Are You a Good Fit for Collaborative Practice? Building a Team of Conflict Resolution Advocates towards Achieving enduring Settlement for Clients.

Whether you are a lawyer, accountant, financial adviser, psychologist, counsellor, child or relationship specialist or communication specialist, this is an important question if you are currently performing a role or considering performing a role in Collaborative Practice.

Perhaps you have heard about Collaborative Law and what is called Collaborative Practice, an area that promotes a non-litigious mindset, a 'paradigm shift' from traditional positional bargaining towards interest-based negotiation, with the goal of achieving an enduring settlement for clients (Smith, L. 2006, pp 3). An approach suited to practitioners who are problem solvers, creative thinkers, communicators and persuasive negotiators, those who understand that settlement is the norm and that going to court is just one option (Macfarlane, 2008).

Developed in Minnesota is 1990 as an alternative to using the court system, Collaborative Practice aims to create a team of professionals including trained lawyers to assist the parties in areas like property, financial settlement and tax, and issues related to communication between the parties to assist the process and issues related to children such as access and support (Peck, B. 2015). The team consists of legal experts – lawyers, financial experts - accountants, financial, debt advisers and people experts - psychologists, counsellors, child specialists, relationship specialists and communication specialists and in hybrid models, mediators and consultants (Tesler, P. 2008, pp 87).

But unfortunately, not all of these practitioners are a good fit for collaborative practice. Being a collaborative practitioner requires the development of skills in communication and persuasion and solution-creation, and the avoidance of narrow technical advice and strategies that centre on litigation and positionality (Macfarlane, 2008, pp 179). Clients accessing Collaborative Practice seek an enduring settlement because of an ongoing relationship such as the raising of children, and they require a

process that encourages collaboration and cooperation, and often one that is quick and affordable. They seek relief to a great extent, of much of the emotion, delays and cost that is central to the traditional approach that is focused on rights, litigation and at times, combat. With the help of a team of conflict resolution professionals, Collaborative Practice can direct clients towards a more holistic, practical and efficient approach to conflict resolution (Macfarlane, 2009, p2) and therefore engaging practitioners who understand how to deal with the inter-professional nuances of clients, those who possess what Julie Macfarlane suggests as the skills, knowledge, and sensitivities of a "*conflict resolution advocate*" (Macfarlane, 2008, pp 179).

This paper focuses on Collaborative Law and Collaborative Practice in Family Disputes (the area in which collaborative processes have been most applied) and the processes facilitated by lawyers and other professionals that focus on negotiation and settlement and specifically the development of a team of Conflict Resolution Advocates who are incentivised to resolve matters in a cooperative and non-adversarial manner. Recognising that Collaborative Practice can change the quality of the conflict interaction and can potentially effect much deeper changes in clients, this paper discusses the role of collaborative practitioners and the challenges of interdisciplinary team development, aimed to improve client outcomes.

WHAT IS COLLABORATIVE PRACTICE?

Collaborative Practice has been carried out in the United States and Canada for more than 25 years, in the United Kingdom and Europe for the past 15 years and in Australia for more than 10 years (Family Law Council, 2006, pp 4) however the development has not been smooth. In the 1990's, before consistent standards and protocols had been developed, the term "Collaborative" was used loosely to reflect the lawyers' intention to behave in a constructive, solution-oriented manner, even when their clients did not expressly choose Collaborative Practice (Tesler, P. 2008, pp 87). Lawyer only models were developed which were deemed 'psychologically unsophisticated' and 'insufficient as a professional response to the complex needs of couples and families' (Tesler, P. 2008, pp 86-87). Whilst lawyer only models still exist - where lawyers operate a referral model using mental health or financial professionals in an ad hoc manner - the core defining element embodied in the

International Academy of Collaborative Professionals (IACP) standards is the simple rule first articulated by Collaborative Law's founder, Stuart Webb, in 1990: "A case is a Collaborative case if all the professionals assisting the clients are contractually barred from participating in litigation between the parties, and it is not a Collaborative case if they are not so barred" (Tesler, P. 2008, pp 87). This unique disqualification agreement is referred to by Strickland as 'the only absolutely essential element of collaborative law' (Strickland, K. 2006).

COLLABORATIVE PRACTICE IN AUSTRALIA

Collaborative Practice began in Australia in 2005 with training carried out in Canberra by Stu Webb followed immediately by co-training in New South Wales at the University of Technology Sydney with Canadian trainer, Marion Korn. Collaborative Practice has grown and is carried out in all states with greater than 120 IACP members and greater than 15 Practice Groups throughout the country (www.collaborativepractice.com).

Support for collaborative practice occurred at an executive administrative level with endorsement from the Federal Government, the Law Council of Australia and the Chief Judge of the Family Court of Australia (Spencer, D., 2011, p 131), culminating in the release of the Collaborative Practice in Family Law: A report to the Attorney General prepared by the Family Law Council in December 2006 (Scott, M., 2008, pp 220). Although family law remains the prime area of practice and is particularly suited to resolving disputes between separated couples (Scott, M., 2008), collaborative practice is gradually growing more widely and can be used in assisting clients to resolve civil law disputes for example in relation to family, commercial, community, workplace, environmental, construction, building, health and educational decision making (Degoldi, B. R., 2007).

