrelatedness of all the family members. Both clients, all the children, other members of the extended family, nannies, or friends of the family, and even pets can influence the transition through separation. Divorce coaching brings all the relevant influences to the table, thereby sparing the team the discomfort of being influenced by the power of the system without the knowledge of how or why this is happening.<sup>83</sup>

**Relationship rehabilitation:** Altogether, the aspects of divorce coaching described above allow the opportunity for rehabilitation of the couple

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81 Gamache, *supra* note 53 at 209; Susan Gamache, *Divorce Coaches as Collaborative Team Members*, Collaborative Law: A New Model of Dispute Resolution 199 (S. Gutterman, ed., Bradford Publishing: Colorado, 2004); Susan Gamache, Collaborative Separation and Divorce, May 2005 Training Manual - Special topics - Difficult and Not-entirely-Voluntary Client, p. 4.1.29 (Continuing Legal Education of British Columbia, 2005).

82 Mental Health Professionals who are members of the Vancouver Group must have 3 days of mediation training. This could be in an interest-based negotiation course or a conflict resolution course. As well as adding new skills to complement the therapeutic skills the therapists already have, mediation skills create a bridge or common language between all the professionals in the interdisciplinary group.

83 It is my opinion that traditional litigation, based on 'individual' rights and freedoms prefers an individual focus. This allows each counsel to focus on their client without having to take into account their client's influence on the other family members and the influence of the family members on their client. Collaborative Practice necessitates a systemic focus; a view of the family as a dynamic system of interrelated relationships. Shifts or changes in one part of the system create a response in other parts of the system. I have often wondered how family lawyers have survived without a systemic perspective in the face of such intense conflict and reactive family systems. Family therapists do not see moderate to high conflict separating couples in therapy. They may have seen them previously, but once the separation has begun, high conflict couples do not generally use marriage and family therapists. They use lawyers. Family lawyers have faced the most challenging of all families without a systemic focus, training in family systems, or the support of supervision. These are essential for therapist self care and survival when working with even moderately tumultuous family systems.

relationship sufficiently to support the highest quality co-parenting possible.<sup>84</sup> Settlement of issues is not enough. Change may be necessary to satisfy children's interests. The literature clearly suggests that children's best interests are served by the sufficient resolution of parental conflict so as to allow the establishment of a minimally successful co-parenting relationship.<sup>85</sup> This is the only way to protect them from prolonged exposure to parental conflict and to keep their family environment free of unresolved issues between their parents. Solving the problems of the day is important; however, children need parents who can solve the problems of tomorrow, the next day and the day after that.

They also need parents who can be together at sports days, recitals, graduation ceremonies, weddings, Christenings, and the inevitable funerals without burdening their children with the stress of being in the same place at the same time. No parents intended to have children only to have them carry the burden of the legacy of a miserable divorce.

Encouraging parenting that buffers children from the negative effects of divorce on children: This process supports effective parenting in two ways. First, the reduction of conflict serves to eliminate or substantially reduce the destructive effects of conflict on parenting.<sup>86</sup> Second, working together with divorce coaches, parents can receive support and encouragement for their own 'best parenting'. Parents can be informed of the tremendous buffering quality of effective parenting, what this means in the daily life of the family, and supported to move their parenting in this direction as much as possible.<sup>87</sup>

### *C. Collaborative Lawyers*

Collaborative lawyers, trained in mediation and Collaborative Practices, also strive to reduce conflict and facilitate enduring agreements between spouses. Collaborative lawyers focus on problems that need to be resolved rather than supporting the procedures of the litigation process. They devote their time to solving problems related to the separation, and perform most of this work with their client in the room. Apart from the Participation Agreement, Retainer agreement and Separation Agreement, few documents are necessary. Though clients still must pay lawyers, they pay them to do something dramatically different.

As such, the process focuses on the real life of the family rather than an interpretation of the family derived by the lawyers or the judge. In this way, the unique culture of each family can be respected throughout the process, and

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84 Retooling a couple's relationship to a successful co-parenting relationship is not easy, however, I have been astounded at the change that can occur with the combination of advocacy, mediation skills and therapeutic process that the divorce coaching team provides.

