THE A – Z OF COLLABORATIVE LAW (PRACTICE)

Since its emergence in 1990, collaborative practice has been a rapidly growing family law practice throughout America, Canada, Europe, England and now Australia.

On 1 January 1990 Stuart Webb, a Family Lawyer in Minneapolis in the United States decided that he would henceforth represent his clients only pursuant to a binding agreement that neither he nor the lawyers for the other party would ever go to Court for their clients. His sole purpose was to ensure that his client and his client's partner were able to reach an efficient respectful and interest-based resolution on matters resulting from a breakdown in the clients' relationship. Stuart Webb realised that he needed like-minded family lawyers to practice family law in this manner.

Collaborative practice has now established itself as a prominent means of resolving family law disputes.

The core element of collaborative practice is that lawyers and their clients will not threaten to resort to or engage in litigation during the period of their collaborative negotiations and all negotiations are to take place outside the Court system.

Ag a result of Stuart Webb's endeavours the International Academy of Collaborative Professionals was formed and includes membership of family law practitioners, psychologists, communications professionals, financial planners and accountants.

Details of International Academy of Collaborative Professionals and list of members **attached.**

**Include here a quote from a family Judge in Australia.

The core element that distinguishes collaborative practice from other areas of family law practice is the binding collaborative agreement (referred to as a "Participation Agreement") which prohibits the lawyers and their clients from participating in contested court proceedings during the period of the collaborative negotiations.

Draft copy of Participation Agreement **attached.**

Litigated resolutions

Nearly half of all marriages in Australia end in divorce. A marriage of 7 years in the eyes of the Family Court is a lengthy marriage. The average marriage in Australia is 11 years. The

breakdown in de facto and same sex relationships (although statistics are not readily available) would be in the view of the author greater than the breakdown in marriages.

Divorced parents, re marriages, blended families, shared custody in one form or another with the potential for parental disagreement and conflict constitute the daily life experience of a large and growing percentage of children growing up in Western cultures today.

The divorce passage is far from easy for most people. In many cases the emotional trauma of a breakdown in a relationship is only second to that of the death of a loved member or spouse. The grief and recovery process resulting from a breakdown in a relationship parallels the stages of recovery from a death of a loved one. Divorce requires unusual emotional resources from parties at a time when they typically are experiencing high levels of stress and lowered coping ability. Moreover, clients are expected to make financial and parenting decisions of enormous import for the future wellbeing of themselves, their family and their children at a time when strong emotions often impair their ability to make sound judgments.

Study after study has documented the substantial harm inflicted on children by high conflict divorces in which parents use the Courts as a battle ground for seeking redress for deep emotional pain which the Courts cannot possibly remedy. This is a common experience of the author in the conduct of his family law practice. Courts, even with the best-intention Judges, are poorly adapted to meet the needs of families as they breakdown and restructure.

The Family Law Courts fall far short of including the kinds of comprehensive conflict resolution, financial and psychological services that families involved in a relationship breakdown typically require. The Courts function in an adversarial model.

Most litigants emerge from a settlement in the Family Court disillusioned with the process. They tend to believe what has been set out in their Court statements (affidavits) when in reality they are awarded something that is far less than that they had hoped for. Unhappy clients are common place in family law litigation. The fees and costs incurred in family law litigation are in most cases well beyond the financial means of a client.

Nearly all litigated proceedings which mainly deal with parenting and financial issues end, not in a judgment after trial, but rather in a negotiated pre trial settlement agreement at some stage prior to the actual trial. Only 4% of applications filed in the Family Court of Australia (Federal Circuit Court of Australia) go to trial and of that 4%, 75% relate to children's issues.

Economic and emotional costs (which in many cases are irreversible) are often incurred in the lengthy preparation of a matter for trial that precedes the eventual effort to settle. In

many cases agreements are hammered out virtually on the eve of the trial date through considerable pressure from lawyers and in some cases Judges.

HOW DOES COLLABORATIVE PRACTICE RELIEVE THE PARTIES FROM THIS EMOTIONAL AND FINANCIAL STRESS.

Collaborative practice in contrast takes place entirely outside the Court process.

Collaboration proceeds without reference to Courts except at the end of the process to formalise a divorce or agreement reached by the parties in the collaborative process.

Collaborative Practice

Collaborative practice meets the needs of clients involved in a relationship breakdown. Very rarely will a client enter this practice wanting revenge or to take the other party to the cleaners or to thoroughly destroy the other party. It is the norm in family practice for the client to tell their lawyer that they just want to be fair. The fairness that they are seeking may differ from party to party.