In Australia the legal system has embraced the concept of judicial determination being an option of last resort (Australian Law Reform Commission, 2000). In family law, beginning with the establishment of the Family Law Act 1975, parties were directed to the facilities available for counselling and the procedures available for the resolution by conciliation of matters arising in the proceedings, particularly custody and property proceedings (SS 64(1)(B), 79(9))(Spencer et al, 2009, pp 107). Later

amendments such as the Family Law Reform Act 1995 designated Primary Dispute Resolution (PDR), a term used to describe dispute resolution processes which take place prior to, or instead of, determination by a court, the Act encouraged disputants to use counselling, mediation, family dispute resolution (FDR), or other means of conciliation or reconciliation to resolve matters in which a court order might otherwise be made (Section 14, Dispute Resolution Terms, 2003). Additionally, section 60I of the Act, requires Dispute Resolution to be used before application for court orders. Defined in the Family Law Rules 2004 (Cth) the main purpose (r. 1.06) requires the court to encourage and help parties to consider and use a dispute resolution method rather than having the case resolved by a court. More recently, the 2006 amendments to the Family Law Act 1975 (Cth) procedurally distinguish FDR from other forms of mediation, calling for 'Compulsory Family Dispute Resolution', in regards to parenting matters, property and maintenance disputes (Charlton et al, 2014, p173).

The Family Court has a broad range of options when referring parties to non-court based services and per section 13C, the court may refer the parties to family counselling, family dispute resolution or any appropriate course, program or other service such a Collaborative Practice. These processes provide the confidential and consensual style of modern dispute resolution practices that are carried out today, processes that emphasise the preservation of future relationships, seen as appropriate due to emotive nature of issues surrounding family breakdown and the protection and custody of children (Astor et al, 2002, p7), core to the principles of Collaborative Practice.

HOW DOES COLLABORATIVE PRACTICE DIFFER FROM OTHER FORMS OF FAMILY DISPUTE RESOLUTION?

As Marilyn Scott has noted, Collaborative Law processes offer an option for the resolution of disputes that lawyers have not been able to find in either arbitration or mediation and FDR as provided by the network of Family Relationship Centres, community organisations and private mediators and other lawyer-directed negotiation processes (Scott, M; 2004, p207). FDR clients retain access to court processes should they elect to proceed down that path, as Caroline Counsel so eloquently states, "… litigation while not on the table, is still on the menu" (Counsel, C; 2010, p78).

Distinguishing itself from FDR, Collaborative Practice aims to assist clients to negotiate resolution of their dispute without the overriding threat of Court action (Smith, L. 2006, pp 2), allowing the parties to negotiate in the spirit of mediation but with the benefit of legal advice (and non-legal advice) and assistance (Evers, M. 2008, pp 180). Because collaborative practice professionals are contractually barred from participating in litigation between the parties, this therefore changes the nature of the relationship between lawyer and client in a way that enables the lawyer to encourage and guide the client towards resolution (Smith, L. 2006, pp 3), embracing a type of therapeutic justice giving collaborative practice an opportunity not to destroy families but to leave the parties more satisfied and the new family unit, perhaps unconventionally, intact (Biesot, C. et al, A. 2013).

While this unique disqualification applies to Collaborative practitioners, the disputants can still elect to abandon the collaborative process and proceed to litigation at any time, however the lawyers who represent them in the process cannot. The lawyers exclude themselves from ever representing the clients in court, this becomes binding on them should the process come to an end (Counsel, C; 2010, p78).

PARTICIPATION AGREEMENT

At the beginning of the collaboration the parties agree to sign a formal agreement (the participation agreement) that if their dispute is not resolved and one of them takes the matter to Court, each party must retain new lawyers (Family Law Council and Family Law Section of the Law Council of Australia, 2010, pp17). The Participation Agreement outlines the key principles of collaborative process and includes elements such as (Degoldi, B. R., 2007):

- To treat each other with respect;
- To focus on the future rather than the past;
- To focus on the needs and best interests of the children;
- To voluntarily exchange all information fully and frankly;
- To listen to each other’s concerns, issues and perspectives;
- To explore all possible options;
- To resolve all issues in dispute by consent;
- To file consent orders in the court; and

- If they cannot reach a negotiated settlement, then the collaborative practitioners (psychologists/counsellors and lawyers) will not represent the clients in future litigation and that the information discussed in the collaborative meetings will not be used in future litigation.

The foundation of the participation agreement is that all parties are likely to be on the same page and thus, there are no surprises during the process, focusing parties solely on finding a suitable settlement.

VOLUNTARY PROCESS

According to section 58 of the Australian Collaborative Practice Guidelines, the process is voluntary and all parties have discretion about whether they terminate a collaborative process and these circumstances are to be set out in the participation agreement. The collaborative practitioner must also advise the participants about how they or the collaborative practitioner can suspend or terminate the collaborative process and any costs implications that may be associated with the suspension or termination (Collaborative Practice Guidelines, 2010).

CONFIDENTIALITY

The participation agreement also provides that any communications during the process are confidential, which promotes productive negotiations. Whilst each collaborative practitioner, whether legal or non-legal is obligated to work within their respective profession's confidentiality obligations, rules and guidelines, there remains shared values and common objectives amongst collaborative practitioners (Ever, M. 2008, pp 180), contained in the Australian Collaborative Practice Guidelines for Lawyers (Law Council of Australia, 2011) and formalised in the participation agreement.

CHILD FOCUSED

Collaborative Practice can be particularly useful especially in resolving disputes between separated couples with children. Collaborative practitioners can assist parents become child and future focused in their thinking and dealings with each other (Counsel, C; 2010, p78) and may also be child-inclusive if the parties deem that to be

appropriate – unlike other models of mediation and conferencing. Collaborative Practice encourages collaboration and cooperation among the separated couple by attempting to reach agreements in a dignified and respectful way, towards settling issues in relation to children who have no voice when their parents separate (Macfarlane, 2009, p3).

There is a plethora of research and the impact of separation on children. Key issues of concern that the Collaborative Practitioner can assist centre on the legal, emotional and financial problems of the separation. Once basic financial needs are met, the greatest social risk to children is prolonged conflict between their parents (see: Amato, P: 1999, Emery, R. 1982; Fendrich, Warner, & Weissman, 1990; Hetherington E.M., 2002; Kelly, J. 2000; Johnston J. R. 1994; Gamache, S. 2005). Prolonged parental conflict has both a direct and indirect effect on children and has been found to be predictive of many serious and ongoing problems for children. Therefore, settlement alone is not enough. Addressing the best interest of children requires all possible efforts to reduce or to resolve conflict between parents, thereby creating the highest possible level of family functioning in the post-separation family environment (Gamache, S. 2005: pp 1455), addressing the unique needs of the family, and especially those of the child, giving them a voice.