85 See Hetherington, *supra* note 18 at 136 - 137; Kelly, *supra* note 1 at 964.

86 Kelly, *supra* note 1 at 965.

87 See Hetherington, *supra* note 13 at 94; Hetherington, *supra* note 18 at 126.

decisions based on this unique culture can be created. This helps stabilize and strengthen the family.

The Participation Agreement, cornerstone of the collaborative process, keeps the parents at the discussion table and out of the courtroom (and off the courthouse steps).<sup>88</sup> It also keeps the parents participating in negotiating and decision-making. Although it may be darned uncomfortable and “emotionally inconvenient,”<sup>89</sup> clients often make better decisions if they keep their hands on the steering wheel of the process rather than backing away from their conflict and handing it over to someone else.

#### *D. Financial specialist*

The financial specialist serves the best interests of children by reducing parental conflict generated by financial issues, and by helping the family address its financial needs through the most efficient use of its resources. The financial specialist absolutely must remain neutral in order to provide impartial information to the clients and resolve impasse around financial issues. Furthermore, the financial counseling and financial projections they offer allow parents to more accurately understand their financial situation in the present and future, and to better provide for their children's needs.

### V CONCLUSION

In conclusion, settlement is not enough to satisfy children's best interests. We must raise our standards to address the conflict of parental separation. Our minimal standard must include the maximum possible resolution of parental conflict to create a minimally successful co-parenting relationship that can respond to the challenges life will bring.

Given that co-parenting relationships are a relatively new sociological phenomenon, created in part by dramatic increases in life expectancy, we are all pioneers when it comes to learning how to best support this complex transition from spouse to successful co-parent. Many years ago the mediation movement raised the bar, introducing a new process and higher standard for outcomes in marital transition.<sup>90</sup> Collaborative Practice now adds to our choices by raising the bar again.

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<sup>88</sup> See discussion *infra* Part II.B for an description of the Participation Agreement.

<sup>89</sup> Credit for this wonderful expression goes to my brilliant friend, Glen Grigg, MA, RCC (PhD in progress).

<sup>90</sup> See Bernard Meyer, *Beyond Neutrality* 159 (Jossey Bass: San Francisco, 2004) for a brief history of mediation and the conflict resolution field. Meyer suggests that this movement was "intended to find better ways for dealing with organizational, family, environmental, and community disputes". *Id.* at 159.

The juxtaposition and integration of family law and family therapy with the additional support of mediation skills, as well as expertise in children's issues and financial counseling as found in Collaborative Practice, creates opportunities for separating parents to receive comprehensive support toward these ends. Collaborative family lawyers also trained in mediation, working together with divorce coaches trained in mediation, family therapy and collaborative practice can facilitate powerful interventions for the family.

Families are dynamic systems of interrelated relationships. Parents can learn how they contribute to the very conflicts by which they feel victimized. When both parents become aware of their contributions to this conflict, they can begin to change the system so as to reduce it. Moreover, with therapeutic support that includes advocacy, mediation skills and therapeutic process, they have an opportunity to re-tool their spousal relationship into a former spouse relationship that works.

Families need help, not only with problems of the present, but also with problems of the future. Creating successful co-parenting relationships produces a greater likelihood that they will be able to respond to the future needs of the family.

Perhaps this process is akin to bringing the intervention to the family at the point of separation.<sup>91</sup> Interdisciplinary Collaborative Practice does not substitute for all other interventions such as groups for children and/or parents, but the combination of family law and family therapy along with special attention to the children and finances provides intervention custom tailored to each family.

Interdisciplinary Collaborative Practice includes the teamwork of Collaborative Lawyers, Divorce Coaches, Child Specialists and Financial Specialists. The latest, fourth option in the conflict resolution continuum, Interdisciplinary Collaborative Practice provides comprehensive support to separating families and systematically addresses children's best interests in separation and divorce in a multitude of ways.

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<sup>91</sup> This is my observation. While Emery reviews existing interventions, it seems that Collaborative Practice itself can be considered an intervention that brings support, education, treatment and appropriate forums to parents and children during the process of separation and divorce. See Emery, *supra* note 60 for a review of research on psychological interventions for separated and divorced families including child-focused treatments, parent and parenting interventions, and co-parenting or divorce mediation.

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