In collaborative practice the wishes of the parties are ascertained prior to the first combined meeting with their lawyers and are made known to each party at the early stages of the joint negotiating meetings. It is quite common for the parties to have the same wishes and goals which are recorded on a white board and which are visible throughout the negotiating process. The wishes and goals normally are:

1. I wish to reach a fair agreement with my partner.
2. I wish to agree a settlement that will provide some financial security for my future and for my family.
3. I do not wish our children to become involved in our conflict.
4. I want what is best for our children and our family.

Settlements reached in the collaborative process come from a process that differs dramatically, in nearly every important respect, from the litigation Court process. Collaborative lawyers must be specifically trained and undergo continuing training to work together in the negotiation meetings with the client to reach an agreement that is fair and reasonable to all concerned. Collaborative lawyers are trained to listen deeply to the client's entire story at the first meeting with the client and to gain a clear understanding of the wishes, goals and emotional issues that are involved in the client's life at that point in time. In the first meeting with the client the collaborative lawyer will endeavour to educate the client about the negotiating process involved in collaborative practice to empower the client to participate actively and effectively in the negotiations that will take place in the joint meeting.

All substantive discussions, information sharing, options, development and negotiations subsequently take place in face to face meetings with the clients aided by the joint efforts of the collaborative lawyers. The role of the collaborative lawyer is to act as a guide for the negotiations and the management of conflict. Collaborative lawyers move away from outcome driven resolutions and work effectively together with the clients to offer the clients the best possible circumstances in which to work in good faith, interest based, respectful manner at an appropriate place towards a mutually beneficial and accepted outcome.

The process involved maximum client involvement and control over outcome whilst ensuring privacy and creativity. The Participation Agreements signed at the first joint meeting commits all participants to negotiate in good faith bargaining voluntary full disclosure with a view to long term interests in the identification of the client's goals and wishes.

Other collaborative professionals

More often than not other collaboratively trained professionals are involved in the collaborative process. The collaborative teams involve the two collaborative lawyers, a communication professional (a family and child psychologist) and a financial neutral (a financial planner or accountant). These professionals are trained in the collaborative process.

The communication professional maintains highly focused communication during the negotiations, endeavours to reduce the stress levels during the meeting and assist the parties in their clarification of the issues involved. They have anger management skills which help the clients move effectively as possible through the collaborative process.
The child specialist provides balance, non judgmental, non evaluative information about the children's needs and challenges during the negotiating process with an aim to develop high quality parenting plans. The financial neutral helps the parties to clearly identify their property and financial issues, their incomes and expenses to effectively document such matters for the collaborative lawyers to use in the negotiations which take place whilst at the same time helping the clients with immediate budgeting concerns, identifying key financial issues needing to be addressed in the negotiations and assisting in the settlement process by analysing tax issues and projecting long term financial consequences of various settlement options which may be put forward.

Having a team approach contains conflict and educates clients in ways which will reduce their legal fees. The team approach streamlines negotiations and provides long lasting "value-added" resolutions. It enables the clients to enter into educated resolutions of the matters of concern to them.

Having a team approach usually results in a resolution that costs less than it would have been if they had been represented solely by their collaborative lawyers. It enables the

parties to reach respectful, efficient, lasting, mutually workable solutions to divorce related problems that will help the parties as parents provide effective co-parenting of their children in the future. All interdisciplinary collaborative professionals sign contractual agreements that bar them as with the collaborative lawyers, from participating in contested Court proceedings between the parties.

International Academy of Collaborative Professionals (IACP)

The International Academy of Collaborative Professionals was founded to maintain a consistent vision of core elements and standards for collaborative practice. The IACP was founded in the mid 1990s. It sets and maintains the standards for collaborative practice throughout the world. Collaborative professionals are required to be members of this Academy.

Details of the IACP and membership are **attached.**

Training for collaborative professionals

Collaborative professionals are required to undergo specific and detailed training if they wish to become registered and to practice in the collaborative area. In Queensland, they are registered with Queensland Collaborative Law (details **attached**) and must attend regular practice group meetings held on a monthly basis, and undergo continuing training to practice in this area of law.

Certain collaborative professionals have been trained specifically as trainers to provide the training required for lawyers to become collaborative practitioners. Pauline Tesler, a prominent collaborative practitioner in America (profile **attached**) came to Australia in early 2000s to provide the necessary training for collaborative professionals.

Australian trainers were specifically trained to carry out this work. Prominent trainers in Australia are Cathy Gale and Professor Tania Sourdin (profiles **attached**) and continued with the training of Australian collaborative professionals. Other collaborative lawyers have now been trained to carry out this training.