COST

Over the past four decades, judicial policy-makers have focused on encouraging earlier settlement motivated by widespread public dissatisfaction with the costs and delays of the justice system (Macfarlane, 2009, p1). In addition to these legislative imperatives, clients are demanding, and many lawyers are responding to a need for the cost-effective and timely resolution of disputes (Cooper, D, 2013) and an increasing focus on value for money and practical problem-solving for clients (Macfarlane, 2009, p2). This was eloquently described by Julie Macfarlane: “By creating an atmosphere where the issues are dealt with in a rational way, settlements can be reached much quicker and affordably, as well as much less emotionally demanding with the help of a team collaborative practitioners” (Macfarlane, 2009, p3).

Whilst lawyers are experts in the legal aspects of divorce, other professionals expert in the financial, child development, and relational aspects of divorce can be very cost effective. Whilst they are usually employed at lower hourly rates, the value added benefit of being experts in their respective fields, generally delivers quicker and cheaper value for clients. Collaborative Practice therefore has the potential to be considerably less expensive than litigating as clients are generally billed at an hourly rate, with meetings limited from one to two hours, generally with four to six meetings to reach a resolution.

In comparison to mediation, fees for Collaborative Practice are more predictable as mediation fees can vary depending on the nature of the dispute and the mediator. Comparing collaborative practice to conferencing processes however, the Collaborative process is likely to be more expensive, as conferencing envisage one client preparation interview and one conference and is therefore simpler and cheaper (Smith, L. 2006).

Whilst there is limited empirical research into Australia collaborative practice, the truth surrounding the purported cost-effectiveness of Collaborative Practice is questionable and considering complex issues which involve multidisciplinary teams, the cost can be relatively high (Biesot et al, 2013, pp 82). Research undertaken in the US suggests that Collaborative Practice may be the domain of the rich with the International Academy of Collaborative Practitioners (IACP) showing that clients seeking Collaborative Practice are typically tertiary educated, have an annual income of $100,000 and have a solid portfolio of assets (IACP Cumulative Research, Demographic Characteristics for Couples in Scott, M. 2008. pp. 226). A significant challenge in this growing area.

THE COLLABORATIVE PROCESS

Outlined in part 3 of the Collaborative practice in family law: A report to the Attorney General by the Family Law Council (Family Law Council, 2006, p80) – suggests conduct of a case using the collaborative process. Whilst Strickland comments however that, ‘there is no strict consensus as to how the process should work’, it is flexible by nature, allowing parties to shape the negotiations as they see fit (Strickland, K. 2006, p. 979), there is however, a number of general aspects to the

collaborative law process. The process is dependent on both parties making full and frank disclosure of all of their assets so that negotiations can be honest and open which purports that the agreement that the parties come away with will be a far more effective and workable agreement than any arrangements that might be imposed by a court. The lawyers bring their problem solving skills to the table and the participants hear exactly what the other has to say and the advice of the lawyers (Barbara A. Smyth 2009).

The standard process is often in the form of the four-way meeting where everyone is present in the same room at the same time (diagram 1) with the same agenda and the honest commitment to look at solutions creates a powerful dynamic.

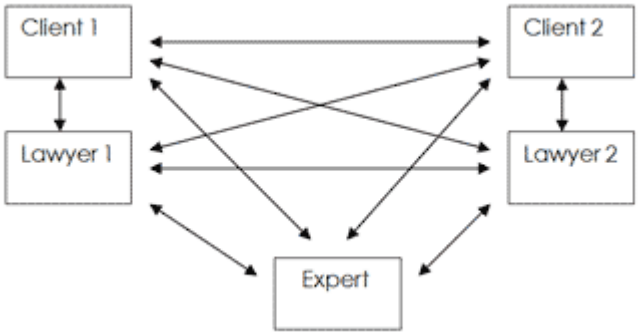

Diagram 1: Four-way Meeting plus expert

This approach promotes a negotiation where clients and lawyers collaborate to solve the issues at hand. In the collaborative family law model the parties in dispute with assistance from their Lawyers, draw up a written contract setting down the ground rules to be followed in the process (Scott, M, 2008, pp.207). Clients and lawyers work together to decide upon processes to assist in the 'four-way' negotiation (Macfarlane, 2005).

Other variations may include:

- 2 coaches + child specialist + financial adviser
- 1 coach (as process manager)
- Coach at first interview - to assess client
- FDRP at first interview - to assess client, later to assess 'genuine effort' if settlement not achieved.
- Any many others.

WHO IS A CANDIDATE FOR USING COLLABORATIVE PRACTICE?

Whilst collaborative practice can be used to resolve many issues in dispute, most attention has focused on family disputes. The 2006 Family Law reforms aimed to ensure that separating couples had a range of options available to resolve disputes outside of the court system and hence encouraged parents to reach agreements that ensure the ongoing involvement of both father and mother in their children's lives (Family Law Council, 2006, p4). Separating couples who require assistance with disputes over property or arrangements for their children have a range of dispute resolution services to choose from – Collaborative Practice being one.

The parties are initially screened for suitability and for instances or issues regarding abuse or the safety of any party to the process and they must be willing to fully participate in the process in an open and honest manner (Strickland, K. 2006, p. 979). Intake may take the form of a face to face interview, telephone interview or survey with each party, held separately from a collaborative process session. The collaborative practitioners ensure that the participants have been provided with an explanation of the process and have an opportunity to reach agreement about the way in which the process is to be conducted (Collaborative Practice Guidelines, 2010).

As outlined in the Collaborative Practice Guidelines, the objectives of an intake process include (Collaborative Practice Guidelines, 2010):

a) determining whether collaborative process is appropriate and whether variations are required (for example, using an interpreter or a different collaborative process model in culturally and linguistically diverse communities, or varying arrangements where violence is an issue);
b) discussing the range of potential dispute resolution options that may be available so that a client can make an informed decision;
c) assisting the participants to prepare for the process. Participants who are prepared are in the best position to make an informed decision when attending a collaborative process;

d) ensuring that every participant receives information about the roles of each party in the collaborative process; this discussion may involve questions relating to the role of collaborative practitioners, support people and others;
e) clarifying the terms of any agreement to enter into the process; and
f) settling venue and timing issues.

Some of the issues that may screen a family out of the Collaborative process include (Gamache, S. 2005: pp 1455):

- Family Violence
- Mental illness;
- Extreme power imbalance in the couple relationship;
- Unwillingness to disclose information relevant to the separation process; and
- A profound and pervasive distrust of the other party.

Collaborative practitioners must ensure careful assessment of the magnitude of these issues including the client's ability and willingness to commit to the process. For collaborative professionals', they must review each case and assess their own experience and comfort and ability to commit to the process for these clients. The involvement of a mental health care professional can assist in helping to explore such issues and putting in place sufficient support systems to assist particular clients.

ARE YOU A CANDIDATE FOR PRACTICING COLLABORATIVE PRACTICE?

Twenty-first century clients are interested in practical problem solving and expect to be involved in strategic planning and decision-making in ways that previous generations did not (Macfarlane, 2009, p2). They employ collaborative lawyers to advise them individually and to provide support, education and legal advice to make decisions that work for them now and into the future. They expect to be engaged in a process that is client centred, that is not always about winning but rather is focused on designing an acceptable agreement for the family as a whole (Counsel, C; 2010, p78).

PARADIGM SHIFT

Collaborative Practice promotes a ‘paradigm shift’ from traditional positionality, inflexibility and unyielding argument towards interest-based negotiation, seeking practitioners with skills of communication and persuasion and solution-creation (Macfarlane, 2008, pp 179). The increasing use of negotiation, mediation and collaboration in resolving family disputes is evolving a new professional identity which centres on value for money and practical problem-solving for clients (Macfarlane, 2009, p2). This emergent professional identity moves practitioners beyond the narrow articulation of partisan interests towards the realisation of a new, practical, conflict specialist (Macfarlane, 2009, p3), a practitioner with the skills, knowledge, and sensitivities of a "*conflict resolution advocate*” (Macfarlane, 2008, pp 179).

As a collaborative lawyer within collaborative practice, this means that they need to forget many of the skills they have developed over the years, such as the ‘zealous representation of the client’s interests’ and the ‘gladiatorial role’ undertaken, particularly for a client who is weak and vulnerable (Smyth, 1990). Lawyers need to adopt a persuasive rather than adversarial or aggressive approach, and they need to acknowledge the concerns of the other side (Cooper, D. 2014, pp. 210). It is not the other lawyer or mediator that needs to be convinced, it is the client on the other side of the table.

SELF-DETERMINATION

At the heart of Collaborative Practice is a self-determination model – a model whereby Clients are informed by Lawyers but ultimately they make decisions, decisions that need to work for them into the future. This requires lawyers to unlearn certain behaviours and to give up control of the outcome and over the ultimate decision the client(s) will make (Cameron, N. 2005, pp.17).

CLIENT FOCUSED, PROBLEM SOLVERS

Collaborative practice is a client focused process, borne out of the desire not to only doing the right thing for their clients but also for their own mental wellbeing, personal values and work practices (Evers, M. 2008, pp.179). Collaborative practitioners aim to assist clients in their thinking and towards working in parallel with other practitioners to preserve peace and enhance good communication (Counsel, C; 2010,

p78). Building on problem-solving models in negotiation (Tesler, P. 2000, pp187), collaborative practitioners commit to resolve the dispute between the parties in dedicated meetings with the focus on the parties underlying interests and settlement rather than positional bargaining. Interest-based negotiation techniques allow parents greater scope to focus on their children's needs, changing their thinking from rights-based to interest-based.

CHILD FOCUS

The unique combination of advocacy and mediation offered by collaboratively trained lawyers, together with the advocacy, mediation and therapeutic process offered by other collaboratively trained professionals - such as child psychologists, counsellors and therapists and has the potential to focus on the co-parenting relationship. By ensuring a minimal level of conflict and maximum level of cooperation, parents can develop a different relationship and learn the business of parenting apart in a way that promotes the wellbeing of their children, and thereby preserving the concept of family (Counsel, C; 2010, p78).

WORKING TO BUILD CONSENSUS

Different to the traditional model of zealous advocacy as described by Julie Macfarlane, Collaborative Practice attempts to use information and facts, working to build consensus where the goals are more inclusive of the client (Macfarlane, 2009, p2). This highlights the complexity of the lawyer's role in non-adversarial processes. Although the lawyer has a duty to promote the client's best interests, it is still possible to compromise and reach a settlement for slightly less than the client's initial position without neglecting that duty (Cooper, D. 2014, pp. 210).

THE ROLE OF LAWYERS

Collaborative family lawyers are legal practitioners who are trained in the collaborative process and actively participate in the negotiations between the disputing parties as "settlement counsel" (Smith, L. 2006, pp 3). Collaborative family lawyers use non-adversarial problem-solving skills to assist clients to resolve all issues in dispute and the collaborative family lawyers prepare the necessary legal documents to complete the process (Degoldi, B. R., 2007).

Part 2 of the Collaborative practice in family law: A report to the Attorney-General by the Family Law Council (Family Law Council, 2006, p80) outlines the role and responsibilities of the collaborative lawyer and the organisation of collaborative law, placing lawyers at the centre of the process (Ardagh, A, 2008, pp. 238). Lawyers make the process decisions in conjunction with clients, rather than an independent third party. This role requires lawyers to adopt a non-adversarial, more collaborative approach (Macfarlane, 2009, pp 10) and to provide an organised framework that will make it easier for the parties to reach an agreement on each issue. The lawyer helps the parties to communicate with each other, identify issues, ask questions, make observations, suggest options, help them express needs, goals and feelings, check the workability of proposed solutions and prepare and file all written paperwork (Smyth, B. A., 2009, pp 3).

Empathic listening plays a large role and helps in building rapport and trust with clients necessary to delve deep into the heart of the conflict (Cameron, 2004, pp. 140). Evaluation of the legal issues is still critically important in order to assess the BATNA ('Best Alternative to a Negotiated Agreement') but lawyers also need to build trust with the other side, providing opportunities for both sides to listen to the other.

THE ROLE OF OTHER COLLABORATIVE PRACTITIONERS

The collaborative team work together to resolve all issues in dispute, whether that relates to property settlement, parenting issues, or support. Given the nature of the separation and divorce process, it is suggested that psychologists and lawyers work together as a team (see also Cameron, 2004) and where appropriate, engage a wider group of interdisciplinary professionals (e.g., family mediators, child specialists, financial advisors) to provide advice in non-legal areas, all of whom are trained in the collaborative process (Degoldi, B. R., 2007). The team aims to ensure settlement agreements are tailored to the specific needs and circumstances of the participants (Ardagh and Cumes, G, 2007, pp 205), working together to help clients deal with this very stressful and challenging time of life. (Degoldi, B. R., 2007)

This wider group of interdisciplinary professionals provide emotional support, teach communication skills, discuss shared parenting, and help ensure that feelings, needs,

and concerns are understood and respected during the dispute settlement process (Degoldi, B. R., 2007).

WORKING COLLABORATIVE WITH COLLEAGUES

Values and objectives such as integrity, honesty, good faith, open communications, a team approach and a focus on moving forward and achieving solutions, underpin Collaborative Practice (Ever, M. 2008, pp 189). Additionally, being open to constructive criticism and being prepared to listen and take time to debrief – to improve professional skills is also essential (Cameron, N. 2005, pp.13).

Within collaborative practice lawyers take professional responsibility for the utility of the process and therefore finding like-minded counterparts who trust each other and have the same sense of what it means to be an advocate for their client is critical (Cameron, N. 2005, pp.12).

BUILDING A COLLABORATIVE PRACTICE

There are a number of trained collaborative lawyers (and other professionals such as child welfare experts and financial planners) across Australia with practice groups in most states and territories. Collaboration should only take place involving professionals trained in collaborative practice (Family Law Section of the Law Council of Australia, 2010). Whilst lawyers still require skills in advocacy, and argument and analytical thinking, they will also need to have the skills of effective negotiators, problem-solvers and neutral facilitators and representatives (Menkel-Meadow, 1999: pp.54). There is recognition that in legal education, greater steps need to been taken ‘beyond teaching lawyering skills toward a focus on professional collaborative relationships and human interactions’ (O’Grady, C,G: 1998, pp 485).

The Collaborative lawyer acknowledges that the interests of the client may be best served by engaging neutral experts to participate in the collaborative process:

- Accountants;
- Valuers;
- Financial Planners and Debt Advisers;
- Counselors and allied professionals;

- Senior Barristers or specialist lawyers;
- Coaches; and
- Child specialists

Others may include:

- financial advisers;
- liquidators;
- administrators;
- accountants;
- investment advisers;
- counselors; and
- Any other relevant expert to inform decision making.

In collaborative Practice the entire team works together for the benefit of the family. Potential team members and their roles include (Adapted from the IACP website: www.collaborativepractice.com):

Lawyers:

- Provides legal guidance, counsel, and advice;
- Support resolving the areas of dispute that arise;
- Cooperates with other Collaborative team members to guide clients through the process;
- Works in joint meetings with both clients and the other lawyer to create legal documents to necessary to complete the process; and
- Are professionally licensed.

Coach:

- Helps clients effectively communicate during the process which can minimise conflict and cost;
- Helps to maintain a safe environment to discuss difficult issues with mutual respect;
- Helps advocating for clients;
- Helps you minimise emotions to better manage reactivity to stress; and

- Is licensed as a mental health professional or a qualified mediator.

Financial Specialist:

- Assists clients with developing spending plans (budgets);
- Develops current and future cash flow analyses;
- Identifies and evaluates tax consequences;
- Helps clients/lawyers generate and evaluate financial options;
- Guides the team discussion on financial matters; and
- Is professionally licensed as a financial expert.

Child Specialist:

- Provides neutral guidance and education to parents;
- Helps parents to talk with their children about the divorce or break up;
- Meets with parents and children to obtain developmental information, identify family strengths and identify goals to meet children's needs'
- Meets with children to assess their hopes and needs for the future;
- Gives feedback to parents and the team members about the needs of children;
- Assists parents in the creation of parenting plans;
- Works with the Coach to strengthen parents' co-parenting relationship; and
- Is licensed as a mental health professional.

COLLABORATIVE PRACTICE STANDARDS FOR TRAINING

The Australian Collaborative Practice Guidelines for Lawyers (Law Council of Australia; 2010) seeks to address the discrepancies between the applicability of the adversarial ethical framework and the collaborative practice principles (Evers et al, 2012, p181), by defining the nature and scope of the profession and ethical responsibilities specific to Collaborative Practice, devising a framework for conducting the process and setting standards for lawyer training (Biesot et al, 2013, pp 81).

Team members trained in collaborative practice and processes must satisfy the minimum Law Council of Australia Standards for "Basic Training", meeting the criteria outlined in Appendix B. Basic training requires at least fifteen hours of education in the collaborative process and knowledge of the theories, practices and

skills of Collaborative Practice including knowledge of the collaborative model of dispute resolution negotiation theory, the dynamics of interpersonal conflict, and effective communication skills.

Additionally, IACP sponsors an annual International Networking Forum, a National Training Institute and the Collaborative Review and has developed standards for practitioners and trainers as well as training and ethical standards for Collaborative Practice.

COLLABORATIVE PRACTICE STANDARDS FOR TRAINERS

Collaborative Practice Standards for Trainers is set out in Appendix A, that detail the standards that must be satisfied by trainers including minimum years of experience, in the particular discipline for Lawyers, Child specialists, Financial specialists and coaches working in family dispute resolution with families and children.

CONCLUSION

Divorce doesn't have to be adversarial, with two sides supported by their legal counsel… it can actually be collaborative (Family Law Council 2006). Collaborative Practitioners can work with couples to normalise the separation process, to assist clients to seek a healthy outcomes for all family members (Cameron, 2004, 131). Beyond the "zealous adversarial advocate", Collaborative Practice encourages legal practitioners and other collaborative practitioners to learn the skills, knowledge, and sensitivities of a "*conflict resolution advocate*", by taking an interest-based approach focused on negotiation and settlement. It requires Collaborative Practitioners to reframe their thinking from adversary to fellow advocate, to turn critical skills away from adversary, into focusing on the problem (Cameron, N. 2005, pp.11), towards assisting clients to build a successful resolution that meets both their needs. Clients are central to the decision-making process.

By creating an atmosphere where the issues are dealt with in a rational way, settlements can be reached much quicker and affordably, as well as much less emotionally with the help of a team collaborative practitioners (Macfarlane, 2009, p3). Settlement-oriented processes also assist parents become child and future focused

which is more likely to improve outcomes for children. These processes and methods of resolution involve parties negotiating together, are less formal, cheaper, more efficient and effective and more satisfying to clients than legal ‘solutions’ (Ardagh, A, 2008).

Being a collaborative practitioner however is not for everyone, but for those who are interested in delivering more satisfactory outcomes for clients and lawyers alike, and the engaging a wider group of interdisciplinary professionals trained in the collaborative processes, can be very rewarding. Working together to change the quality of the conflict interaction and to effect much deeper changes in clients as they transition through a very stressful and challenging time of their life, can bring personal and societal benefits, a far cry from the current adversarial processes laden with emotion, delays and excessive cost. There are worse endeavours in life, consider becoming a Conflict Resolution Advocate today.

APPENDIX A - COLLABORATIVE PRACTICE STANDARDS FOR TRAINERS

1. **Experience**
   1.1. A trainer should have participated in at least eight different collaborative cases, accumulating at least fifty hours of practice in the collaborative process or co-train with others so that the training team meets this requirement.
   1.2. A trainer should, during the five years immediately prior to the training, have had at least twenty hours of actual hands on experience as a teacher, trainer or presenter of programs each of which was at least three hours in duration or co-train with others so that the training team meets this requirement.
   1.3. A trainer should have completed at least twenty four hours of training in the collaborative process. Not less than twelve of such hours shall include 1) a basic training of six hours in the theories, practices and skills of collaborative practice and 2) a training of at least six hours directed at that trainer's professional discipline. The additional twelve hours may be earned by participating as a student or assistant in Collaborative Practice trainings conducted by trainers who satisfy these Trainer Standards.
2. **Practitioner Standards**
   2.1. A trainer should have completed at least thirty eight hours of mediation training in accordance with the Australian National Mediator Approval Standards.
3. **Licensing/Certification**
   3.1. A trainer shall be registered and be in good standing, as required for the trainer's field of practice. A trainer shall have no public record of discipline or unsatisfactory professional conduct or professional misconduct.
4. **Australian Training Standards**
   4.1. A trainer should have the skills to conduct a training that meets the Law Council of Australia Training Standards.
5. **Skills Training**
   5.1. A trainer should be qualified by education, training and experience to inform and educate about skills relative to communication, problem-solving, facilitative dispute resolution, mediation, interpersonal relationships, couples' conflict management and resolution, interest based negotiation, team and

process. A trainer should be able to teach adults through meaningful dialogue and didactic presentations, and be able to set up demonstrations, structure role plays, and employ other experiential learning methods.

6. Knowledge about area of dispute

6.1. A trainer should have an appropriate understanding of the general area to which the dispute training relates including, a recognition that financial decisions may have far-reaching and long-term financial and tax implications and, when training in the family law area, knowledge of the separation process, child development, and the dynamics of the separating family.

7. Particular professions

7.1. In addition to the above, those offering training in particular disciplines as part of the collaborative process shall satisfy the following:

7.2. Lawyers:

- A minimum of five years in active practice including five years of experience in the particular discipline which is the subject of the training.

7.3. Child specialist:

- A minimum of five years clinical experience with specialty focus on children.

7.4. Financial:

- A minimum of five years in financial consulting with significant experience in any particular discipline that is the subject of the training.

7.5. Coaches:

- A minimum of five years experience in the particular discipline which is the subject of the training for example, experience in family dispute resolution and in-depth knowledge of: 1) short-term therapy and coaching models, 2) separation and the psychological impact of separation on families, and 3) basic elements and guidelines for creating parenting plans.

APPENDIX B - COLLABORATIVE PRACTICE STANDARDS FOR TRAINING

Training in the collaborative process satisfies the minimum Law Council of Australia Standards for a "Basic Training" when it meets the following criteria:

1. A "Basic Training" in the collaborative process is a training or workshop consisting of at least fifteen hours of education.
2. At the completion of "Basic Training" a participant should have knowledge of the theories, practices and skills needed to begin Collaborative Practice.
3. In particular, participants should be exposed to and educated about:
   3.1. The collaborative model, both as a dispute resolution mechanism and as a process for modeling the skills and tools necessary for the positive reconstruction of interpersonal relationships.
   3.2. Negotiation theory, including the characteristics of positional and interest-based negotiation.
   3.3. Dynamics of interpersonal conflict.
   3.4. Effective communication skills.
   3.5. Team building skills (whether lawyer centric or broader team) with respect to the clients and collaborative colleagues.
   3.6. The legal, financial, psychological and emotional elements of the clients‟ circumstances.
   3.7. The interdisciplinary team approach and the contribution and roles of each profession.
   3.8. Depending on the participants‟ experience, different ways of beginning and developing collaborative practices in the participants‟ unique community.
   3.9. How to assess one‟s own level of understanding of „knowledge‟ (comprehension) and the limits of one‟s own competence with a willingness to seek assistance from more experienced practitioners.
   3.10. One‟s ability and limitations to effectively assess the capacity of the client for effective participation in the collaborative process.
   3.11. Organisational considerations in running a collaborative case (e.g. how to establish Collaborative Practice issues to be covered at or before the first

group meeting, contacting the other party, identifying materials and client agendas etc).

3.12. Ethical considerations including integrity, professionalism, diligence, competence and confidentiality, including knowledge of the specific ethical considerations of each profession.

3.13. Meaningful material to support all of the objectives.

3.14. Dynamics that are relevant to the particular training for example in family focused training an understanding of separating and blended families.

4. A Basic Training should include multiple learning modalities – interactive, experiential and lecture elements: e.g. demonstrations, role play, small group exercises, dialogue between, and among, trainer(s) and participants, communication, team building and negotiation games.
5. A Basic Training should include written materials that are useful for reference and practice by the collaborative practitioner after the training.
6. A Basic Training should include evaluations of the training and trainer(s) by the participants.

BIBLIOGRAPHY

Journal Articles/Books/Reports

Alexander, N, 2008: *The Mediation Metamodel: Understanding Practice* 26(1) Conflict Resolution Quarterly 97 at 111-112.

Amato, P. 1999: *Children of Divorced Parents as Young Adults*, Coping with Divorce, Single Parenting, & Remarriage: A Risk and Resiliency Perspective 147-163 (Hetherington, E.M ed., Erlbaum L, New Jersey).

Ardagh, A 1999; *A Transformative Mediation: The opportunity and the challenge*, 2 ADR Bulletin, pp1-3

Ardagh, A, 2008: *Repositioning the Legal Profession in ADR Services*, The Place of Collaborative Law System in Australia. Vol 8 No 1 (QUTLJJ); 238-252.

Ardagh, A and Cumes, G, 2007: *The Legal Profession Post-ADR: From Mediation to Collaborative Law*, 18 Australasian Dispute Resolution Journal 205

Astor, H and Chinkin, C 2002: *Dispute Resolution in Australia*, Second Edition, LexisNexis Butterworths Australia.

Australian Law Reform Commission, 2000: *Managing justice: A review of the federal civil justice system*, ALRC 89

Biesot, C. Rice, A. and Caple, A. 2013: Diffusing Family Distress: Collaborative Law in the Family Law Context. The Arbitrator and Mediator, June 2103.

Boulle, L,. 1996: Mediation Principles, Process, Practice (Butterworths, Sydney) pp 33-34 and 259-260

Burger, W (Chief Justice), 1982: *Isn't There A Better Way?* 68 A.B.A. J. 274 at 275.

Bush, R A. Baruch and Folger, J P., 2007: *Transformative Mediation and Third-Party Intervention: Ten Hallmarks of a Transformative Approach to Practice*, Conflict Resolution Quarterly 13, no. 4 January (pp 85-87).

Bush, R A. Baruch and Folger, J P., 2004: *The Promise of Mediation: The Transformative Approach to Conflict*, 2nd ed. San Francisco: Jossey-Bass Publishers.

Caruana, C. 2010: *Dispute resolution choices: A comparison of family dispute resolution, family law conferencing services and collaborative law*, No. 85; 80-83.

Cameron, N. J. 2004: *Collaborative Practice: Deepening the Dialogue*, The Continuing Legal Education Society of British Columbia

Cameron, N. J. 2005: *Reclaiming Advocacy*, The Continuing Legal Education Society of British Columbia (Paper presented at 2nd Annual ADR and Collaborative Law Conference, Vancouver, British Columbia, 2005: Reclaiming Advocacy).

Condliffe, P., 2003: *Conflict management: A Practical Guide* (2nd ed, LexisNexis Butterworths, Sydney, pp 34-38

Cooper, D. M. 2014: *Lawyers behaving badly in mediations: lessons for legal educators*. Australasian Dispute Resolution Journal, 25(4), pp. 204-211

Cooper, D. M. 2013; *The "new advocacy" and the emergence of lawyer representatives in ADR*. Australasian Dispute Resolution Journal, 24, pp. 178-186.

Cooper, D. 2007: *The Family Law Dispute Resolution Spectrum*, Vol 18, Australasian Dispute Resolution Journal 234, pp 237-242.

Cooper, D. and Brandon, M. 2007: *How can Family Lawyers Effectively Represent their Clients in Mediation and Conciliation Processes?* Vol 21, Australian Journal of Family Law, 288, pp292-307.

Counsel, C. 2010: *What is this thing called collaborative law?* Family Matters, Australian Institute of Family Studies, No. 85; 77-79.

Degoldi, B. R., 2007: *How to end a relationship with dignity and respect without going to court*. InPsych December.

Douglas, K. 2011: *The teaching of ADR in Australia law schools: Promoting non-adversarial practice in law*, Australasian Dispute Resolution Journal, No.22: 49.

Emery, R. 1982: *Interparental Conflict and the Children of Discord and Divorce*. 92 Psychological Bulletin, 310.

Evers, M. 2012: *Family Dispute Resolution: The Importance of Clear Protocols for Cooperation between Family Relationship Service Providers and Family Lawyers* (2012), 2 Family Law Review, 225.

Evers, M. 2008: *The Ethics of Collaborative Practice,* Australasian Dispute Resolution Journal No.19, 179 at 179-181.

Family Law Council, 2006. *Collaborative practice in family law: A report to the Attorney-General prepared by the Family Law Council*. Canberra: Commonwealth of Australia.

Family Law Council and Family Law Section of the Law Council of Australia 2010: *Best Practice Guidelines for lawyers doing family law work* (2nd edition)

Gamache, S. 2005: *Collaborative Practice: A New Opportunity to Address Children's Best Interest in Divorce*, Louisiana Law Review, Vol. 65, Number 4, pp 1455 – 1485

Hetherington E.M., 2002: *For Better or Worse; Divorce Reconsidered*. Norton: New York.

IACP Cumulative Research. 2007: *Demographic Characteristics for Couples: Education Husband*. Results presented at the 8th Annual Networking and Educational Forum, Toronto Canada, October 25-28.

Johnston J. R. 1994: *High Conflict Divorce,* 4 The Future of Children 165.

Kelly, J., 2000: *Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research*, 39 J. Am. Acad. Child Adolesc. Psychiatry 963.

Law Council of Australia 2011: *Australian Collaborative Practice Guidelines for Lawyers*.

Law Reform Commission, 2008: *Consultation Paper on Alternative Dispute Resolution* (LRC CP50) 205

Macfarlane, J. 2009: *The New Lawyer: Moving from warrior to conflict resolver*, ADR Bulletin of Bond University DRC, Volume 10 | Number 8, Article 5.

Macfarlane, J. 2008: *The New Lawyer: How Settlement is Transforming the Practice of Law*, Vancouver, UBC Press.

Macfarlane, J. 2005: *The Emerging Phenomenon of Collaborative Family Law: A Qualitative Study of CFL Cases* (Family, Children and Youth Section, Department of Justice, Canada).

Menkel-Meadow, C. 1999: *Lawyering, Dispute Resolution, Problem Solving and Creativity for the 21st Century, Into the 21st Century*: Thought Pieces on Lawyering, Problem Solving and ADR, Alternatives, CPR Institute for Dispute Resolution, 54.

National Alternative Dispute Resolution Advisory Council (NADRAC), 2012: *Teaching Alternative Dispute Resolution in Australian Law Schools*.

National Alternative Dispute Resolution Advisory Council (NADRAC), 2003: *Dispute Resolution Terms* (AGPS, Canberra, September).

Noble, C. 2003: Conflict Coaching for Leaders, Mediate.com, http://mediate.com/articles/noble3.cfm

O'Grady, C., G. 1998: *Preparing Students for the Profession: Clinical*

Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer. 4 Clinical Law Review 485

Okun, B.F. 1992, *Effective Helping*. Belmont, CA: Brooks/Cole.

Peck, B. 2015: *Are You a Good Fit for Collaborative Divorce?* Collaborative Law Institute of Minnesota. http://collaborativedivorceoptions.com/are-you-a-good-fit-for-collaborative-divorce/#sthash.1us1dbqm.dpuf

Scott, M., 2004: *Collaborative Law: A new role for Lawyers*, ADRJ, 15; 207-216.

Scott, M., 2008: *Collaborative Law: Dispute Resolution Competencies for the 'New Advocacy'* 8(1) Queensland University of Technology Law and Justice Journal 213

Scott, M. 2015: *Dispute Resolution, Reading materials*, Autumn 2015, Volume 1, University of Technology, Sydney.

Smith, L. 2006: *Collaborative Law and the Legal Aid System*, National Legal Aid letter to Family Law Council

Smyth, B. A., 2009: *Collaborative Law, The Association of Collaborative Practitioners*, Legal Aid Board, Wicklow.

Spencer, D. and Hardy, S, 2009: *Dispute Resolution an Australia: cases, commentary and materials*, 2nd Edition, Thomson Reuters, Sydney

Spencer, D., 2011: *Principles of Dispute Resolution*, 1st Edition, Thomson Reuters, Sydney

Strickland, K. 2006: *Putting "Counselor" Back in the Lawyer's Job Description: Why More States Should Adopt Collaborative Law Statutes*, 84 N.C. L. REV. 979, 986

Susskind, L, E. Thomas-Lamer, J. 1999: Conducting a Conflict Assessment, in the Consensus Building Handbook 99-136

Tesler, P, 2008: *Collaborative Family Law, the New Lawyer, and Deep Resolution of Divorce-Related Conflicts;* Journal of Dispute Resolution, Issue 1, Article 7, p 83-130.

Tesler, P, 2000: *Collaborative Law: What it is and Why Lawyers Need to Know About It*, in Dennis Stolle, David Wexler and Bruce Winick, (eds), Practising Therapeutic Jurisprudence: Law as a Helping Profession, Carolina Academic Press, 187.

Tillet, G. and French, B.2010, Resolving Conflict: A Practical Approach, 4th edn. Oxford University Press, South Melbourne, Vic

Ury, W., Brett, J. and Goldberg, S., 1988: Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict, San Francisco: Jossey-Bass Publishers.

Webb, S.G., & Ousky, R.D. (2007). *The Collaborative Way to Divorce: The Revolutionary Method That Results in Less Stress, Lower Costs, and Happier Kids – Without Going to Court*. New York: Penguin Books.

www.collabprofessionalsnsw.org.au/home-2/

http://collaborativedivorceoptions.com/what-is-a-collaborative-divorce-team/#sthash.GyMmlkGa.dpuf